

# Title 463 WAC

## ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

<b>Chapters</b>			
<b>463-06</b>	<b>General—Organization—Public records.</b>	463-08-030	Participation by intervenor. [Order 1-70, § 463-08-030, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-10</b>	<b>Definitions.</b>	463-08-035	Informational hearing. [Order 1-70, § 463-08-035, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-14</b>	<b>Policy and interpretation.</b>	463-08-040	Formal public hearing. [Order 1-70, § 463-08-040, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-18</b>	<b>Procedure—Regular and special council meetings.</b>	463-08-045	Additional public hearings. [Order 4-74, § 463-08-045, filed 12/13/74; Order 1-70, § 463-08-045, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-22</b>	<b>Procedure and guidelines—Potential site studies.</b>	463-08-050	Disposition after formal hearing. [Order 1-70, § 463-08-050, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-26</b>	<b>Procedure—Initial public hearing and public information meeting.</b>	463-08-055	Petition for rehearing. [Order 1-70, § 463-08-055, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
<b>463-28</b>	<b>Procedure—State preemption.</b>	463-08-060	Potential site study. [Order 1-74, § 463-08-060, filed 5/29/74.] Repealed by Order 106, filed 11/4/76. Later promulgation, see chapter 463-22 WAC.
<b>463-30</b>	<b>Procedure—Adjudicative proceedings.</b>		
<b>463-34</b>	<b>Procedure—Petitions for rule making and declaratory orders.</b>		
<b>463-36</b>	<b>Procedure—Amending or terminating a site certification agreement.</b>		
<b>463-38</b>	<b>Regulations for compliance with NPDES permit program.</b>		
<b>463-39</b>	<b>General and operating permit regulations for air pollution sources.</b>		
<b>463-40</b>	<b>Dangerous wastes.</b>		
<b>463-42</b>	<b>Procedure—Guidelines—Applications for site certification.</b>		
<b>463-43</b>	<b>Procedure—Applications for expedited processing.</b>		
<b>463-47</b>	<b>SEPA rules.</b>		
<b>463-50</b>	<b>Independent consultants—Guidelines.</b>		
<b>463-54</b>	<b>Certification compliance determination and enforcement.</b>		
<b>463-58</b>	<b>Fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.</b>		

**DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE**

	<b>Chapter 463-08</b>
	<b>RULES OF PRACTICE</b>
463-08-010	Uniform procedural rules. [Order 1-70, § 463-08-010, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
463-08-011	Effect of certification. [Order 2-72, § 463-08-011, filed 12/27/72.] Repealed by Order 104, filed 11/4/76.
463-08-015	Council organization. [Order 2-72, § 463-08-015, filed 12/27/72; Order 1-70, § 463-08-015, filed 5/7/70.] Repealed by Order 103, filed 11/4/76.
463-08-020	Official application. [Order 2-72, § 463-08-020, filed 12/27/72; Order 1-70, § 463-08-020, and Form A, filed 5/7/70.] Repealed by Order 113, filed 2/4/77.
463-08-021	Hearing examiners. [Order 2-72, § 463-08-021, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.
463-08-022	Proposed orders by examiners. [Order 2-72, § 463-08-022, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.
463-08-023	Notice of intent. [Order 1-74, § 463-08-023, filed 5/29/74; Order 2-72, § 463-08-023, filed 12/27/72.] Repealed by Order 113, filed 2/4/77.
463-08-024	Compliance procedures for State Environmental Policy Act of 1971. [Order 2-72, § 463-08-024, filed 12/27/72.] Repealed by Order 112, filed 12/5/76.
463-08-025	Intervention. [Order 1-70, § 463-08-025, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

**Chapter 463-12**  
**GUIDELINES FOR APPLICANTS SEEKING THERMAL POWER PLANT CERTIFICATION**

463-12-010,	463-12-015, 463-12-020, 463-12-025, 463-12-030, 463-12-035, 463-12-040, 463-12-045 and 463-12-050. [Order 1-70, filed 5/7/70.] Repealed by Order 2-72, filed 12/27/72. Later promulgations, see WAC 463-12-100 through 463-12-150, and chapter 463-42 WAC.
463-12-100	Project description. [Order 2-72, § 463-12-100, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-105	Site characteristics. [Order 2-72, § 463-12-105, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-110	Transmission lines. [Order 2-72, § 463-12-110, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-115	Health and safety. [Order 2-72, § 463-12-115, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-120	Environmental impact—Land. [Order 2-72, § 463-12-120, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-125	Environmental impact—Water. [Order 2-72, § 463-12-125, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-130	Environmental impact—Air. [Order 2-72, § 463-12-130, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-135	Environmental impact—Vegetation, fish and animal life. [Order 2-72, § 463-12-135, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-140	Environmental impact—Aesthetics. [Order 2-72, § 463-12-140, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-145	Environmental impact—Recreation and heritage. [Order 2-72, § 463-12-145, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-150	Monitoring and future studies. [Order 2-72, § 463-12-150, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
463-12-155	Environmental impact—Social and economic. [Order 2-74, § 463-12-155, filed 6/12/74.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

**Chapter 463-16**  
**REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM**

463-16-010	Definitions. [Order 3-74, § 463-16-010, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-010.
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463-16-020 Scope and purpose. [Order 3-74, § 463-16-020, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-020.

463-16-030 NPDES application and tentative determination. [Caption only] [Order 3-74, § 463-16-030, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-030.

463-16-031 Application filing with the council. [Order 3-74, § 463-16-031, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-031.

463-16-032 Signature form. [Order 3-74, § 463-16-032, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-032.

463-16-033 Tentative determination on NPDES permits. [Order 3-74, § 463-16-033, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-033.

463-16-034 Fact sheet. [Order 3-74, § 463-16-034, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-034.

463-16-040 Notice, hearings and information accessibility. [Caption only] [Order 3-74, § 463-16-040, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-040.

463-16-041 Notice, provisions. [Order 3-74, § 463-16-041, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-041.

463-16-042 Public hearings. [Order 3-74, § 463-16-042, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-042.

463-16-043 Public access to information. [Order 3-74, § 463-16-043, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-043.

463-16-050 NPDES permit contents. [Order 3-74, § 463-16-050, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-050.

463-16-051 General conditions. [Order 3-74, § 463-16-051, filed 8/27/74.] Repealed by order 114, filed 2/4/77. Later promulgation, see WAC 463-38-051.

463-16-052 Prohibited discharges. [Order 3-74, § 463-16-052, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-052.

463-16-053 Effluent limitations, water quality standards and other requirements for NPDES permits. [Order 3-74, § 463-16-053, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-053.

463-16-054 Schedules of compliance. [Order 3-74, § 463-16-054, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-054.

463-16-055 Other terms and conditions. [Order 1-75, § 463-16-055, filed 4/7/75; Order 3-74, § 463-16-055, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-055.

463-16-060 NPDES permits review and appeal. [Order 3-74, § 463-16-060, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-060.

463-16-061 Reissuance of NPDES permits. [Order 3-74, § 463-16-061, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-061.

463-16-062 Modifications of NPDES permits. [Order 3-74, § 463-16-062, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-062.

463-16-063 Appeal. [Order 3-74, § 463-16-063, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-063.

463-16-064 Transmission to regional administrator of proposed NPDES permit. [Order 3-74, § 463-16-064, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-064.

463-16-065 Monitoring and enforcement. [Order 1-75, § 463-16-065, filed 4/7/75; Order 3-74, § 463-16-065, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-065.

463-16-080 Transmittal of data to regional administrator. [Order 3-74, § 463-16-080, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-080.

463-16-090 Conflict of interest. [Order 3-74, § 463-16-090, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-090.

**Chapter 463-20**  
**PUBLIC DISCLOSURE**

463-20-010 Purpose. [Order 1-74, § 463-20-010, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

463-20-020 Definitions. [Order 1-74, § 463-20-020, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

463-20-030 Operations and procedures. [Order 1-74, § 463-20-030, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

463-20-040 Public records available. [Order 1-74, § 463-20-040, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-060.

463-20-050 Public records officer. [Order 1-74, § 463-20-050, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-070.

463-20-060 Office hours. [Order 1-74, § 463-20-060, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-030.

463-20-070 Requests for public records. [Order 1-74, § 463-20-070, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-080.

463-20-080 Copying. [Order 1-74, § 463-20-080, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-110.

463-20-090 Exemptions. [Order 1-74, § 463-20-090, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.

463-20-100 Review of denials of public records requests. [Order 1-74, § 463-20-100, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.

463-20-110 Protection of public records. [Order 1-74, § 463-20-110, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

463-20-111 Records index. [Order 1-74, § 463-20-111, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-170.

463-20-120 Address for communications. [Order 1-74, § 463-20-120, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

463-20-130 Adoption of form—Appendix A—"Request for public record." [Order 1-74, § 463-20-130, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

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

463-46-010 Authority. [Order 112, § 463-46-010, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1). Later promulgation, see chapter 463-47 WAC.

463-46-020 Purpose. [Order 112, § 463-46-020, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-025 Scope and coverage of this chapter. [Order 112, § 463-46-025, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-040 Definitions. [Order 112, § 463-46-040, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-050 Use of the environmental checklist form. [Order 112, § 463-46-050, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-055 Timing of the EIS process. [Statutory Authority: RCW 80.50.040(1). 81-07-019 (Order 81-1), § 463-46-055, filed 3/11/81; Order 112, § 463-46-055, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. [Order 112, § 463-46-060, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-100 Summary of information which may be required of a private applicant. [Order 112, § 463-46-100, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-150 Exemptions exclusive—DOE approval of changes in exemptions. [Order 112, § 463-46-150, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-160 No presumption of significance for nonexempt actions. [Order 112, § 463-46-160, filed 12/15/76.] Repealed by

- 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-170 Categorical exemptions. [Order 112, § 463-46-170, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-175 Exemptions and nonexemptions applicable to specific state agencies. [Order 112, § 463-46-175, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-177 Environmentally sensitive areas. [Order 112, § 463-46-177, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-180 Exemption for emergency actions. [Order 112, § 463-46-180, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-190 Use and effect of categorical exemptions. [Order 112, § 463-46-190, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-200 Lead agency—Responsibilities. [Order 112, § 463-46-200, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-203 Determination of lead agency—Procedures. [Order 112, § 463-46-203, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-205 Lead agency designation—Governmental proposals. [Order 112, § 463-46-205, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-210 Lead agency designation—Proposals involving both private and public construction activity. [Order 112, § 463-46-210, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-215 Lead agency designation—Private projects for which there is only one agency with jurisdiction. [Order 112, § 463-46-215, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-220 Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. [Order 112, § 463-46-220, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-225 Lead agency designation—Private projects requiring licenses from more than one state agency. [Order 112, § 463-46-225, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-230 Lead agency designation—Specific proposals. [Order 112, § 463-46-230, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-240 Agreements as to lead agency status. [Order 112, § 463-46-240, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-245 Agreements between agencies as to division of lead agency duties. [Order 112, § 463-46-245, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-260 Dispute as to lead agency determination—Resolution by DOE. [Order 112, § 463-46-260, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-270 Assumption of lead agency status by another agency with jurisdiction. [Order 112, § 463-46-270, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-300 Threshold determination requirement. [Order 112, § 463-46-300, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-305 Recommended timing for threshold determination. [Order 112, § 463-46-305, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-310 Threshold determination procedures—Environmental checklist. [Order 112, § 463-46-310, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-320 Threshold determination procedures—Initial review of environmental checklist. [Order 112, § 463-46-320, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-330 Threshold determination procedures—Information in addition to checklist. [Order 112, § 463-46-330, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-340 Threshold determination procedures—Negative declarations. [Order 112, § 463-46-340, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-345 Assumption of lead agency status by another agency with jurisdiction over a proposal—Prerequisites, effect and form of notice. [Order 112, § 463-46-345, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-350 Affirmative threshold determination. [Order 112, § 463-46-350, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-355 Form of declaration of significance/nonsignificance. [Order 112, § 463-46-355, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-360 Threshold determination criteria—Application of environmental checklist. [Order 112, § 463-46-360, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-365 Environmental checklist. [Order 112, § 463-46-365, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-370 Withdrawal of affirmative threshold determination. [Order 112, § 463-46-370, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-375 Withdrawal of negative threshold determination. [Order 112, § 463-46-375, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-390 Effect of threshold determination by lead agency. [Order 112, § 463-46-390, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-400 Duty to begin preparation of a draft EIS. [Order 112, § 463-46-400, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-405 Purpose and function of a draft EIS. [Order 112, § 463-46-405, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-410 Predraft consultation procedures. [Order 112, § 463-46-410, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-420 Preparation of EIS by persons outside the lead agency. [Order 112, § 463-46-420, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-425 Organization and style of a draft EIS. [Order 112, § 463-46-425, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-440 Contents of a draft EIS. [Order 112, § 463-46-440, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-442 Special considerations regarding contents of an EIS on a nonproject action. [Order 112, § 463-46-442, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-444 List of elements of the environment. [Order 112, § 463-46-444, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-450 Public awareness of availability of draft EIS. [Order 112, § 463-46-450, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-455 Circulation of the draft EIS—Review period. [Order 112, § 463-46-455, filed 12/15/76.] Repealed by 84-19-

031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-460 Specific agencies to which draft EIS shall be sent. [Order 112, § 463-46-460, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-465 Agencies possessing environmental expertise. [Order 112, § 463-46-465, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-470 Cost to the public for reproduction of environmental documents. [Order 112, § 463-46-470, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-480 Public hearing on a proposal—When required. [Order 112, § 463-46-480, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-485 Notice of public hearing on environmental impact of the proposal. [Order 112, § 463-46-485, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-490 Public hearing on the proposal—Use of environmental documents. [Order 112, § 463-46-490, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-495 Preparation of amended or new draft EIS. [Order 112, § 463-46-495, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-500 Responsibilities of consulted agencies—Local agencies. [Order 112, § 463-46-500, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-510 Responsibilities of consulted agencies—State agencies with jurisdiction. [Order 112, § 463-46-510, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-520 Responsibilities of consulted agencies—State agencies with environmental expertise. [Order 112, § 463-46-520, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-530 Responsibilities of consulted agencies—When predraft consultation has occurred. [Order 112, § 463-46-530, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-535 Cost of performance of consulted agency responsibilities. [Order 112, § 463-46-535, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-540 Limitations on responses to consultation. [Order 112, § 463-46-540, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-545 Effect of no written comment. [Order 112, § 463-46-545, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-550 Preparation of the final EIS—Time period allowed. [Order 112, § 463-46-550, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-570 Preparation of the final EIS—Contents—When no critical comments received on the draft EIS. [Order 112, § 463-46-570, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-580 Preparation of the final EIS—Contents—When critical comments received on the draft EIS. [Order 112, § 463-46-580, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-600 Circulation of the final EIS. [Order 112, § 463-46-600, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-650 Effect of an adequate final EIS prepared pursuant to NEPA. [Order 112, § 463-46-650, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-652 Supplementation by a lead agency of an inadequate final NEPA EIS. [Order 112, § 463-46-652, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-660 Use of previously prepared EIS for a different proposed action. [Order 112, § 463-46-660, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-690 Use of lead agency's EIS by other acting agencies for the same proposal. [Order 112, § 463-46-690, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-695 Draft and final supplements to a revised EIS. [Order 112, § 463-46-695, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-700 No action for seven days after publication of the final EIS. [Order 112, § 463-46-700, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-830 Responsibility of agencies—SEPA public information center. [Order 112, § 463-46-830, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-840 Application of agency guidelines to ongoing actions. [Order 112, § 463-46-840, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

463-46-910 Severability. [Order 112, § 463-46-910, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

### Chapter 463-06 WAC

#### GENERAL—ORGANIZATION—PUBLIC RECORDS

##### WAC

463-06-010 Organization of this title.

463-06-020 Description of organization.

463-06-030 Council office—Business hours.

463-06-040 Monthly meetings.

463-06-050 General method by which operations are conducted.

463-06-060 Public records available.

463-06-070 Public records officer.

463-06-080 Contents of requests for public records.

463-06-090 Staff assistance.

463-06-100 Record of requests maintained.

463-06-110 Fees for copying.

463-06-120 Determination of exempt status.

463-06-130 Deletion of identifying details.

463-06-140 Written denials.

463-06-150 Review of denials.

463-06-160 Time for completion of review.

463-06-170 Records index.

**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 463-28 WAC sets forth the council's procedures in determining whether to recommend that the state preempt local land use plans or zoning ordinances for a site.

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 463-36 WAC sets forth the council's procedures in amending or terminating a site certification agreement.

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

Chapter 463-39 WAC provides the basic framework for the conduct of the council's responsibilities for air pollution prevention and control.

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

Chapter 463-43 WAC sets forth requirements for preparation and processing of applications which qualify for expedited processing.

Chapter 463-47 WAC implements the state-wide SEPA rules in chapter 197-11 WAC.

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).

Chapter 463-58 WAC contains rules relating to independent consultant fees for potential site study, application processing, and compliance determination.

[Statutory Authority: RCW 80.50.040(1), 98-01-079, § 463-06-010, filed 12/12/97, effective 1/12/98. 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.]

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

(2) The chair of the council is the person appointed by the governor with the advice and consent of the senate to a term coextensive with that of the governor pursuant to RCW 80.50.030. The chair has a vote on all matters before the council and has an office at the department of community, trade, and economic development.

(3) The department of community, trade, and economic development provides administrative services and staff to the council.

[Statutory Authority: RCW 80.50.040(1) and 34.05.220 [(1)](b), 98-01-078, § 463-06-020, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-020, filed 4/2/92, effective 5/3/92; 78-09-077 (Order 78-4), § 463-06-020, filed 8/28/78; Order 103, § 463-06-020, filed 11/4/76.]

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**WAC 463-06-030 Council office—Business hours.**

The council office is located at the Department of Community, Trade, and Economic Development, 925 Plum Street S.E., Olympia, Washington. It is open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. Notices, applications, business correspondence, or other communication should be sent to the council office.

[Statutory Authority: RCW 80.50.040(1) and 34.05.220 [(1)](b), 98-01-078, § 463-06-030, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-030, filed 4/2/92, effective 5/3/92; 81-20-028 (Order 81-4), § 463-06-030, filed 9/30/81; Order 103, § 463-06-030, filed 11/4/76. Formerly WAC 463-20-060.]

**WAC 463-06-040 Monthly meetings.** Regular meetings of the council are held on the second Monday of each month. Regular meetings of the council's executive committee are held on the first and third Mondays of each month. Regular council and executive committee meetings may be canceled or rescheduled at the discretion of the chair or by the noticing procedure provided for special meetings pursuant to WAC 463-18-050.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-040, filed 4/2/92, effective 5/3/92; 84-07-042 (Order 84-1), § 463-06-040, filed 3/21/84; Order 103, § 463-06-040, filed 11/4/76.]

**WAC 463-06-050 General method by which operations are conducted.** In general, the council reaches major policy and operational decisions through formal council action at regular and special meetings. In some circumstances, the chair may perform duties which are specifically authorized by the council. Day-to-day administration is handled by the council manager and staff. The council manager is responsible for implementing the decisions of the council and for directing the staff that supports the council.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-050, filed 4/2/92, effective 5/3/92; Order 103, § 463-06-050, filed 11/4/76.]

**WAC 463-06-060 Public records available.** All public records of the council are available for public inspection and copying at the council office pursuant to chapter 42.17 RCW and these rules, except as otherwise provided by RCW 42.17.310 or any superseding law.

[Order 103, § 463-06-060, filed 11/4/76. Formerly WAC 463-20-040.]

**WAC 463-06-070 Public records officer.** The council's public records officer is the council manager who is responsible for implementation of these and other applicable regulations regarding public records. Correspondence regarding public records is to be addressed to the public records officer.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-070, filed 4/2/92, effective 5/3/92; Order 103, § 463-06-070, filed 11/4/76. Formerly WAC 463-20-050.]

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

- (1) Name of the person requesting the records; and
- (2) The day on which the written request was prepared or submitted; and

(3) The nature of the request (to the extent that this may expedite compliance); and

(4) If the matter requested is indexed, an appropriate index reference; or

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

(6) A prominent statement that the request is being made pursuant to chapter 42.17 RCW and these regulations.

[Order 103, § 463-06-080, filed 11/4/76. Formerly WAC 463-20-070.]

**WAC 463-06-090 Staff assistance.** It is the obligation of the staff to assist requestors in identifying the public record requested. Staff members who are dealing with requests will make a sincere effort to respond to each initial request within two working days of first receipt.

[Order 103, § 463-06-090, filed 11/4/76.]

**WAC 463-06-100 Record of requests maintained.** A record of requests for public records shall be maintained at the council office which shall reflect the date received and whether or not the request was granted, in addition to other information deemed relevant by the council.

[Order 103, § 463-06-100, filed 11/4/76.]

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

[Order 103, § 463-06-110, filed 11/4/76. Formerly WAC 463-20-080.]

**WAC 463-06-120 Determination of exempt status.** Determination whether a requested record is exempt under the provisions of RCW 42.17.310 will be made in each instance.

[Order 103, § 463-06-120, filed 11/4/76. Formerly WAC 463-20-090 (part).]

**WAC 463-06-130 Deletion of identifying details.** Identifying details will be deleted by the council in cases where disclosure of such details would be an invasion of privacy under the laws of the state of Washington. Written justification by the council for deletions will always accompany furnished records where deletions have been made.

[Order 103, § 463-06-130, filed 11/4/76. Formerly WAC 463-20-090 (part).]

**WAC 463-06-140 Written denials.** All denials of requests are by written statement specifying the reasons for denial, including, where appropriate, a reference to the specific exemption and a brief explanation as to how the exemption applies to the record withheld.

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[Order 103, § 463-06-140, filed 11/4/76. Formerly WAC 463-20-090 (part).]

**WAC 463-06-150 Review of denials.** Any person is entitled to review of a public record request denial if written request for review is promptly made. The request should specifically refer to the written statement constituting the denial. Any such written request is to be promptly referred to the council manager who shall either affirm or reverse the denial. The council manager may request a special meeting of the council to review the denial if such action is requested in writing and is otherwise warranted.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-06-150, filed 4/2/92, effective 5/3/92; Order 103, § 463-06-150, filed 11/4/76. Formerly WAC 463-20-100 (part).]

**WAC 463-06-160 Time for completion of review.** When a written request for review of a denied public record request is made, a final decision will be made and written response will be given to the requestor within two business days. If the written request for review is submitted at the council office substantially simultaneous with initial denial, then review shall be completed within two business days thereafter. If the initial request and denial are made through the mail, then review shall be completed within two business days after receipt of the written request for review. The review period cited above may be extended only as necessary and for good cause. Where a request for council review at a regular or special meeting is granted, review shall be complete on council action.

[Order 103, § 463-06-160, filed 11/4/76. Formerly WAC 463-20-100 (part).]

**WAC 463-06-170 Records index.** The council maintains an index of those classes of records described in RCW 42.17.260 which is available for public inspection and copying.

[Order 103, § 463-06-170, filed 11/4/76. Formerly WAC 463-20-111.]

## Chapter 463-10 WAC DEFINITIONS

### WAC

463-10-010 Definitions.

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

(1) "Council" refers to the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means the person or entity making application for a certification or permit covered by this title.

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

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been approved by the council and signed by the governor, and who is bound by the terms therein.

[Statutory Authority: RCW 80.50.040(1), 98-01-080, § 463-10-010, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040, 91-03-

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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**

463-14-010	Purpose of this chapter.
463-14-020	Need for energy—Legislative intent binding.
463-14-030	Public hearings policy.
463-14-040	County, city and port district representatives—Segmentation of hearings and issues.
463-14-050	Preemption.
463-14-060	Open meetings with full discussion.
463-14-070	Integration of council activities with federal agency activities.
463-14-080	EFSEC deliberative process.

**WAC 463-14-010 Purpose of this chapter.** The purpose of this chapter is to publicize significant policy determinations and interpretations by which the council is guided in implementing chapter 80.50 RCW and this title.

[Order 104, § 463-14-010, filed 11/4/76.]

**WAC 463-14-020 Need for energy—Legislative intent binding.** RCW 80.50.010 requires the council "to recognize the pressing need for increased energy facilities." In acting upon any application for certification, the council action will be based on the policies and premises set forth in RCW 80.50.010 (1), (2), and (3).

[Order 104, § 463-14-020, filed 11/4/76.]

**WAC 463-14-030 Public hearings policy.** RCW 80.50.090 requires a minimum of two public hearings concerning each site for which certification is sought. The first of these is the local public hearing described in RCW 80.50.090 (1) and (2) where the council is obligated to determine whether or not the proposed use of the site is consistent and in compliance with county or regional land use plans or zoning ordinances at the time of application. However, in order to foster general public comment on the proposed site, the council will allow general public comment at such local public hearings, wherever possible. The council must also conduct a second public hearing as 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 463-14-040 County, city and port district representatives—Segmentation of hearings and issues.** RCW 80.50.030 (4), (5) and (6) necessitate segmentation of hearings and issues in instances where proposed energy facilities

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would extend beyond the boundaries of a single county, city and/or port district.

[Statutory Authority: RCW 80.50.040(1). 78-09-078 (Order 78-5), § 463-14-040, filed 8/28/78; Order 104, § 463-14-040, filed 11/4/76.]

**WAC 463-14-050 Preemption.** Chapter 80.50 RCW operates as a state preemption of all matters relating to energy facility sites. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document which might otherwise be required.

[Order 104, § 463-14-050, filed 11/4/76.]

**WAC 463-14-060 Open meetings with full discussion.** All council proceedings are to be conducted in a manner consistent with the spirit of the state Open Meetings Act, and not merely according to the letter of that law. To this same end, full and open discussion between council members themselves, as well as between council members, members of the staff and persons appearing before the council, shall be fostered and encouraged at all regular and special meetings.

[Order 104, § 463-14-060, filed 11/4/76.]

**WAC 463-14-070 Integration of council activities with federal agency activities.** In consonance with RCW 80.50.040(10), the council hereby adopts a policy of holding joint hearings, whenever practical and desirable, with federal agencies having jurisdiction over matters affecting certification under chapter 80.50 RCW.

[Statutory Authority: RCW 80.50.040(1). 98-01-081, § 463-14-070, filed 12/12/97, effective 1/12/98; Order 104, § 463-14-070, 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.]

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## Chapter 463-18 WAC

## PROCEDURE—REGULAR AND SPECIAL COUNCIL MEETINGS

## WAC

463-18-010	Purpose of this chapter.
463-18-020	Governing procedure.
463-18-030	Quorum.
463-18-040	Delegation of duties.
463-18-050	Special meetings.
463-18-060	Procedure in the absence of the chairman.
463-18-070	Council duties of acting chairman.
463-18-080	County, city and port district representatives—Participation.

**WAC 463-18-010 Purpose of this chapter.** This chapter delineates procedures to be followed in the conduct of council business at regular and special meetings.

[Order 105, § 463-18-010, filed 11/4/76.]

**WAC 463-18-020 Governing procedure.** Council business at regular and special meetings is conducted according to *Roberts Rules of Order* except as suspended by majority vote. To the extent that any 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.]

**WAC 463-18-030 Quorum.** A majority of the voting council members constitutes a quorum for the conduct of council business.

[Order 105, § 463-18-030, filed 11/4/76.]

**WAC 463-18-040 Delegation of duties.** The chairman or any member of the council may perform such duties as are specifically authorized and directed by the council.

[Order 105, § 463-18-040, filed 11/4/76.]

**WAC 463-18-050 Special meetings.** A special meeting may be called at any time by the chair or by a majority of the members of the council by delivering personally or by mail written notice to each member; and to each local newspaper of general circulation and to each local radio or television station which has on file a written request to be notified of such special meetings of or all special meetings. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the EFSEC manager a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make

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notice impractical and increase the likelihood of such injury or damage.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, § 463-18-050, filed 12/12/97, effective 1/12/98; Order 105, § 463-18-050, filed 11/4/76.]

**WAC 463-18-060 Procedure in the absence of the chairman.** Pursuant to RCW 80.50.030 the chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence.

[Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-060, filed 8/28/78; Order 105, § 463-18-060, filed 11/4/76.]

**WAC 463-18-070 Council duties of acting chairman.** Any council member designated by the council chairman as acting chairman shall remain entitled to vote on any proposed council action and shall continue to fulfill his responsibilities to the agency which he represents.

[Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-070, filed 8/28/78; Order 105, § 463-18-070, filed 11/4/76.]

**WAC 463-18-080 County, city and port district representatives—Participation.** To the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port representatives to participate in discussion; however, voting on issues shall be as permitted by WAC 463-06-020.

[Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-080, filed 8/28/78; Order 105, § 463-18-080, filed 11/4/76.]

## Chapter 463-22 WAC

## PROCEDURE AND GUIDELINES—POTENTIAL SITE STUDIES

## WAC

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

**WAC 463-22-010 Purpose of this chapter.** This chapter sets forth procedure and guidelines for processing potential sites studies pursuant to RCW 80.50.170 and 80.50.175.

[Order 106, § 463-22-010, filed 11/4/76.]

**WAC 463-22-020 Potential site study—Where submitted.** Requests shall be submitted to the energy facility site evaluation council at the council office in writing.

[Order 106, § 463-22-020, filed 11/4/76.]

**WAC 463-22-030 Potential site study—Fee.** A fee of \$10,000 shall accompany the study request and shall be a condition precedent to any action by the council. Payment

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shall be made by a cashier's check payable to the state treasurer.

[Order 106, § 463-22-030, filed 11/4/76.]

**WAC 463-22-040 Potential site study—Contents.** A request for potential site study is to include a legal description of the proposed site, a general description of the area in which the proposed energy facility is to be located, and a description of the type, size, and significant features of the proposed facility itself. The council may require further information which it deems necessary to complete the request.

[Order 106, § 463-22-040, filed 11/4/76.]

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

[Order 106, § 463-22-050, filed 11/4/76.]

**WAC 463-22-060 Notification of local authorities.** Upon receipt of a request for study of a potential site, the council will give notice to the legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located.

[Statutory Authority: RCW 80.50.040(1), 78-09-080 (Order 78-7), § 463-22-060, filed 8/28/78; Order 106, § 463-22-060, filed 11/4/76.]

**WAC 463-22-070 Independent consultant study—No preliminary approval.** Nothing stated or recommended by the consultant, either during the study stage or in its report, shall be interpreted as preliminary approval or disapproval of the potential site by the council.

[Order 106, § 463-22-070, filed 11/4/76.]

**WAC 463-22-080 Procedure where application precedes conclusion of study.** In the event an application for certification is made prior to completion of the study, the council may terminate the study prior to completion.

[Order 106, § 463-22-080, filed 11/4/76.]

**WAC 463-22-090 Additional costs procedure.** In the event that the council determines that the initial fee of \$10,000 is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof.

[Order 106, § 463-22-090, filed 11/4/76.]

(1999 Ed.)

**Chapter 463-26 WAC**

**PROCEDURE—INITIAL PUBLIC HEARING AND PUBLIC INFORMATION MEETING**

**WAC**

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

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

463-26-030	News releases. [Order 109, § 463-26-030, filed 11/16/76.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).
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**WAC 463-26-010 Purpose of this chapter.** This chapter sets forth the procedures to be followed in the conduct of the initial public hearing held pursuant to RCW 80.50.090(1) and the public informational meeting described in WAC 463-26-130.

[Order 109, § 463-26-010, filed 11/16/76.]

**WAC 463-26-020 Notification of local authorities.** Before scheduling the initial public hearing, the council will notify the legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located.

[Statutory Authority: RCW 80.50.040(1), 78-09-081 (Order 78-8), § 463-26-020, filed 8/28/78; Order 109, § 463-26-020, filed 11/16/76.]

**WAC 463-26-040 Adversary nature of hearings.** The initial public hearing conducted pursuant to this chapter shall be conducted as adversary proceeding.

[Order 109, § 463-26-040, filed 11/16/76.]

**WAC 463-26-050 Purpose for hearing.** At the commencement of the initial public hearing, the council shall explain that the purpose of the initial hearing under RCW 80.50.090(1) is to determine whether the proposed facility is consistent and in compliance with county or regional land use plans or zoning ordinances and that this matter shall have priority. Pursuant to RCW 80.50.020(15) "land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government under chapters 35.63, 35A.63, or 36.70 RCW. Pursuant to RCW 80.50.020(16) "zoning ordinance" means an ordinance of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state constitution.

[Statutory Authority: RCW 80.50.040(1), 78-09-081 (Order 78-8), § 463-26-050, filed 8/28/78; Order 109, § 463-26-050, filed 11/16/76.]

**WAC 463-26-060 Public announcement—Testimony.** At the outset of the initial public hearing, the council shall publicly announce that opportunity for testimony by

anyone shall be allowed relative to the consistency and compliance with county or regional land use plans or zoning ordinances.

[Order 109, § 463-26-060, filed 11/16/76.]

**WAC 463-26-070 Introduction of counsel for the environment.** The council shall invite the counsel for the environment to be present at the initial public hearing. Counsel for the environment shall be introduced and afforded an opportunity to explain his or her statutory duties under chapter 80.50 RCW.

[Order 109, § 463-26-070, filed 11/16/76.]

**WAC 463-26-080 Explanation of entire certification process.** At the commencement of the hearing, the council shall generally explain the entire hearing process as set forth in RCW 80.50.090 and these regulations.

[Statutory Authority: RCW 80.50.040(1), 87-01-065 (Order 86-1), § 463-26-080, filed 12/17/86; Order 109, § 463-26-080, filed 11/16/76.]

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

[Order 109, § 463-26-090, filed 11/16/76.]

**WAC 463-26-100 Procedure where no certificates relating to zoning ordinances or land use plans are presented.** In cases where no certificates relating to zoning or land use are presented to the council, then the applicant will be required to demonstrate compliance with local zoning or land use plans as part of its presentation. Local authorities shall then be requested to testify on the question of consistency and compliance with county or regional land use plans or zoning ordinances.

[Order 109, § 463-26-100, filed 11/16/76.]

**WAC 463-26-110 Determination regarding zoning or land use.** Prior to the conclusion of the hearing, the council shall make a determination as to whether the proposed site is consistent and in compliance with land use plans or zoning ordinances pursuant to RCW 80.50.090(2).

[Order 109, § 463-26-110, filed 11/16/76.]

**WAC 463-26-120 Initial determination subject to review.** At the time that the determination on zoning or land use planning is made, the council shall explain that this determination may be reopened later during the course of the adjudicative proceeding by the parties to that proceeding when good cause is shown.

[Title 463 WAC—p. 10]

[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

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

**WAC 463-28-010 Purpose and scope.** This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt local land use plans or zoning ordinances for a site or portions of a site for an energy facility.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

**WAC 463-28-020 Authority of council—Preemption by state.** The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-020, filed 6/23/78.]

**WAC 463-28-030 Determination of noncompliance—Procedures.** If the council determines during the hearing required by RCW 80.50.090 that the site of a pro-

posed energy facility or any portion of a site is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, the following procedures shall be observed:

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

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

(3) The applicant shall submit regular reports to the council regarding the status of negotiations with local authorities on noncompliance issues.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.]

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

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

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

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

(4) Interests of the state as delineated in RCW 80.50.010.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.]

**WAC 463-28-050 Failure to request preemption.** Where noncompliance is at issue, failure of the applicant to file the written request as required in WAC 463-28-040 within the time permitted shall be sufficient grounds for the council to recommend to the governor denial of certification.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.]

**WAC 463-28-060 Request for preemption—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

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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 463-28-070 Certification—Conditions—State/local interests.** If the council approves the request for preemption it shall include conditions in the draft certification agreement which give due consideration to state or local governmental or community interests affected by the construction or operation of the energy facility and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted or superseded pursuant to RCW 80.50.110(2).

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

**WAC 463-28-080 Preemption—Failure to justify.** During the 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.]

**WAC 463-28-090 Governing rules.** Applications for certification of the energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable rules in effect on the day immediately preceding July 15, 1977.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-090, filed 6/23/78.]

**Chapter 463-30 WAC**

**PROCEDURE—ADJUDICATIVE PROCEEDINGS**

<b>WAC</b>	
463-30-010	Purpose and scope of this chapter.
463-30-020	Council conducted hearings and administrative law judges.
463-30-030	Use of the term "council."
463-30-050	Status of agencies and agency members in adjudicative proceedings.
463-30-055	Applicant funding of council members salaries and fringe benefits for extended adjudications.
463-30-060	Definitions—Persons and parties.
463-30-080	Commencement of adjudicative proceedings.
463-30-085	Provisions regarding limited English-speaking and hearing impaired persons.
463-30-090	Publicity—Commencement of adjudicative proceedings.
463-30-100	Appearance and practice before the council.
463-30-120	Filing and service.
463-30-190	Discovery practice.
463-30-200	Subpoenas—Practice.
463-30-230	Official notice.
463-30-240	Official notice—Evaluation of evidence.
463-30-250	Stipulations and settlement.
463-30-270	Prehearing conference.
463-30-280	Attendance by council members at prehearing conferences.
463-30-300	Hearing schedule guidelines.
463-30-310	Rules of evidence.

463-30-320 Entry of initial and final orders.  
 463-30-330 Petition for review and replies.  
 463-30-335 Reconsideration.  
 463-30-390 Recommendation—Transmittal to governor.  
 463-30-400 Intervention.  
 463-30-410 Participation by intervenor.  
 463-30-420 Participation by county, city and port district representatives.

463-30-380 Adoption of proposed order. [Order 109, § 463-30-380, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.

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

463-30-040 Hearing examiner designation. [Order 109, § 463-30-040, filed 11/16/76.] Repealed by 82-10-027 (Order 82-2), filed 4/30/82. Statutory Authority: RCW 80.50.040(1).  
 463-30-070 Pleadings—Legibility. [Order 109, § 463-30-070, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-110 Notice and opportunity to be heard—Time. [Order 109, § 463-30-110, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-130 Service—Upon whom served. [Order 109, § 463-30-130, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-140 Waiver of service—Filing. [Order 109, § 463-30-140, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-150 Service—Method of service. [Order 109, § 463-30-150, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-160 Service—When service complete. [Order 109, § 463-30-160, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-170 Proof of service—Filing with council. [Order 109, § 463-30-170, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-180 Proof of service—Method. [Order 109, § 463-30-180, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-210 Depositions and interrogatories—Practice. [Order 109, § 463-30-210, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-220 Request for production. [Order 109, § 463-30-220, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-260 Definition of issues before hearing. [Statutory Authority: RCW 80.50.040(1), 83-01-126 (Order 82-4), § 463-30-260, filed 12/22/82; Order 109, § 463-30-260, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-290 Prehearing conference record of action. [Order 109, § 463-30-290, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-295 Orders regarding procedure, scheduling and substantive issues. [Statutory Authority: RCW 80.50.040(1), 83-01-126 (Order 82-4), § 463-30-295, filed 12/22/82.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-340 Proposed order—Contents of exceptions. [Order 109, § 463-30-340, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-350 Replies to exceptions. [Order 109, § 463-30-350, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-360 Replies to exceptions—Contents. [Order 109, § 463-30-360, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.  
 463-30-370 Exceptions and replies to exceptions—Briefs and arguments. [Order 109, § 463-30-370, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.

**WAC 463-30-010 Purpose and scope of this chapter.**  
 The purpose of this chapter is to set forth procedures by which adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter 10-08 WAC shall not apply to adjudicative proceedings before the council.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-010, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-010, filed 11/16/76.]

**WAC 463-30-020 Council conducted hearings and administrative law judges.** The council may conduct adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW or it may utilize an administrative law judge provided by the office of administrative hearings pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-020, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1), 82-10-027 (Order 82-2), § 463-30-020, filed 4/30/82; Order 109, § 463-30-020, filed 11/16/76.]

**WAC 463-30-030 Use of the term "council."** The term "council," for purpose of this chapter, shall refer to the members of the energy facility site evaluation council as constituted by law, or a panel of such members.

[Statutory Authority: RCW 80.50.040(1), 82-10-027 (Order 82-2), § 463-30-030, filed 4/30/82; Order 109, § 463-30-030, filed 11/16/76.]

**WAC 463-30-050 Status of agencies and agency members in adjudicative proceedings.** All state agencies having members on the council are deemed to be parties to any adjudicative proceeding before the council. For purposes of any adjudicative proceeding, however, the agency representative on the council shall be deemed to be a member of the council and not a member of the agency. It shall be proper for the agency representative on the council to communicate with employees of the represented agency, excepting those agency employees who have participated in the proceeding in any manner or who are otherwise disqualified by RCW 34.05.455.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-050, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-050, filed 11/16/76.]

**WAC 463-30-055 Applicant funding of council members salaries and fringe benefits for extended adjudications.** When more than ten days of adjudicative hearings will be necessary to review an application for site certification, it shall be the responsibility of the applicant for site certification to pay the normal salary and fringe benefits expenses of such members of the council for the period in excess of ten days that they spend in adjudicative hearings. For the purposes of this rule, time spent in preparation for adjudicative hearings shall not be considered. Such salary and fringe ben-

efits expenses for designated council members shall be considered to be part of the council's normal expenses pursuant to RCW 80.50.071 (1)(b).

[Statutory Authority: RCW 80.50.040, 93-12-013, § 463-30-055, filed 5/20/93, effective 6/20/93.]

**WAC 463-30-060 Definitions—Persons and parties.**

The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(1).
- (2) Each "member agency" as defined in RCW 80.50.030(3).
- (3) The "counsel for the environment" as defined in RCW 80.50.020(12).
- (4) Each person admitted to an adjudicative proceeding as an "intervenor," is a party only for the purposes and subject to any limitations and conditions specified in the council order granting intervention.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-060, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-060, filed 11/16/76.]

**WAC 463-30-080 Commencement of adjudicative proceedings.** Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

- (1) Upon the record without further written notice to the parties; or
- (2) By letter from the EFSEC manager; or
- (3) By letter from the presiding officer.

In such instances, twenty days' prior notice is not required.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250, 98-01-084, § 463-30-080, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-080, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1), 81-07-019 (Order 81-1), § 463-30-080, filed 3/11/81; Order 109, § 463-30-080, filed 11/16/76.]

**WAC 463-30-085 Provisions regarding limited English-speaking and hearing impaired persons.** Provisions in WAC 10-08-040 (2) and (3)(c), 10-08-045, 10-08-150, and 10-08-160(2) relating to procedures involving limited English-speaking or hearing impaired persons are incorporated in these rules by this reference.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-085, filed 2/13/90, effective 3/16/90.]

**WAC 463-30-090 Publicity—Commencement of adjudicative proceedings.** Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the pro-

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posed site to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC 463-30-400.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-090, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-090, filed 11/16/76.]

**WAC 463-30-100 Appearance and practice before the council.** (1) General. In all proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on a record subject to review by the courts, the following persons may appear in a representative capacity:

- (a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;
- (b) Attorneys at law duly qualified and entitled to practice before the highest court of any other state;
- (c) Upon permission of the presiding officer, an officer or employee of a party or person seeking party status.

The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) Notices of appearance and withdrawal of attorneys. Attorneys or other authorized representatives appearing on behalf of a party or withdrawing from a proceeding shall immediately so notify the council and all parties to the proceeding.

(3) Unethical conduct. All persons appearing in proceedings before the council in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to these standards, the council may decline to permit the person to appear in a representative capacity in any proceeding before the council.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-100, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-100, filed 11/16/76.]

**WAC 463-30-120 Filing and service.** (1) Filing. Filing of any document shall be deemed complete only upon receipt by the EFSEC manager or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(a) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

(b) Other pleadings. All pleadings shall be legible and a copy shall be served upon each party to the proceeding.

(2) Service.

(a) Service by parties. Service of pleadings by parties shall be made by delivering one copy to each party in person, by mail, properly addressed with postage prepaid, by commercial parcel delivery company properly tendered with fees prepaid, or by telefacsimile transmission, where originals are mailed simultaneously. Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be

deemed valid service upon the party of all future pleadings before the council. Service of pleadings by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.

(b) Service by the council. All notices, findings of fact, decisions, and orders required to be served by the council may be served in person, by mail, by commercial parcel delivery company, properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously. Service of documents shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company.

(c) Certificate of service. There shall appear on the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120 (2)(a).

Dated at . . . . . this . . . . . day of . . . . .  
(signature) . . . . .

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, § 463-30-120, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-120, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-120, filed 11/16/76.]

**WAC 463-30-190 Discovery practice.** Discovery is available when permitted by the presiding officer and shall be conducted in accordance with RCW 34.05.446.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-190, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-190, filed 11/16/76.]

**WAC 463-30-200 Subpoenas—Practice.** (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of

the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff in any proceeding before the council.

(6) The council shall only be responsible for paying the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-200, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-200, filed 11/16/76.]

**WAC 463-30-230 Official notice.** (1) Upon written or oral motion the council may officially notice:

(a) Any judicially cognizable facts;

(b) Technical or scientific facts within the council's specialized knowledge; and

(c) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-230, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-230, filed 11/16/76.]

**WAC 463-30-240 Official notice—Evaluation of evidence.** WAC 463-30-230 shall not be construed to preclude the council from utilizing its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-240, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-240, filed 11/16/76.]

**WAC 463-30-250 Stipulations and settlement.** (1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.

(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipu-



lation shall be stated on the record or submitted in writing and is subject to approval by the council.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-250, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-250, filed 11/16/76.]

**WAC 463-30-270 Prehearing conference.** (1) The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-400 may be ruled upon at a prehearing conference;
- (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, at his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-270, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-270, filed 11/16/76.]

**WAC 463-30-280 Attendance by council members at prehearing conferences.** Individual council members may be present and participate in prehearing conferences.

[Statutory Authority: RCW 80.50.040(1), 83-01-126 (Order 82-4), § 463-30-280, filed 12/22/82; Order 109, § 463-30-280, filed 11/16/76.]

**WAC 463-30-300 Hearing schedule guidelines.** In any adjudicative site certification proceeding the council shall, after consultation with the parties, schedule the hearing pro-

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cess so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

(1) The description of the particular energy facility and the proposed site.

(2) Consistency of the proposal with zoning and land use regulations.

(3) Physical site suitability and related safety considerations.

(4) NPDES, PSD, or other permits.

(5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.

(6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.

(7) Peripheral area impacts (all categories).

(8) Adverse impacts minimization and consideration of conditions of certification.

At the commencement of the hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. The council may alter the schedule.

[Statutory Authority: RCW 34.05.250, 98-01-083, § 463-30-300, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-300, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-300, filed 11/16/76.]

**WAC 463-30-310 Rules of evidence.** (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2) Where practicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the council shall appear, except with the permission of the council, as an expert witness on behalf of other parties in a proceeding in which the former employee participated.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of

the presiding officer, be grounds for striking all testimony of the witness.

(6) Any party bound by stipulation or admission of record may, at any time prior to closure of the record, be permitted to withdraw its agreement in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-310, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-310, filed 11/16/76.]

#### **WAC 463-30-320 Entry of initial and final orders.**

Every decision and order whether initial or final shall:

- (1) Be correctly captioned to identify the council and name of the proceeding;
- (2) Identify all parties and representatives participating in the proceeding;
- (3) Include a concise statement on the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;
- (6) Contain an initial or final order disposing of all contested issues;
- (7) If applicable, contain a statement describing the parties' rights to reconsideration or other administrative relief.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-320, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1), 82-10-027 (Order 82-2), § 463-30-320, filed 4/30/82; Order 109, § 463-30-320, filed 11/16/76.]

#### **WAC 463-30-330 Petition for review and replies.**

(1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) The petition for review shall be filed with the EFSEC manager within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(3) The petition for review shall specify the challenged portions of the initial order and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may file an answer to a petition for review. The answer shall be filed with the EFSEC manager within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250, 98-01-084, § 463-30-330, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-330, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-330, filed 11/16/76.]

**WAC 463-30-335 Reconsideration.** A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the EFSEC manager.

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[Statutory Authority: RCW 80.50.040(1) and 34.05.250, 98-01-084, § 463-30-335, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-335, filed 2/13/90, effective 3/16/90.]

**WAC 463-30-390 Recommendation—Transmittal to governor.** Upon the adoption by the council of its recommendations as to the approval or disapproval of an application for certification, the council shall forward such recommendations to the governor.

[Order 109, § 463-30-390, filed 11/16/76.]

**WAC 463-30-400 Intervention.** On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

[Statutory Authority: RCW 80.50.040(1), 81-20-028 (Order 81-4), § 463-30-400, filed 9/30/81; Order 109, § 463-30-400, filed 11/16/76.]

**WAC 463-30-410 Participation by intervenor.** In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-410, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-410, filed 11/16/76.]

**WAC 463-30-420 Participation by county, city and port district representatives.** In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-30-420, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1), 78-09-082 (Order 78-9), § 463-30-420, filed 8/28/78; Order 109, § 463-30-420, filed 11/16/76.]

## Chapter 463-34 WAC

## PROCEDURE—PETITIONS FOR RULE MAKING AND DECLARATORY ORDERS

## WAC

463-34-010	Purpose and scope of this chapter.
463-34-030	Petitions for rule making—Form, content, and filing.
463-34-050	Petition for rule making—Consideration and disposition.
463-34-060	Disposition time.
463-34-070	Declaratory orders—Form, content, and filing.
463-34-080	Declaratory orders—Procedural rights of persons in relation to petition.
463-34-090	Declaratory orders—Disposition of petition.

## DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-34-020	Scope of petitions for rule making. [Order 107, § 463-34-020, filed 11/4/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-34-040	Rule-making petitions—Request for specific time. [Order 107, § 463-34-040, filed 11/4/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-34-100	Form of petitions. [Order 107, § 463-34-100, filed 11/4/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.

**WAC 463-34-010 Purpose and scope of this chapter.**

This chapter sets forth procedures to be followed in petitions for rule making and for declaratory orders pursuant to chapter 34.05 RCW.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-010, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-010, filed 11/4/76.]

**WAC 463-34-030 Petitions for rule making—Form, content, and filing.** A petition for adoption, amendment, or repeal of a rule may be filed pursuant to RCW 34.05.330 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rule making." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioner and whether the petition seeks the adoption of a new rule or amendment or repeal of an existing rule.

(b) The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. If the petition seeks repeal of an existing rule, the rule proposed to be repealed shall be set forth in full.

(c) The third paragraph shall set forth concisely the reasons for the proposal and shall state the petitioner's interest in the subject matter of the rule. The petition should in subsequent paragraphs state a full explanation of reasons supporting the proposal.

(3) Petitions shall be dated and signed by the petitioner or its attorney. The original and two legible copies shall be filed with the council.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-030, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-030, filed 11/4/76.]

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**WAC 463-34-050 Petition for rule making—Consideration and disposition.** (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the council, and the council may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) If the council denies the petition, the denial shall be in writing and shall be served upon the petitioner.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-050, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-050, filed 11/4/76.]

**WAC 463-34-060 Disposition time.** Within sixty days after the petition's submission, the council shall deny the petition in writing, stating its reasons for the denial or initiate rule-making proceedings.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-060, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-060, filed 11/4/76.]

**WAC 463-34-070 Declaratory orders—Form, content, and filing.** A petition for a declaratory order may be filed pursuant to RCW 34.05.240 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioning party.

(b) The second paragraph shall state all rules or statutes that may be brought into the issue by the petition.

(c) Succeeding paragraphs shall set out the facts relied upon and the reasons for granting its relief.

(d) The concluding paragraph shall specify the relief sought by the petitioner.

The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the council.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-070, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-070, filed 11/4/76.]

**WAC 463-34-080 Declaratory orders—Procedural rights of persons in relation to petition.** (1) If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the agency shall give not less than seven days' advance written notice of the proceeding to the petitioner and all persons described in RCW 34.05.240(3). The notice shall specify the time, date, place, and nature of the proceeding and shall describe how interested persons may participate.

(2) The council may order that RCW 34.05.410 through 34.05.494 and chapter 463-30 WAC shall apply in a proceeding under this section.

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-080, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-080, filed 11/4/76.]

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**WAC 463-34-090 Declaratory orders—Disposition of petition.** A declaratory order entered by the council or a decision by the council to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

[Statutory Authority: RCW 80.50.040, 90-05-018, § 463-34-090, filed 2/13/90, effective 3/16/90; Order 107, § 463-34-090, filed 11/4/76.]

### Chapter 463-36 WAC

#### PROCEDURE—AMENDING OR TERMINATING A SITE CERTIFICATION AGREEMENT

##### WAC

463-36-010	Council policy.
463-36-020	Termination.
463-36-030	Request for amendment.
463-36-040	Amendment review.
463-36-050	Environmental impact—Alternatives.
463-36-060	Council determinations.
463-36-070	Approval by resolution.
463-36-080	Approval by governor.
463-36-090	Council powers.
463-36-100	Transfer of a site certification agreement.

**WAC 463-36-010 Council policy.** The council may take such action as may be necessary to protect the public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-010, filed 11/19/87.]

**WAC 463-36-020 Termination.** Termination of a site certification agreement (SCA), except pursuant to its own terms, is an amendment of the agreement.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-020, filed 11/19/87.]

**WAC 463-36-030 Request for amendment.** A request for amendment of an agreement shall be made in writing by a certificate holder to the council. The council will consider the request at the next feasible council meeting. The council will then refer the question to committee for recommendation, determine a schedule for action, or take action upon the request. The council may, if appropriate and required for full understanding and review of the proposal, secure the assistance of a consultant or take other action at the expense of the certificate holder. The council shall hold one or more public hearing sessions upon the request for amendment at times and places determined by the council.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-030, filed 11/19/87.]

**WAC 463-36-040 Amendment review.** In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules; and
- (3) The public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-040, filed 11/19/87.]

**WAC 463-36-050 Environmental impact—Alternatives.** In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council

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shall consider the short-term and long-term environmental impacts of the proposal. Reasonable alternative means by which the purpose of the proposal might be achieved shall be considered as shall the availability of funding to implement the proposal.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-050, filed 11/19/87.]

**WAC 463-36-060 Council determinations.** The council in acting upon a requested amendment may accept the amendment; reject the amendment; or reject the amendment, and state conditions or terms under which the amendment will be reconsidered.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-060, filed 11/19/87.]

**WAC 463-36-070 Approval by resolution.** An amendment which changes a technical provision or requirement within the terms of the SCA, and constitutes no substantial alteration of any provisions of the SCA, and is determined to have no detrimental effect upon the environment, shall be effective upon adoption of a council resolution.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-070, filed 11/19/87.]

**WAC 463-36-080 Approval by governor.** An amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor of Washington state.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-080, filed 11/19/87.]

**WAC 463-36-090 Council powers.** The council has power to initiate proceedings leading to the SCA amendment where it perceives that a certificate may be abandoned or when it deems such action to be appropriate.

[Statutory Authority: RCW 80.50.040(1), 87-24-006 (Order 87-2), § 463-36-090, filed 11/19/87.]

**WAC 463-36-100 Transfer of a site certification agreement.** (1) No site certification agreement, any portion of a site certification agreement, nor any legal or equitable interest in such an agreement issued under this chapter shall be transferred, assigned, or in any manner disposed of (including abandonment), either voluntarily or involuntarily, directly or indirectly, through transfer of control of the certification agreement or the site certification agreement owner or project sponsor without express council approval of such action. In the event a site certification agreement is to be acquired via a merger, leveraged buy-out, or other change in corporate or partnership ownership, the successor in interest must file a formal petition under the terms of this section to continue operation or other activities at the certificated site.

(2)(a) A certification holder seeking to transfer or otherwise dispose of a site certification agreement must file a formal application with the council including information about the new owner required by WAC 463-42-065 and 463-42-075 that demonstrate the transferee's organizational, finan-

cial, managerial, and technical capability to comply with the terms and conditions of the original site certification agreement including council approved plans for termination of the plant and site restoration. The council may place conditions on the transfer of the certification agreement including provisions that reserve liability for the site in the original certification holder.

(b) If the certification holder is seeking an alternative disposition of a certificated site, the certification holder must petition the council for an amendment to its site certification agreement pursuant to the provisions of this chapter and gain council approval of its alternative disposition plan. In submitting a request for an alternative disposition of a certificated site, the certification holder must describe the operational and environmental effects of the alternative use of the site on the certified facility. If the proposed alternative use of the site is inconsistent with the terms and conditions of the original site certification agreement the council may reject the application for alternative use of the site.

(3) The council shall require any person who submits an application to acquire a site certification agreement under provisions of this section to file a written consent from the current certification holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right, subject to the provisions of chapter 80.50 RCW et seq. and the rules of this chapter, to possession of the energy facility involved.

(4) After mailing a notice of the pending application for transfer of the site certification agreement to all persons on its mailing list, the council shall hold an informational hearing on the application. Following the hearing the council may approve an application for transfer of the site certification agreement if the council determines that:

(a) The applicant satisfies the provisions of WAC 463-42-065 and 463-42-075;

(b) The applicant is entitled to possession of the energy facility described in the certification agreement; and

(c) The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.

(5) The council shall issue a formal order either approving or denying the application for transfer of the site certification agreement. If the council denies the request, it shall state the reasons for its denial.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-36-100, filed 11/6/92, effective 12/7/92.]

### Chapter 463-38 WAC

#### REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

##### WAC

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

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

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

(3) The term "applicable effluent standards and limitations" means all state of Washington and federal effluent standards and limitations to which a discharge is subject under the act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

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

(a) Approved or permitted to remain in effect by the administrator pursuant to section 303(a) or section 303(c) of the act, or,

(b) Promulgated by the administrator pursuant to section 303(b) or section 303(c) of the act.

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

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

(7) The term "chairman" means the chairman of the energy facility site evaluation council.

(8) The term "council" means the Washington state energy facility site evaluation council.

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

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

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

(10) The term "DOE" means the Washington state department of ecology.

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

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

(13) The term "executive secretary" means the individual holding the position of executive secretary of the council.

(14) The term "governor" shall mean the governor of the state of Washington.

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

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

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

(c) Is not identified by the council, the regional administrator or by the administrator in regulations issued pursuant to section 307(a) of the act as a discharge which is not a minor discharge.

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

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

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

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

(19) The term "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) as adopted by the council for use in the Washington state NPDES program.

(20) The term "NPDES form" means any issued NPDES permit, refuse action application, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(21) The term "NPDES permit" means the permit incorporated in the certification agreement issued by the council

which regulates the discharge of pollutants pursuant to section 402 of the act.

(22) The term "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

(23) The term "NPDES reporting form" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

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

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

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

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

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

(29) The term "regional administrator" means the EPA's region X administrator.

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

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

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

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

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

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

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

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

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



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

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

(i) Sewage from vessels within the meaning of section 312 of this act; or,

(ii) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

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

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

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

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

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

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

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

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

(ii) At appropriate frequencies and locations.

(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

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[Order 114, § 463-38-010, filed 2/4/77. Formerly WAC 463-16-010.]

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

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

(3) These regulations apply to:

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

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

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 155, Laws of 1973, and the act.

[Order 114, § 463-38-020, filed 2/4/77. Formerly WAC 463-16-020.]

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

[Order 114, § 463-38-030, filed 2/4/77. Formerly WAC 463-16-030.]

**WAC 463-38-031 Application filing with the council.**

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

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

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

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

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

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

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

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

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

(4) The council shall not consider any NPDES application for a energy facility included within WAC 463-38-020 (3)(b) until and unless an application for certification is filed with the council pursuant to RCW 80.50.070.

(5) Each NPDES application will be submitted on such form as specified by the council.

[Order 114, § 463-38-031, filed 2/4/77. Formerly WAC 463-16-031.]

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

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

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

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

(4) In the case of a municipal corporation, state or other public organization, by either a principal executive officer, the ranking elected official or a duly authorized employee.

[Order 114, § 463-38-032, filed 2/4/77. Formerly WAC 463-16-032.]

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

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

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

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

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

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

(2) The council shall organize the tentative determination prepared pursuant to paragraph 1 of this section into a draft NPDES permit.

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[Order 114, § 463-38-033, filed 2/4/77. Formerly WAC 463-16-033.]

**WAC 463-38-034 Fact sheets.** (1) For every discharge in excess of 500,000 gallons on any one day of the year, the council shall prepare and include in any public notice given pursuant to WAC 463-38-041 a fact sheet with respect to the Refuse Act or NPDES application described in the public notice. Such fact sheet shall include at least the following:

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

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

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

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

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

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

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

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

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

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

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

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to each person or group on such mailing list.

[Order 114, § 463-38-034, filed 2/4/77. Formerly WAC 463-16-034.]

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

[Order 114, § 463-38-040, filed 2/4/77. Formerly WAC 463-16-040.]

**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.

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*per 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 applicants.

(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 hear-

ing 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 463-38-043 Public access to information.** (1)

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

(2) Any information (other than effluent data) received by the council and contained in any NPDES forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the council shall forward such information to the regional administrator for his concurrence in any determination of confidentiality. If the regional administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the office of general counsel stating the reasons for his disagreement with the determination of the council. The regional administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional informa-

tion submitted to the office of the general counsel within 30 days of receipt of the request from the regional administrator. If the general counsel determines that the information being considered does not contain trade secrets he shall so advise the regional administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the regional administrator shall communicate to the council his decision not to concur in the withholding of such information and the council and the regional administrator shall then make available to the public upon request that information determined not to constitute trade secrets.

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

(4) The council shall provide facilities for the inspection of information relating to NPDES forms during normal business hours of the council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with council business. The executive secretary shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the council.

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

**WAC 463-38-050 NPDES permit contents.** The terms, conditions and content of any NPDES permit issued by the council shall be in accordance with the following subsections.

[Order 114, § 463-38-050, filed 2/4/77. Formerly WAC 463-16-050.]

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

(2) The decision to approve or reject, and on what conditions an NPDES permit shall be issued, shall be in conformance with the requirements of this section. A majority vote of council members listed in RCW 80.50.030(3) shall resolve any dispute and shall determine the approval or rejection of a Refuse Act or NPDES application.

[Statutory Authority: RCW 80.50.040(1), 87-01-065 (Order 86-1), § 463-38-051, filed 12/17/86; Order 114, § 463-38-051, filed 2/4/77. Formerly WAC 463-16-051.]

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

(2) No NPDES permit issued by the council shall authorize any person to:

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

(b) Discharge any pollutants which the secretary of the Army acting through the chief, Corps of Engineers, finds

would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(c) Discharge any pollutant to which the regional administrator has objected in writing pursuant to any right to object provided the administrator in section 402(d) of the act;

(d) Discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act.

[Order 114, § 463-38-052, filed 2/4/77. Formerly WAC 463-16-052.]

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

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

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

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

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

(d) Any more stringent limitation, including those:

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

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

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

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

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

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

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to paragraphs (1) and (2) hereof, each issued NPDES permit shall specify average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average

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and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate.

[Order 114, § 463-38-053, filed 2/4/77. Formerly WAC 463-16-053.]

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

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

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

(i) Applicable effluent standards and limitations;

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

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

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

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

(3) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

[Order 114, § 463-38-054, filed 2/4/77. Formerly WAC 463-16-054.]

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

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants must be reported to the council by submission of a new NPDES application or supplement thereto or, if such discharge does not violate effluent limitations specified in the

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NPDES permit, by submission to the council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

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

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

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

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

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

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

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

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

(d) To sample any discharge of pollutants.

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

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the council shall revise or modify the NPDES permit in accordance with the toxic effluent standard of prohibition and so notify the permittee.

[Order 114, § 463-38-055, filed 2/4/77. Formerly WAC 463-16-055.]

**WAC 463-38-060 NPDES permits review and appeal.** This section governs the procedures for reissuance, modification, suspension and revocation of NPDES permits. In addition, the appeal procedure for an applicant or permittee is set out.

[Order 114, § 463-38-060, filed 2/4/77. Formerly WAC 463-16-060.]

**WAC 463-38-061 Reissuance of NPDES permits.** (1) Any permittee shall make application for reissuance of NPDES permits or continuation of discharges after the expiration date of his NPDES permit by filing with the council an application for reissuance of his permit at least 180 days prior to its expiration. The filing requirement for reissuance shall be satisfied in the first instance by a simply written request for reissuance by the permittee to the council, except that the council in its discretion may require any and/or all permittees

to request a reissuance by submitting to the council all then applicable NPDES forms.

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

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

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

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

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

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

[Order 114, § 463-38-061, filed 2/4/77. Formerly WAC 463-16-061.]

**WAC 463-38-062 Modification of NPDES permit.** (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended or revoked for cause, in whole or in part during its term.

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

(3) Any such modifications shall be executed by the council and the permittee in the same manner as the NPDES permit was executed, including full compliance with the requirements of WAC 463-38-041, 463-38-042 and 463-38-043.

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

**WAC 463-38-063 Appeal.** (1) The approval, rejection, or modification of an NPDES permit shall be subject to judicial review pursuant to the provisions of chapter 34.05 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.]

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

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

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

(2) A copy of every issued NPDES permit immediately following execution by the applicant and the state, along with any and all terms, conditions, requirements or documents which are a part of such NPDES permit or which will affect the authorization of the discharge of pollutants will be sent to the regional administrator.

[Order 114, § 463-38-064, filed 2/4/77. Formerly WAC 463-16-064.]

**WAC 463-38-065 Monitoring and enforcement.** The council hereby delegates to the DOE the monitoring activities of water discharges under a certification agreement which incorporates the NPDES permit. As a result of said monitoring activities, DOE shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The council shall then take or initiate action to enforce the terms of any certification agreement and the incorporated NPDES permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it is delegated the enforcement authority and responsibility to carry out such immediate action as it deems necessary and shall report such actions to the council. Such action shall remain in effect until confirmed or modified by the council.

[Order 114, § 463-38-065, filed 2/4/77. Formerly WAC 463-16-065.]

**WAC 463-38-080 Transmittal of data to regional administrator.** (1) Copies of NPDES forms received by the

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council as outlined below shall be transmitted to the regional administrator:

(a) Upon receipt by the council;

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

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

(3) For all minor discharges, the council may require the operator of such a discharge to submit NPDES application forms or such other information as may be requested by the regional administrator.

[Order 114, § 463-38-080, filed 2/4/77. Formerly WAC 463-16-080.]

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

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

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

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

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

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

[Order 114, § 463-38-090, filed 2/4/77. Formerly WAC 463-16-090.]

## Chapter 463-39 WAC

### GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

#### WAC

463-39-005  
463-39-010

Adoption by reference.  
Purpose.

463-39-020 Applicability.  
 463-39-030 Additional definitions.  
 463-39-070 Radioactive emissions.  
 463-39-090 Permit application form.  
 463-39-095 Permit issuance.  
 463-39-100 Registration.  
 463-39-105 Fees.  
 463-39-115 Standards of performance for new stationary sources.  
 463-39-120 Monitoring and special report.  
 463-39-135 Criminal penalties.  
 463-39-140 Appeals procedure.  
 463-39-170 Conflict of interest.  
 463-39-230 Regulatory actions.

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

463-39-040 General standards for maximum permissible emissions. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-040, filed 8/6/79.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).  
 463-39-050 Minimum emission standards for combustion and incineration sources. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-050, filed 8/6/79.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).  
 463-39-060 Minimum emission standards for general process sources. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-060, filed 8/6/79.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).  
 463-39-080 Compliance schedules. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-080, filed 8/6/79.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).  
 463-39-110 New source review. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-110, filed 8/6/79.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).  
 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.  
 463-39-150 Variance. [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.] Repealed by 92-09-013, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1).

**WAC 463-39-005 Adoption by reference.** (1) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC by reference.

WAC 173-400-030: Definitions.  
 WAC 173-400-040: General standards for maximum emissions.  
 WAC 173-400-050: Emission standards for combustion and incineration units.  
 WAC 173-400-060: Emission standards for general process units.  
 WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.  
 WAC 173-400-081: Startup and shutdown.  
 WAC 173-400-091: Voluntary limits on emissions.  
 WAC 173-400-105: Records, monitoring, and reporting.  
 WAC 173-400-107: Excess emissions.  
 WAC 173-400-110: New source review (NSR).

WAC 173-400-112: Requirements for new sources in nonattainment areas.  
 WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.  
 WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.  
 WAC 173-400-120: Bubble rules.  
 WAC 173-400-131: Issuance of emission reduction credits.  
 WAC 173-400-136: Use of emission reduction credits.  
 WAC 173-400-141: Prevention of significant deterioration (PSD).  
 WAC 173-400-151: Retrofit requirements for visibility protection.  
 WAC 173-400-161: Compliance schedules.  
 WAC 173-400-171: Public involvement.  
 WAC 173-400-180: Variance.  
 WAC 173-400-190: Requirements for nonattainment areas.  
 WAC 173-400-200: Creditable stack height and dispersion techniques.  
 WAC 173-400-205: Adjustment for atmospheric conditions.

(2) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-401 WAC by reference.

WAC 173-401-100: Program overview.  
 WAC 173-401-200: Definitions.  
 WAC 173-401-300: Applicability.  
 WAC 173-401-500: Permit applications.  
 WAC 173-401-520: Certification.  
 WAC 173-401-600: Permit content.  
 WAC 173-401-605: Emission standards and limitations.  
 WAC 173-401-610: Permit duration.  
 WAC 173-401-615: Monitoring and related record-keeping and reporting requirements.  
 WAC 173-401-620: Standard terms and conditions. Except (2)(i).  
 WAC 173-401-625: Federally enforceable requirements.  
 WAC 173-401-630: Compliance requirements.  
 WAC 173-401-635: Temporary sources.  
 WAC 173-401-640: Permit shield.  
 WAC 173-401-645: Emergency provision.  
 WAC 173-401-650: Operational flexibility.  
 WAC 173-401-700: Action on application.  
 WAC 173-401-705: Requirement for a permit.  
 WAC 173-401-710: Permit renewal, revocation and expiration.  
 WAC 173-401-720: Administrative permit amendments.  
 WAC 173-401-722: Changes not requiring permit revisions.  
 WAC 173-401-725: Permit modifications.  
 WAC 173-401-730: Reopening for cause.

- WAC 173-401-750: General permits.  
 WAC 173-401-800: Public involvement.  
 WAC 173-401-810: EPA Review.  
 WAC 173-401-820: Review by affected states.

(3) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-406 WAC by reference.

#### Part I - GENERAL PROVISIONS

- WAC 173-406-100: Acid rain program general provisions.  
 WAC 173-406-101: Definitions.  
 WAC 173-406-102: Measurements, abbreviations, and acronyms.  
 WAC 173-406-103: Applicability.  
 WAC 173-406-104: New units exemption.  
 WAC 173-406-105: Retired units exemption.  
 WAC 173-406-106: Standard requirements.

#### Part II - DESIGNATED REPRESENTATIVE

- WAC 173-406-200: Designated representative.  
 WAC 173-406-201: Submissions.  
 WAC 173-406-202: Objections.

#### Part III - APPLICATIONS

- WAC 173-406-300: Acid rain permit applications.  
 WAC 173-406-301: Requirement to apply.  
 WAC 173-406-302: Information requirements for acid rain permit applications.  
 WAC 173-406-303: Permit application shield and binding effect of permit application.

#### Part IV - COMPLIANCE PLAN

- WAC 173-406-400: Acid rain compliance plan and compliance options.  
 WAC 173-406-401: General.  
 WAC 173-406-402: Repowering extensions.

#### Part V - PERMIT CONTENTS

- WAC 173-406-500: Acid rain permit.  
 WAC 173-406-501: Contents.  
 WAC 173-406-502: Permit shield.

#### Part VI - PERMIT ISSUANCE

- WAC 173-406-600: Acid rain permit issuance procedures.  
 WAC 173-406-601: General.  
 WAC 173-406-602: Completeness.  
 WAC 173-406-603: Statement of basis.  
 WAC 173-406-604: Issuance of acid rain permits.  
 WAC 173-406-605: Acid rain permit appeal procedures.

#### Part VII - PERMIT REVISIONS

- WAC 173-406-700: Permit revisions.  
 WAC 173-406-701: General.

#### Part VII - PERMIT REVISIONS

- WAC 173-406-702: Permit modifications.  
 WAC 173-406-703: Fast-track modifications.  
 WAC 173-406-704: Administrative permit amendment.  
 WAC 173-406-705: Automatic permit amendment.  
 WAC 173-406-706: Permit reopenings.

#### Part VIII - COMPLIANCE CERTIFICATION

- WAC 173-406-800: Compliance certification.  
 WAC 173-406-801: Annual compliance certification report.  
 WAC 173-406-802: Units with repowering extension plans.

#### Part IX - NITROGEN OXIDES

- WAC 173-406-900: Nitrogen oxides emission reduction program.

#### Part X - SULFUR DIOXIDE OPT-IN

- WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-460 WAC by reference.

- WAC 173-460-010: Purpose.  
 WAC 173-460-020: Definitions.  
 WAC 173-460-030: Requirements, applicability and exemptions.  
 WAC 173-460-040: New source review.  
 WAC 173-460-050: Requirement to quantify emissions.  
 WAC 173-460-060: Control technology requirements.  
 WAC 173-460-070: Ambient impact requirement.  
 WAC 173-460-080: Demonstrating ambient impact compliance.  
 WAC 173-460-090: Second tier analysis.  
 WAC 173-460-100: Request for risk management decision.  
 WAC 173-460-110: Acceptable source impact levels.  
 WAC 173-460-120: Scientific review and amendment of acceptable source impact levels and lists.  
 WAC 173-460-130: Fees.  
 WAC 173-460-140: Remedies.  
 WAC 173-460-150: Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.  
 WAC 173-460-160: Class B toxic air pollutants and acceptable source impact levels.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-005, filed 8/21/95, effective 9/21/95; 94-16-031, § 463-39-005, filed 7/26/94, effective 8/26/94. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-005, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-39-005, filed 4/2/92, effective 5/3/92.]

**WAC 463-39-010 Purpose.** The energy facility site evaluation council, under the authority vested in it by chapter 80.50 and 40 C.F.R. Part 52 is charged with responsibilities

for the conduct of a state-wide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-39-010, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-010, filed 8/6/79.]

**WAC 463-39-020 Applicability.** The provisions of this chapter shall apply state-wide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-020, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW, 93-23-035, § 463-39-020, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-020, filed 8/6/79.]

**WAC 463-39-030 Additional definitions.** (1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-401-200, 173-406-101, "ecology" and "authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-030, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW, 93-23-035, § 463-39-030, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-39-030, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-030, filed 8/6/79.]

**WAC 463-39-070 Radioactive emissions.** (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW 70.94.331, as promulgated by chapters 173-480 and 246-247 WAC.

(2) The council will enter into a memorandum of agreement with the state department of health regarding the regulation of radionuclides.

(3) The monitoring and regulation of radionuclides emissions from major energy facilities shall be consistent with the memorandum of agreement referenced in subsection (2) of this section between the state department of health and the council.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-39-070, filed 7/26/94, effective 8/26/94.]

**WAC 463-39-090 Permit application form.** (1) Applications for air operating permits shall be on the standard

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form(s) developed by the department of ecology and shall contain the information required pursuant to WAC 173-401-510.

(2) Applications for permits under chapter 173-406 WAC shall be on form(s) developed by the department of ecology.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-090, filed 8/21/95, effective 9/21/95; 94-16-031, § 463-39-090, filed 7/26/94, effective 8/26/94.]

**WAC 463-39-095 Permit issuance.** Permit(s) issued for air emissions in accordance with chapters 173-400, 173-401, 173-406, and 173-460 WAC shall become an attachment(s) to a site certification agreement. For new energy facilities the permit(s) shall be effective upon the governor's approval and execution of the site certification agreement.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-095, filed 8/21/95, effective 9/21/95.]

**WAC 463-39-100 Registration.** (1) The owner or operator of each stationary source subject to chapter 80.50 RCW shall register the source with the council.

Registration shall be on forms which have been adopted for use by the department of ecology within the time specified thereon.

A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(2) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(d) Issuance or denial of final permit, permit modifications, or renewals;

(e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;

(f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

[Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW, 93-23-035, § 463-39-100, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-100, filed 8/6/79.]

**WAC 463-39-105 Fees.** (1) Holders of air operating permits issued to major energy facilities in accordance with RCW 70.04.422 shall be assessed annual fees to recover the costs associated with program development, monitoring, compliance, and administration of the air operating permit program.

(2) All fees recovered under the air operating permit program shall be deposited in the state air operating permit account.

(3) The council shall determine and assess fees for air operating permits based on the following:

(a) Sources which are located in counties having a local air authority shall be assessed fees based upon the fee structure set by that local air authority.

(b) Sources which are located in counties not having a local air authority, or are cogeneration facilities which provide steam and/or electricity to primary industries such as the aluminum or pulp and paper mills, shall be assessed fees based upon the fee structure set by the department of ecology.

(c) Radioactive emissions sources shall be assessed fees consistent with the department of health fee structure.

(d) Department of ecology air operating permit program administration costs shall be charged to all sources under council jurisdiction.

(e) The council shall recover its actual costs for program administration as provided in WAC 463-58-050.

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-105, filed 8/21/95, effective 9/21/95.]

**WAC 463-39-115 Standards of performance for new stationary sources.** Subparts A, D, Da, GG, J, K, Kb, Y, KKK, LLL, QQQ of Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), are by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council.

Sections 60.5 and 60.6 of Title 40, Code of Federal Regulations, are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC 173-400-110, such review under the state program is mandatory and an order of approval is required before the construction, installation or establishment of a new stationary source may commence.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-39-115, filed 7/26/94, effective 8/26/94; 92-09-013, § 463-39-115, filed 4/2/92, effective 5/3/92; 82-14-051 (Order 82-3), § 463-39-115, filed 6/30/82; 79-09-006 (Order 79-1), § 463-39-115, filed 8/6/79.]

**WAC 463-39-120 Monitoring and special report.** The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

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

[Statutory Authority: RCW 80.50.040(1), 95-17-088, § 463-39-120, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW, 93-23-035, § 463-39-120, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-39-120, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-120, filed 8/6/79.]

**WAC 463-39-135 Criminal penalties.** Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW.

(1999 Ed.)

[Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-135, filed 8/6/79.]

**WAC 463-39-140 Appeals procedure.** Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-54-070 (4)(c).

[Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW, 93-23-035, § 463-39-140, filed 11/10/93, effective 12/11/93.]

**WAC 463-39-170 Conflict of interest.** No member of the council shall have received, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

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

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

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

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

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

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

**WAC 463-39-230 Regulatory actions.** The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

(1) Enforcement actions—Notice of violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing the council information pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amount established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

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

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

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The

order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

[Statutory Authority: RCW 80.50.040(1). 94-16-031, § 463-39-230, filed 7/26/94, effective 8/26/94.]

**Chapter 463-40 WAC  
DANGEROUS WASTES**

**WAC**

463-40-010	Purpose.
463-40-020	Coverage.
463-40-030	Regulations.
463-40-040	Monitoring and enforcement.

**WAC 463-40-010 Purpose.** The energy facility site evaluation council, under authority invested in it by chapter 80.50 RCW is charged with the responsibility of adopting rules sufficient to the protection of the public and the environment from the effects of dangerous wastes generated at energy facilities subject to chapter 80.50 RCW.

[Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-010, filed 12/22/82.]

**WAC 463-40-020 Coverage.** The provisions of this chapter shall apply state-wide for those generators of dangerous wastes under the jurisdiction of the energy facility site evaluation council.

[Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-020, filed 12/22/82.]

**WAC 463-40-030 Regulations.** Notwithstanding the provisions of WAC 173-303-801, to the extent of their applicability and appropriateness, the provisions of chapter 173-303 WAC shall apply to the on-site activities, at energy facilities subject to this chapter, which involve the generation, storage, transportation, treatment or disposal of dangerous wastes.

[Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-030, filed 12/22/82.]

**WAC 463-40-040 Monitoring and enforcement.** The council will contract with the department of ecology (DOE) for the monitoring activities for dangerous wastes regulated by this chapter under a certification agreement. As a result of said monitoring activities, DOE shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council. The council shall then take or initiate action to enforce the terms of any certification agreement. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it shall report immediately to the chairman who shall initiate such immediate enforcement action as may be necessary. Such action shall remain in effect until confirmed or modified by the council.

[Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-040, filed 12/22/82.]



## Chapter 463-42 WAC

PROCEDURE—GUIDELINES—APPLICATIONS  
FOR SITE CERTIFICATION

## WAC

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DISPOSITION OF SECTIONS FORMERLY  
CODIFIED IN THIS CHAPTER

463-42-020	Basic requirement—Full disclosure by applicants. [Order 113, § 463-42-020, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-065.	463-42-060	Application—Specific contents and applicability. [Order 113, § 463-42-060, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-115.
463-42-030	Application—Where filed. [Order 113, § 463-42-030, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-045.	463-42-070	Application—Optional application form and content. [Order 113, § 463-42-070, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW.
463-42-040	Application—Form and number of copies. [Order 113, § 463-42-040, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-055.	463-42-080	Application—Option (2) procedural schedule. [Order 113, § 463-42-080, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW.
463-42-050	Application—Organization—Index. [Order 113, § 463-42-050, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-012.	463-42-090	Application—Designation of agent. [Order 113, § 463-42-090, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-025.
		463-42-100	Application—Fee. [Order 113, § 463-42-100, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-035.
		463-42-110	Content—Graphic material. [Order 113, § 463-42-110, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-105.
		463-42-120	Content—Sources of information. [Order 113, § 463-42-120, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-095.
		463-42-130	Content—Construction and study schedules. [Order 113, § 463-42-130, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-285.
		463-42-140	Content—Potential for future activities at site. [Order 113, § 463-42-140, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-295.
		463-42-150	Content—Analysis of alternatives. [Order 113, § 463-42-150, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-645.
		463-42-160	Content—Safety standards compliance. [Order 113, § 463-42-160, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-505.
		463-42-170	Content—Description of applicant. [Order 113, § 463-42-170, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-015.
		463-42-180	Content—Site description. [Order 113, § 463-42-180, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-125.
		463-42-190	Content—Legal descriptions and ownership interests. [Order 113, § 463-42-190, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-135.
		463-42-200	Content—Land use plans and zoning ordinances. [Order 113, § 463-42-200, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-485.
		463-42-210	Content—Construction on site. [Order 113, § 463-42-210, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-145.
		463-42-220	Content—Contour maps. [Order 113, § 463-42-220, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-305.

- 463-42-230 Content—Access. [Order 113, § 463-42-230, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-545.
- 463-42-240 Content—Energy transmission systems. [Order 113, § 463-42-240, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-155.
- 463-42-250 Content—Criteria, standards, and factors utilized to develop transmission route. [Order 113, § 463-42-250, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-625.
- 463-42-260 Content—Multipurpose use of transmission routes. [Order 113, § 463-42-260, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-495.
- 463-42-270 Content—Safety where public access allowed. [Order 113, § 463-42-270, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-515.
- 463-42-280 Content—Radiation levels. [Order 113, § 463-42-280, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-605.
- 463-42-290 Content—Protection from natural hazards. [Order 113, § 463-42-290, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-265.
- 463-42-300 Content—Security concerns. [Order 113, § 463-42-300, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-275.
- 463-42-305 Physical environment—Contour maps. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-305, filed 10/8/81. Formerly WAC 463-42-220.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-310 Content—Emergency plans. [Order 113, § 463-42-310, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-525.
- 463-42-315 Physical environment—Earth removal. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-315, filed 10/8/81. Formerly WAC 463-42-320.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-320 Content—Earth removal. [Order 113, § 463-42-320, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-315.
- 463-42-325 Physical environment—Landscape restoration. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-325, filed 10/8/81. Formerly WAC 463-42-340.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-330 Content—Surface-water runoff. [Order 113, § 463-42-330, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-215.
- 463-42-335 Physical environment—Environmental safeguards—Geologic and hydrologic survey. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-335, filed 10/8/81. Formerly WAC 463-42-380.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-340 Content—Landscape restoration. [Order 113, § 463-42-340, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-325.
- 463-42-345 Physical environment—Air pollution control. [Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-345, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-345, filed 10/8/81. Formerly WAC 463-42-500.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-350 Content—Transportation impact. [Order 113, § 463-42-350, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-555.
- 463-42-355 Physical environment—Air pollution impact. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-355, filed 10/8/81. Formerly WAC 463-42-510.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-360 Content—Transportation facility construction. [Order 113, § 463-42-360, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-565.
- 463-42-365 Physical environment—Dust control. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-365, filed 10/8/81. Formerly WAC 463-42-530.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-370 Content—Transportation of fuels and waste products. [Order 113, § 463-42-370, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-575.
- 463-42-375 Physical environment—Odor control. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-375, filed 10/8/81. Formerly WAC 463-42-540.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-380 Content—Environmental safeguards—Geologic and hydrologic survey. [Order 113, § 463-42-380, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-335.
- 463-42-390 Content—Water source and usage. [Order 113, § 463-42-390, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-395.
- 463-42-395 Physical environment—Water source and usage. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-395, filed 10/8/81. Formerly WAC 463-42-390.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-400 Content—Water supply. [Order 113, § 463-42-400, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-165.
- 463-42-405 Physical environment—Compatibility with water quality standards. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-405, filed 10/8/81. Formerly WAC 463-42-410.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-410 Content—Compatibility with water quality standards. [Order 113, § 463-42-410, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-405.
- 463-42-415 Physical environment—Hydrographic study of waters. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-415, filed 10/8/81. Formerly WAC 463-42-450.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-420 Content—Spillage prevention and control. [Order 113, § 463-42-420, filed 2/4/77.] Repealed by 81-21-006

- (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-205.
- 463-42-425 Physical environment—Ground-water activity. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-425, filed 10/8/81. Formerly WAC 463-42-460.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-430 Content—System of heat dissipation. [Order 113, § 463-42-430, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-175.
- 463-42-440 Content—Characteristics of aquatic discharge systems. [Order 113, § 463-42-440, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-185.
- 463-42-445 Physical environment—Inventory of potentially affected vegetation, wetlands, animal life, and aquatic life described. [Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-42-445, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-445, filed 10/8/81. Formerly WAC 463-42-550.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-450 Content—Hydrographic study of waters. [Order 113, § 463-42-450, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-415.
- 463-42-455 Physical environment—Impact of construction, operation, abandonment, termination, or cessation of operations on vegetation, wetlands, animal life, and aquatic life. [Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-42-455, filed 4/2/92, effective 5/3/92; 87-05-017 (Order 87-1), § 463-42-455, filed 2/11/87. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-455, filed 10/8/81. Formerly WAC 463-42-560.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-460 Content—Ground-water activity. [Order 113, § 463-42-460, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-425.
- 463-42-465 Physical environment—Description of measures taken to protect vegetation, wetlands, animal life, and aquatic life. [Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-42-465, filed 4/2/92, effective 5/3/92; 87-05-017 (Order 87-1), § 463-42-465, filed 2/11/87. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-465, filed 10/8/81. Formerly WAC 463-42-570.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-470 Content—Wastewater treatment. [Order 113, § 463-42-470, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-195.
- 463-42-475 Physical environment—Noise and glare. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-475, filed 10/8/81. Formerly WAC 463-42-590.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-480 Content—NPDES application. [Order 113, § 463-42-480, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-435.
- 463-42-485 Physical environment—Local land use plans and zoning ordinances. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-485, filed 10/8/81. Formerly WAC 463-42-200.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-490 Content—Solid wastes disposal. [Order 113, § 463-42-490, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-595.
- 463-42-495 Physical environment—Multipurpose use of transmission routes. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-495, filed 10/8/81. Formerly WAC 463-42-260.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-500 Content—Air pollution control. [Order 113, § 463-42-500, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-345.
- 463-42-505 Physical environment—Safety standards compliance. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-505, filed 10/8/81. Formerly WAC 463-42-160.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-510 Content—Air pollution impact. [Order 113, § 463-42-510, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-355.
- 463-42-515 Physical environment—Safety where public access allowed. [Statutory Authority: RCW 80.50.040(1). 87-05-017 (Order 87-1), § 463-42-515, filed 2/11/87. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-515, filed 10/8/81. Formerly WAC 463-42-270.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-520 Content—Emission control. [Order 113, § 463-42-520, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-225.
- 463-42-530 Content—Dust control. [Order 113, § 463-42-530, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-365.
- 463-42-540 Content—Odor control. [Order 113, § 463-42-540, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-375.
- 463-42-545 Human environment—Access. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-545, filed 10/8/81. Formerly WAC 463-42-230.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-550 Content—Inventory of potentially affected vegetation, animal life, and aquatic life described. [Order 113, § 463-42-550, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-445.
- 463-42-555 Human environment—Transportation impact. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-555, filed 10/8/81. Formerly WAC 463-42-350.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-560 Content—Impact of construction and operation on vegetation, animal life, and aquatic life. [Order 113, § 463-42-560, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-455.
- 463-42-565 Human environment—Transportation facility construction. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-565, filed 10/8/81. Formerly WAC 463-42-360.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-570 Content—Description of measures taken to protect vegetation, animal life, and aquatic life. [Order 113, § 463-42-570, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-465.

- 463-42-575 Human environment—Transportation of fuels and waste products. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-575, filed 10/8/81. Formerly WAC 463-42-370.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-580 Content—Aesthetics. [Order 113, § 463-42-580, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-615.
- 463-42-585 Human environment—Energy consumption. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-585, filed 10/8/81. Formerly WAC 463-42-600.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-590 Content—Noise and glare. [Order 113, § 463-42-590, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-475.
- 463-42-595 Human environment—Solid wastes. [Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-42-595, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-595, filed 10/8/81. Formerly WAC 463-42-490.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-600 Content—Energy consumption. [Order 113, § 463-42-600, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-585.
- 463-42-605 Human environment—Radiation levels. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-605, filed 10/8/81. Formerly WAC 463-42-280.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-610 Content—Historical, archaeological, and recreational site preservation/creation. [Order 113, § 463-42-610, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-635.
- 463-42-615 Human environment—Aesthetics. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-615, filed 10/8/81. Formerly WAC 463-42-580.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.
- 463-42-620 Content—Socioeconomic impact. [Order 113, § 463-42-620, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-535.
- 463-42-635 Human environment—Historical, archaeological, and recreational site preservation/creation. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-635, filed 10/8/81. Formerly WAC 463-42-610.] Repealed by 92-23-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040.

**WAC 463-42-010 Purpose and scope.** This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80.50 RCW.

The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, the built environment, and plans for project termination and site restoration. This information shall be in such detail as determined by the council to enable the council to go forward with its application review.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-010, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and

chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-010, filed 10/8/81; Order 113, § 463-42-010, filed 2/4/77. Formerly chapter 463-12 WAC.]

**WAC 463-42-012 General—Organization—Index.**

Except as may be otherwise approved by the council and except as otherwise provided below with respect to applications covering nuclear power plants, the contents of the application shall be organized in the same order as these guidelines.

(1) To aid in the council's review under SEPA and chapter 463-47 WAC, WAC 463-42-302 through 463-42-382 are similar to the elements required in an environmental impact statement.

(2) In the case of an application covering a nuclear power plant, the environmental report prepared for the nuclear regulatory commission may be substituted for the comparable sections of the site certification application, provided that the environmental report is supplemented as necessary to comply with this chapter and that an index is included listing these guidelines in order and identifying where each applicable guideline is addressed.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-012, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-012, filed 10/8/81. Formerly WAC 463-42-050.]

**WAC 463-42-015 General—Description of applicant.** The applicant shall provide an appropriate description of the applicant's organization and affiliations for this proposal.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-015, filed 10/8/81. Formerly WAC 463-42-170.]

**WAC 463-42-025 General—Designation of agent.** The applicant shall designate an agent to receive communications on behalf of the applicant.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-025, filed 10/8/81. Formerly WAC 463-42-090.]

**WAC 463-42-035 General—Fee.** The statutory fee shall accompany an application and shall be a condition precedent to any action by the council. Payment shall be by a cashier's check payable to the state treasurer.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-035, filed 10/8/81. Formerly WAC 463-42-100.]

**WAC 463-42-045 General—Where filed.** Applications for site certification shall be filed with the council at the council office.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-045, filed 10/8/81. Formerly WAC 463-42-030.]

**WAC 463-42-055 General—Form and number of copies.** (1) Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. Applicants shall supply thirty-five copies of the application to the council, two copies to each county, two copies to each city, and one copy to each port district in which the proposed project would be located. In addition, one copy shall be supplied to each intervenor on admission to the proceedings. Information later sub-

mitted shall be by page-for-page substitutions suitable for insertion in the application binder, bearing the date of the submission.

(2) An applicant shall also provide the council copies of its application in a digital format for use in personal computers. Digital format shall be determined by the council in consultation with its consultants and the applicant.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-055, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-055, filed 10/8/81. Formerly WAC 463-42-040.]

**WAC 463-42-065 General—Full disclosure by applicants.** It is recognized that these guidelines can only be comprehensive in a relative sense. Therefore, and in addition to the other guidelines contained herein, the council adopts the basic guideline that an applicant for site certification must identify in the application all information known to the applicant which has a bearing on site certification.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-065, filed 10/8/81. Formerly WAC 463-42-020.]

**WAC 463-42-075 General—Assurances.** The application shall set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life.

[Statutory Authority: RCW 80.50.040(1), 87-05-017 (Order 87-1), § 463-42-075, filed 2/11/87. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-075, filed 10/8/81.]

**WAC 463-42-085 General—Mitigation measures.** The application shall describe the means to be utilized to minimize or mitigate possible adverse impacts on the physical or human environments.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-085, filed 10/8/81.]

**WAC 463-42-095 General—Sources of information.** The applicant shall disclose sources of all information and data and shall identify all preapplication studies bearing on the site and other sources of information.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-095, filed 10/8/81. Formerly WAC 463-42-120.]

**WAC 463-42-105 General—Graphic material.** It is the intent that material submitted pursuant to these guidelines shall be descriptive and shall include illustrative graphics in addition to narration. This requirement shall particularly apply to subject matter that deals with systems, processes, and spacial relationship. The material so submitted shall be prepared in a professional manner and in such form and scale as to be understood by those who may review it.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-105, filed 10/8/81. Formerly WAC 463-42-110.]

**WAC 463-42-115 General—Specific contents and applicability.** It is recognized that not all sections of these guidelines apply equally to all proposed energy facilities. If

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the applicant deems a particular section to be totally inapplicable the applicant must justify such conclusion in response to said section. The applicant must address all sections of this chapter and must substantially comply with each section, show it does not apply or secure a waiver from the council. Information submitted by the applicant shall be accompanied by a certification by applicant that all EFSEC application requirements have been reviewed, the data have been prepared by qualified professional personnel, and the application is substantially complete.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-115, filed 10/8/81. Formerly WAC 463-42-060.]

**WAC 463-42-125 Proposal—Site description.** The application shall contain a description of the proposed site indicating its location, prominent geographic features, typical geological and climatological characteristics, and other information necessary to provide a general understanding of all sites involved, including county or regional land use plans and zoning ordinances.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-125, filed 10/8/81. Formerly WAC 463-42-180.]

**WAC 463-42-135 Proposal—Legal descriptions and ownership interests.** (1) Principal facility: The application shall contain a legal description of the site to be certified and shall identify the applicants and all nonprivate ownership interests in such land.

(2) Ancillary facilities: For those facilities described in RCW 80.50.020 (6) and (7) the application shall contain the legal metes and bounds description of the preferred centerline of the corridor necessary to construct and operate the facility contained therein, the width of the corridor, or variations in width between survey stations if appropriate, and shall identify the applicant's and others ownership interests in lands over which the preferred centerline is described and of those lands lying equidistant for 1/4 mile either side of such center line.

[Statutory Authority: RCW 80.50.040(1), 83-01-128 (Order 82-6), § 463-42-135, filed 12/22/82. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-135, filed 10/8/81. Formerly WAC 463-42-190.]

**WAC 463-42-145 Proposal—Construction on site.** The applicant shall describe the characteristics of the construction to occur at the proposed site including the type, size, and cost of the facility; description of major components and such information as will acquaint the council with the significant features of the proposed project.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-145, filed 10/8/81. Formerly WAC 463-42-210.]

**WAC 463-42-155 Proposal—Energy transmission systems.** The applicant shall discuss the criteria utilized as well as describe the routing, the conceptual design, and the construction schedule for all facilities identified in RCW 80.50.020 (6) and (7) which are proposed to be constructed.

[Statutory Authority: RCW 80.50.040(1), 83-01-128 (Order 82-6), § 463-42-155, filed 12/22/82. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-155, filed 10/8/81. Formerly WAC 463-42-240.]

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**WAC 463-42-165 Proposal—Water supply system.**

The applicant shall describe the location and type of water intakes and associated facilities.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-165, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-165, filed 10/8/81. Formerly WAC 463-42-400.]

**WAC 463-42-175 Proposal—System of heat dissipation.**

The applicant shall describe both the proposed and alternative systems for heat dissipation from the proposed facilities.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-175, filed 10/8/81. Formerly WAC 463-42-430.]

**WAC 463-42-185 Proposal—Characteristics of aquatic discharge systems.** Where discharges into a watercourse are involved, the applicant shall identify outfall configurations and show proposed locations.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-185, filed 10/8/81. Formerly WAC 463-42-440.]

**WAC 463-42-195 Proposal—Wastewater treatment.**

The applicant shall describe each wastewater source associated with the facility and for each source, the applicability of all known, available, and reasonable methods of wastewater control and treatment to ensure it meets current waste discharge and water quality regulations. Where wastewater control involves collection and retention for recycling and/or resource recovery, the applicant shall show in detail the methods selected, including at least the following information: Waste source(s), average and maximum daily amounts and composition of wastes, storage capacity and duration, and any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters. Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including appropriate flow diagrams and tables showing the sources of all tributary waste streams, their average and maximum daily amounts and composition, individual treatment units and their design criteria, major piping (including all bypasses), and average and maximum daily amounts and composition of effluent(s).

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-195, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-195, filed 10/8/81. Formerly WAC 463-42-470.]

**WAC 463-42-205 Proposal—Spillage prevention and control.** The applicant shall describe all spillage prevention and control measures to be employed regarding accidental and/or unauthorized discharges or emissions, relating such information to specific facilities, including but not limited to locations, amounts, storage duration, mode of handling, and transport.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-205, filed 10/8/81. Formerly WAC 463-42-420.]

**WAC 463-42-215 Proposal—Surface-water runoff.** The applicant shall describe how surface-water runoff and

erosion are to be controlled during construction and operation to assure compliance with state water quality standards.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-215, filed 10/8/81. Formerly WAC 463-42-330.]

**WAC 463-42-225 Proposal—Emission control.** The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation. In the case of fossil fuel power plants, petroleum refineries, and transmission and associated facilities, the applicant should deal with products containing sulphur, NO<sub>x</sub>, volatile organics, CO, CO<sub>2</sub>, aldehydes, particulates, and any other emissions subject to regulation by local, state, or federal agencies. In the case of a nuclear-fueled plant, the applicant should deal with optional plant designs as these may relate to gaseous emissions.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-225, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-225, filed 10/8/81. Formerly WAC 463-42-520.]

**WAC 463-42-235 Proposal—Construction and operation activities.** The applicant shall: Provide the proposed construction schedule, identify the major milestones, and describe activity levels versus time in terms of craft and non-craft employment; and describe the proposed operational employment levels.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-235, filed 10/8/81.]

**WAC 463-42-245 Proposal—Construction management.** The applicant shall describe the organizational structure including the management of project quality and environmental functions.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-245, filed 10/8/81.]

**WAC 463-42-255 Proposal—Construction methodology.** The applicant shall describe in detail the construction procedures, including major equipment, proposed for any construction activity within watercourses, wetlands and other sensitive areas.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-255, filed 10/8/81.]

**WAC 463-42-265 Proposal—Protection from natural hazards.** The applicant shall describe the means employed for protection of the facility from earthquakes, volcanic eruption, flood, tsunami, storms, avalanche or landslides, and other major natural disruptive occurrences.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-265, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-265, filed 10/8/81. Formerly WAC 463-42-290.]

**WAC 463-42-275 Proposal—Security concerns.** The applicant shall describe the means employed for protection of the facility from sabotage, vandalism and other security threats.



[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-275, filed 10/8/81. Formerly WAC 463-42-300.]

**WAC 463-42-285 Proposal—Study schedules.** The applicant shall furnish a brief description of all present or projected schedules for additional environmental studies. The studies descriptions should outline their scope and indicate projected completion dates.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-285, filed 10/8/81. Formerly WAC 463-42-130.]

**WAC 463-42-295 Proposal—Potential for future activities at site.** The applicant shall describe the potential for any future additions, expansions, or further activities which might be undertaken by the applicant on or contiguous to the proposed site.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-295, filed 10/8/81. Formerly WAC 463-42-140.]

**WAC 463-42-302 Natural environment—Earth.** The applicant shall provide detailed descriptions of the existing environment, project impacts, and mitigation measures for the following:

(1) **Geology** - The applicant shall include the results of a comprehensive geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities.

(2) **Soils** - The applicant shall describe all procedures to be utilized to minimize erosion and other adverse consequences during the removal of vegetation, excavation of borrow pits, foundations and trenches, disposal of surplus materials, and construction of earth fills. The location of such activities shall be described and the quantities of material shall be indicated.

(3) **Topography** - The applicant shall include contour maps showing the original topography and any changes likely to occur as a result of energy facility construction and related activities. Contour maps showing proposed shoreline or channel changes shall also be furnished.

(4) **Unique physical features** - The applicant shall list any unusual or unique geologic or physical features in the project area or areas potentially affected by the project.

(5) **Erosion/enlargement of land area (accretion)** - The applicant shall identify any potential for erosion, deposition, or change of any land surface, shoreline, beach, or submarine area due to construction activities, placement of permanent or temporary structures, or changes in drainage resulting from construction or placement of facilities associated with construction or operation of the proposed energy project.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-302, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-312 Natural environment—Air.** The applicant shall provide detailed descriptions of the affected environment, project impacts, and mitigation measures for the following:

(1) **Air quality** - The applicant shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least,

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adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and temperature. The applicant shall describe the means to be utilized to assure compliance with applicable local, state, and federal air quality and emission standards.

(2) **Odor** - The applicant shall describe for the area affected, all odors caused by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

(3) **Climate** - The applicant shall describe the extent to which facility operations may cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants.

(4) **Dust** - The applicant shall describe for any area affected, all dust sources created by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-312, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-322 Natural environment—Water.** The applicant shall provide detailed descriptions of the affected natural water environment, project impacts and mitigation measures and shall demonstrate that facility construction and/or operational discharges will be compatible with and meet state water quality standards. The applicant shall indicate the source and the amount of water required during construction and operation of the plant and show that it is available for this use and describe all existing water rights, withdrawal authorizations, or restrictions which relate to the proposed source.

(1) **Surface water movement/quality/quantity** - The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within one-half mile of any proposed discharge location with regard to: Bottom configuration; minimum, average, and maximum water depths and velocities; water temperature and salinity profiles; anticipated effluent distribution and dilution, and plume characteristics under all discharge conditions; and other relevant characteristics which could influence the impact of any wastes discharged thereto.

(2) **Runoff/absorption** - The applicant shall describe how surface water runoff and erosion are to be controlled during construction and operation, how runoff can be reintroduced to the ground for retention to the ground water supply, and to assure compliance with state water quality standards.

(3) **Floods** - The applicant shall describe potential for flooding, identify the five, fifty, one hundred, and five hundred year flood boundaries, and all protective measures to prevent possible flood damage to the site and facility.

(4) **Ground water movement/quantity/quality** - The applicant shall include the results of a comprehensive hydrologic survey, describe the ground water conditions on and near the site and any changes in ground water movement, quantity, or quality which might result from project construction or operation.

(5) **Public water supplies** - The applicant shall provide a detailed description of any public water supplies which may

be used or affected by the project during construction or operation of the facility.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-322, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-332 Natural environment—Plants and animals.** (1) Habitat for and number or diversity of species of plants, fish, or other wildlife - The applicant shall describe all habitat types, vegetation, wetlands, animal life, and aquatic life which might reasonably be affected by construction, operation, or cessation of construction or operation of the energy facility and any associated facilities. Assessment of these factors shall include density and distribution information. The application shall contain a full description of each measure to be taken by the applicant to protect all habitat types, vegetation, wetlands, animal life, and aquatic life from the effects of project construction, operation, abandonment, termination, or cessation of operations.

(2) Unique species - Any endangered species or noteworthy species or habitat shall receive special attention.

(3) Fish or wildlife migration routes - The applicant shall identify all fish or wildlife migration routes which may be affected by the energy facility or by any discharge to the environment.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-332, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-342 Natural environment—Energy and natural resources.** (1) Amount required/rate of use/efficiency - The applicant shall describe the energy and natural resource consumption during both construction and operation of the proposed facilities as rate of use and efficiency that can be achieved during construction and operation.

(2) Source/availability - The applicant shall describe the sources of supply, locations of use, types, amounts, and availability of energy or resources to be used or consumed during construction and operation of the facility.

(3) Nonrenewable resources - The applicant shall describe all nonrenewable resources that will be used, made inaccessible or unusable by construction and operation of the facility.

(4) Conservation and renewable resources - The applicant shall describe conservation measures and/or renewable resources which will or could be used during construction and operation of the facility.

(5) Scenic resources - The applicant shall describe any scenic resources which may be affected by the facility or discharges from the facility.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-342, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-352 Built environment—Environmental health.** (1) Noise - The applicant shall describe the impact of noise from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact.

(2) Risk of fire or explosion - The applicant shall describe any potential for fire or explosion during construction, operation, standby or nonuse, dismantling, or restoration

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of the facility and what measures will be made to mitigate any risk of fire or explosion.

(3) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials - The applicant shall describe any potential for release of toxic or hazardous materials to the environment and shall identify plans for complying with the federal Resource Conservation and Recovery Act and the state Dangerous waste regulations (chapter 173-303 WAC). The applicant shall describe the treatment or disposition of all solid or semisolid construction and operation wastes including spent fuel, ash, sludge, and bottoms, and show compliance with applicable state and local solid waste regulations.

(4) Safety standards compliance - The applicant shall identify all federal, state, and local health and safety standards which would normally be applicable to the construction and operation of a project of this nature and shall describe methods of compliance therewith.

(5) Radiation levels - For facilities which propose to release any radioactive materials, the applicant shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The applicant shall also describe the proposed radioactive waste treatment process, the anticipated release of radionuclides, their expected distribution and retention in the environment, the pathways which may become sources of radiation exposure, and projected resulting radiation doses to human populations. Other sources of radiation which may be associated with the project shall be described in all applications.

[Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-352, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-362 Built environment—Land and shoreline use.** (1) The relationship to existing land use plans and to estimated population - As part of the application, the applicant shall furnish copies of adopted land use plans and zoning ordinances, including the latest land use regulation and a survey of present land uses within the following distances of the immediate site area:

(a) In the case of thermal power plants, twenty-five miles radius;

(b) In the case of petroleum refineries ten miles radius;

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

(d) In the case of pipe lines and electrical transmission routes, one mile either side of center line.

(2) Housing - The applicant shall describe potential impact on housing needs, costs, or availability due to influx of workers for construction and/or operation of the facility.

(3) Light and glare - The applicant shall describe the impact of lights and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact.

(4) Aesthetics - The applicant shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how

the installation will appear relative to its surroundings. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads).

(5) Recreation - The applicant shall list all recreational sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation.

(6) Historic and cultural preservation - The applicant shall list all historical and archaeological sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation.

(7) Agricultural crops/animals - The applicant shall identify all agricultural crops and animals which could be affected by construction and/or operation of the facility and any operations, discharges, or wastes which could impact the adjoining agricultural community.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-362, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-372 Built environment—Transportation.** (1) Transportation systems - The applicant shall identify all permanent transportation facilities impacted by the construction and operation of the energy facilities, the nature of the impacts and the methods to mitigate impacts. Such impact identification, description, and mitigation shall, at least, take into account:

(a) Expected traffic volumes during construction, based on where the work force is expected to reside;

(b) Access routes for moving heavy loads, construction materials, or equipment;

(c) Expected traffic volumes during normal operation of the facility;

(d) For transmission facilities, anticipated maintenance access; and

(e) Consistency with local comprehensive transportation plans.

(2) Vehicular traffic - The applicant shall describe existing roads, estimate volume, types, and routes of vehicular traffic which will arise from construction and operation of the facility. The applicant shall indicate the applicable standards to be utilized in improving existing roads and in constructing new permanent or temporary roads or access, and shall indicate the final disposition of new roads or access and identify who will maintain them.

(3) Waterborne, rail, and air traffic - The applicant shall describe existing railroads and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them.

(4) Parking - The applicant shall identify existing and any additional parking areas or facilities which will be needed during construction and operation of the energy facility, and plans for maintenance and runoff control from the parking areas or facilities.

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(5) Movement/circulation of people or goods - The applicant shall describe any change to the current movement or circulation of people or goods caused by construction or operation of the facility. The applicant shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. The applicant shall describe the means proposed to ensure safe utilization of those areas under applicant's control on or in which public access will be granted during project construction, operation, abandonment, termination, or when operations cease.

(6) Traffic hazards - The applicant shall identify all hazards to traffic caused by construction or operation of the facility. Except where security restrictions are imposed by the federal government the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-372, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-382 Built environment—Public services and utilities.** The applicant shall describe the impacts, relationships, and plans for utilizing or mitigating impacts caused by construction or operation of the facility to the following:

- (1) Fire;
- (2) Police;
- (3) Schools;
- (4) Parks or other recreational facilities;
- (5) Maintenance;
- (6) Communications;
- (7) Water/storm water;
- (8) Sewer/solid waste;
- (9) Other governmental services or utilities.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-382, filed 11/6/92, effective 12/7/92.]

**WAC 463-42-385 PSD application.** The applicant shall include a completed prevention of significant deterioration permit application.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-385, filed 10/8/81.]

**WAC 463-42-435 NPDES application.** The applicant shall include a completed National Pollutant Discharge Elimination System permit application.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-435, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-435, filed 10/8/81. Formerly WAC 463-42-480.]

**WAC 463-42-525 Emergency plans.** The applicant shall describe emergency plans which will be required to assure the public safety and environmental protection on and off the site in the event of a natural disaster or other major incident relating to or affecting the project and further, will identify the specific responsibilities which will be assumed by the applicant.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-525, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-525, filed 10/8/81. Formerly WAC 463-42-310.]

**WAC 463-42-535 Socioeconomic impact.** The applicant shall submit a detailed socioeconomic impact study which identifies primary and secondary and positive as well as negative impacts on the socioeconomic environment with particular attention and analysis of impact on population, work forces, property values, housing, traffic, health and safety facilities and services, education facilities and services, and local economy.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-535, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-535, filed 10/8/81. Formerly WAC 463-42-620.]

**WAC 463-42-625 Criteria, standards, and factors utilized to develop transmission route.** The applicant shall identify the federal, state, and industry criteria used in the energy transmission route selection and shall identify the criteria used and the construction factors considered in developing the proposed design and shall indicate how such criteria are met.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-625, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-625, filed 4/2/92, effective 5/3/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-625, filed 10/8/81. Formerly WAC 463-42-250.]

**WAC 463-42-645 Analysis of alternatives.** The applicant shall provide an analysis of alternatives for site, route, and other major elements of the proposal.

[Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW, 81-21-006 (Order 81-5), § 463-42-645, filed 10/8/81. Formerly WAC 463-42-150.]

**WAC 463-42-655 Initial site restoration plan.** The applicant or certificate holder shall in the application, or within twelve months after the effective date of this section, whichever occurs later, provide an initial plan for site restoration at the conclusion of the plant's operating life. The plan shall parallel a decommissioning plan, if such a plan is prepared for the project. The initial site restoration plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues presently anticipated. It shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the site or otherwise protect all segments of the public against risks or danger resulting from the site. The plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the site restoration or management costs. The plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the plan.

[Statutory Authority: RCW 80.50.040, 92-23-012, § 463-42-655, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1), 87-05-017 (Order 87-1), § 463-42-655, filed 2/11/87.]

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**WAC 463-42-665 Detailed site restoration plan—Terminated projects.** When a project is terminated, a detailed site restoration plan shall be submitted within twelve months after termination or within twelve months after the effective date of this section, whichever occurs later. An extension of time may be granted for good cause shown. The site restoration plan shall address the elements required to be addressed in WAC 463-42-655, in detail commensurate with the time until site restoration is to begin. The council may take or require action as necessary to deal with extraordinary circumstances.

[Statutory Authority: RCW 80.50.040(1), 87-05-017 (Order 87-1), § 463-42-665, filed 2/11/87.]

**WAC 463-42-675 Site preservation plan—Suspended projects.** In the event that construction is suspended, a plan for site preservation shall be prepared at the earliest feasible time and the council shall be advised of interim concerns and the measures being taken to remedy those concerns. The site preservation plan shall address environmental, and public health and safety concerns, the scope of proposed monitoring and the provisions for funding or bonding to meet site preservation costs. It shall describe measures that will be taken to preserve the site or otherwise protect all segments of the public against risks or danger resulting from the site. The preservation plan shall also address options for preservation and the costs and benefits associated with those options. The council may take or require action as necessary to deal with extraordinary circumstances.

[Statutory Authority: RCW 80.50.040(1), 87-05-017 (Order 87-1), § 463-42-675, filed 2/11/87.]

**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.]

**WAC 463-42-685 Pertinent federal, state and local requirements.** (1) Each application submitted to the council for site certification shall include a list of all applicable federal, state, and local codes, ordinances, statutes, rules, regulations and permits that would apply to the project if it were not under council jurisdiction. For each listed code, ordinance, statute, rule, regulation and permit, the applicant shall describe how the project would comply or fail to comply with each requirement. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.

(2) Inadvertent failure to discover a pertinent provision after a reasonable search shall not invalidate the application, but may delay processing the application as necessary to gather and consider relevant information.

[Statutory Authority: RCW 80.50.040(1), 92-10-001, § 463-42-685, filed 4/23/92, effective 5/24/92.]

**WAC 463-42-690 Amendments to applications, additional studies, procedure.** (1) Applications to the council for

site certification shall be complete and shall reflect the best available current information and intentions of the applicant.

(2) Amendments to a pending application must be presented to the council at least thirty days prior to the commencement of the adjudicative hearing, except as noted in subsection (3) of this section.

(3) Within thirty days after the conclusion of the hearings, the applicant shall submit to the council, application amendments which include all commitments and stipulations made by the applicant during the adjudicative hearings.

(4) After the start of adjudicative hearings, additional environmental studies or other reports shall be admitted only for good cause shown after petitions to the council or upon request of the council, or submitted as a portion of prefiled testimony for a witness at least thirty days prior to appearance.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-42-690, filed 4/2/92, effective 5/3/92.]

**Chapter 463-43 WAC**

**PROCEDURE—APPLICATIONS FOR EXPEDITED PROCESSING**

**WAC**

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

**WAC 463-43-010 Purpose and scope.** This chapter sets forth requirements for preparation of applications for energy facility site certification which qualify for expedited processing and delineates certain abbreviated procedures for processing eligible applications pursuant to RCW 80.50.075.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-010, filed 4/26/78.]

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

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

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

(3) Submit a request for expedited processing to the council at the time of application which shall be accompanied by a completed environmental checklist as delineated in WAC 463-46-365.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-020, filed 4/26/78.]

**WAC 463-43-030 Eligible proposals.** An application may be expedited when the council finds that the following

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are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

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

(2) The area potentially affected,

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

(4) The degree to which the proposed energy facility represents a change in use of the proposed site.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-030, filed 4/26/78.]

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

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

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

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071 (1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council, and

(4) Initiate processing of the applicant's NPDES application, if required, in accordance with chapter 463-38 WAC.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-040, filed 4/26/78.]

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

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

(2) The environmental impact, area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility are not significant enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-050, filed 4/26/78.]

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

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

(2) Hold 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.]

#### WAC 463-43-070 Expedited application processing.

The council will prescribe the form, content and necessary supporting documentation for site certification during regular or special meetings of the council. All interested persons and the counsel for the environment shall be afforded an opportunity to make presentations on the matters herein.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-070, filed 4/26/78.]

**WAC 463-43-080 Recommendation—Transmittal to governor.** Within 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation for approval with a copy of the draft site certification agreement to the governor.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-43-080, filed 4/26/78.]

### Chapter 463-47 WAC SEPA RULES

#### WAC

463-47-010	Authority.
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463-47-140	Responsibilities of the council.
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**WAC 463-47-010 Authority.** These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-010, filed 9/14/84. Formerly chapter 463-46 WAC.]

**WAC 463-47-020 Adoption by reference.** The energy facility site evaluation council adopts the following sections or subsections of chapter 197-11 WAC by reference.

197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.

197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-360	Determination of significance (DS)/initiation of scoping.
197-11-390	Effect of threshold determination.
197-11-400	Purpose of EIS.
197-11-402	General requirements.
197-11-405	EIS types.
197-11-406	EIS timing.
197-11-408	Scoping.
197-11-410	Expanded scoping. (Optional)
197-11-420	EIS preparation.
197-11-425	Style and size.
197-11-430	Format.
197-11-435	Cover letter or memo.
197-11-440	EIS contents.
197-11-442	Contents of EIS on nonproject proposals.
197-11-443	EIS contents when prior nonproject EIS.
197-11-444	Elements of the environment.
197-11-448	Relationship of EIS to other considerations.
197-11-450	Cost-benefit analysis.
197-11-455	Issuance of DEIS.
197-11-460	Issuance of FEIS.
197-11-500	Purpose of this part.
197-11-502	Inviting comment.
197-11-504	Availability and cost of environmental documents.
197-11-508	SEPA register.
197-11-510	Public notice.
197-11-535	Public hearings and meetings.
197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.
197-11-600	When to use existing environmental documents.
197-11-610	Use of NEPA documents.
197-11-620	Supplemental environmental impact statement—Procedures.
197-11-625	Addenda—Procedures.
197-11-630	Adoption—Procedures.
197-11-635	Incorporation by reference—Procedures.
197-11-640	Combining documents.
197-11-650	Purpose of this part.
197-11-655	Implementation.
197-11-660	Substantive authority and mitigation.
197-11-680	Appeals.
197-11-700	Definitions.
197-11-702	Act.



197-11-704	Action.	197-11-916	Application to ongoing actions.
197-11-706	Addendum.	197-11-917	Relationship to chapter 197-10 WAC.
197-11-708	Adoption.	197-11-918	Lack of agency procedures.
197-11-710	Affected tribe.	197-11-920	Agencies with environmental expertise.
197-11-712	Affecting.	197-11-922	Lead agency rules.
197-11-714	Agency.	197-11-924	Determining the lead agency.
197-11-716	Applicant.	197-11-926	Lead agency for governmental proposals.
197-11-718	Built environment.	197-11-928	Lead agency for public and private proposals.
197-11-720	Categorical exemption.	197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-722	Consolidated appeal.	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-724	Consulted agency.	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-726	Cost-benefit analysis.	197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-728	County/city.	197-11-938	Lead agencies for specific proposals.
197-11-730	Decisionmaker.	197-11-940	Transfer of lead agency status to a state agency.
197-11-732	Department.	197-11-942	Agreements on lead agency status.
197-11-734	Determination of nonsignificance (DNS).	197-11-944	Agreements on division of lead agency duties.
197-11-736	Determination of significance (DS).	197-11-946	DOE resolution of lead agency disputes.
197-11-738	EIS.	197-11-948	Assumption of lead agency status.
197-11-740	Environment.	197-11-950	Severability.
197-11-742	Environmental checklist.	197-11-955	Effective date.
197-11-744	Environmental document.	197-11-960	Environmental checklist.
197-11-746	Environmental review.	197-11-965	Adoption notice.
197-11-750	Expanded scoping.	197-11-970	Determination of nonsignificance (DNS).
197-11-752	Impacts.	197-11-980	Determination of significance and scoping notice (DS).
197-11-754	Incorporation by reference.	197-11-985	Notice of assumption of lead agency status.
197-11-756	Lands covered by water.	197-11-990	Notice of action.
197-11-758	Lead agency.		
197-11-760	License.		
197-11-762	Local agency.		
197-11-764	Major action.		
197-11-766	Mitigated DNS.		
197-11-768	Mitigation.		
197-11-770	Natural environment.		
197-11-772	NEPA.		
197-11-774	Nonproject.		
197-11-776	Phased review.		
197-11-778	Preparation.		
197-11-780	Private project.		
197-11-782	Probable.		
197-11-784	Proposal.		
197-11-786	Reasonable alternative.		
197-11-788	Responsible official.		
197-11-790	SEPA.		
197-11-792	Scope.		
197-11-793	Scoping.		
197-11-794	Significant.		
197-11-796	State agency.		
197-11-797	Threshold determination.		
197-11-799	Underlying governmental action.		
197-11-800	Categorical exemptions.		
197-11-880	Emergencies.		
197-11-890	Petitioning DOE to change exemptions.		
197-11-900	Purpose of this part.		
197-11-902	Agency SEPA policies.		
197-11-904	Agency SEPA procedures.		
197-11-906	Content and consistency of agency procedures.		
197-11-910	Designation of responsible official.		
197-11-912	Procedures on consulted agencies.		
197-11-914	SEPA fees and costs.		

[Statutory Authority: RCW 80.50.040(1) and 43.21C.120. 98-01-082, § 463-47-020, filed 12/12/97, effective 1/12/98; 84-19-031 (Order 84-2), § 463-47-020, filed 9/14/84.]

**WAC 463-47-030 Purpose.** This chapter implements the state-wide rules in chapter 197-11 WAC as they apply to the energy facility site evaluation council.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-030, filed 9/14/84.]

**WAC 463-47-040 Additional definitions.** In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Office" means the offices of the energy facility site evaluation council.

(2) "Agency" should be read as synonymous of council.

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

(4) "Final decision" means the recommendation to the governor required under RCW 80.50.100.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-040, filed 9/14/84.]

**WAC 463-47-050 Designation of decisionmaker.**

Within the energy facility site evaluation council the decisionmaker is the council.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-050, filed 9/14/84.]

**WAC 463-47-051 Designation of responsible official.**

Within the energy facility site evaluation council the responsible official is the council manager.

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-47-051, filed 4/2/92, effective 5/3/92; 84-19-031 (Order 84-2), § 463-47-051, filed 9/14/84.]

**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.]

**WAC 463-47-070 Threshold determination process—Additional considerations.** When reviewing a completed environmental checklist to make the threshold determination, the council will:

(1) Independently evaluate the responses of the applicant and note comments, concerns, corrections, or new information in the right margin of the checklist.

(2) Conduct the initial review of the checklist and any supporting documents without requiring additional information from the applicant.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-070, filed 9/14/84.]

**WAC 463-47-080 Mitigated DNS.** (1) An applicant may ask the council whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of an application and environmental checklist for a nonexempt proposal for which the council is lead agency; and

(c) Precede the council's actual threshold determination for the proposal.

(2) The council shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the council is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the council to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The council shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the council will make its threshold determination based on the changed or clarified proposal.

(a) If the council's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the council shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the council indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the council shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The council may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the council shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the council may require the applicant to submit a new checklist.

(7) The council may change or clarify features of its own proposals before making the threshold determination.

(8) The council's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the council to consider the clarifications or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the council's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-080, filed 9/14/84.]

**WAC 463-47-090 EIS preparation.** (1) Preparation of draft and final EISs and SEISs is the responsibility of the council or a council subcommittee. Before the council issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The council normally will prepare its own draft and final EISs. It may require an applicant to provide information that the council does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the council would be unable to prepare a draft and/or final EIS due to its commitments or other constraints or when a local agency transfers lead agency status to the council under WAC 197-11-940, the council may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The council retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the council agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the consultant will work directly for the council.

(c) The outside party will prepare the document under the supervision of the council or council subcommittee, and the responsible official.

(d) Normally, the council will have the documents printed and distributed.

(4) Whenever someone other than the council prepares a draft or final EIS, the council shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the individual preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the EIS.

(d) Allow the person preparing the EIS access to council records relating to the EIS (under chapter 42.17 RCW—Public disclosure and public records law).

[Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-47-090, filed 4/2/92, effective 5/3/92; 84-19-031 (Order 84-2), § 463-47-090, filed 9/14/84.]

**WAC 463-47-100 Public notice requirements.** (1) The council shall give public notice when issuing a DNS under WAC 197-11-350(2), a scoping notice under WAC 173-802-090, or a draft EIS under WAC 197-11-455.

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(2) Whenever possible, the council shall integrate the public notice required under this section with existing notice procedures for the council's review of an application.

(a) When more than one permit required from the council has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or certification must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the council must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits required for a proposal, the council must use one or more public notice methods in subsection (4) of this section.

(3) The council may require an applicant to perform the public notice requirement at his or her expense.

(4) The council shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or certification required from the council and, public interest expressed in the proposal:

(a) Mailing to persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be located, constructed and operated if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be located, constructed and operated; and/or

(c) Posting the property, for site specific proposals.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-100, filed 9/14/84.]

**WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals.** (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits or rejection of applications.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-110, filed 9/14/84.]

**WAC 463-47-120 Critical areas.** In determining whether a proposal is exempt from SEPA, the council shall respect "critical area" designations made by local governments under WAC 197-11-908.

[Statutory Authority: RCW 80.50.040(1) and 43.21C.120, 98-01-082, § 463-47-120, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-120, filed 9/14/84.]

**WAC 463-47-130 Threshold levels adopted by cities/counties.** In determining whether a proposal is exempt from SEPA, the council shall inquire of the threshold levels adopted by cities/counties under WAC 197-11-800(1).

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-130, filed 9/14/84.]

**WAC 463-47-140 Responsibilities of the council.** The council shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council staff, groups, and citizens.

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(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, and scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-140, filed 9/14/84.]

**WAC 463-47-150 Coordination on combined council—Federal action.** When the council is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-150, filed 9/14/84.]

**WAC 463-47-190 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-190, filed 9/14/84.]

## Chapter 463-50 WAC

### INDEPENDENT CONSULTANTS—GUIDELINES

#### WAC

463-50-010	Purpose and scope of this chapter.
463-50-020	Solicitation of proposals to perform work.
463-50-030	Principles governing selection of independent consultants.
463-50-040	Duties to be performed.
463-50-050	Basis for compensation.

**WAC 463-50-010 Purpose and scope of this chapter.** It is the purpose of this chapter to publish guidelines regarding council use of independent consultants.

[Order 110, § 463-50-010, filed 11/16/76.]

**WAC 463-50-020 Solicitation of proposals to perform work.** Each proposal to contract with an independent consultant shall be the subject of a formal, written "request for proposal." The "request for proposal" shall generally follow the outline and address the provisions of the "Guidelines for using outside consultants" published by the office of financial management. A copy of the "request for proposal" shall be distributed to any requesting consulting firm. Further notice of the availability of the "request for proposal" may be provided by appropriate commercial advertising.

[Statutory Authority: RCW 80.50.040(1), 78-09-083 (Order 78-10), § 463-50-020, filed 8/28/78; Order 110, § 463-50-020, filed 11/16/76.]

(1999 Ed.)

**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.]

**WAC 463-50-040 Duties to be performed.** The independent consultant shall be primarily responsible for the review and evaluation of information provided by the applicant to determine areas of possible omissions or assignments or studies as may be specified or provided for by the contract with the council. The independent consultant may be contracted to:

- (1) Review and analyze the site certification application and supporting documents for compliance with the topical guidelines and for technical veracity,
- (2) Identify areas of critical environmental sensitivity,
- (3) Develop and provide such information as the council may deem essential to an adequate site appraisal and
- (4) Provide technical advice to the council during the site certification process.

[Order 110, § 463-50-040, filed 11/16/76.]

**WAC 463-50-050 Basis for compensation.** The basis for compensation to be specified in contracts with independent consultants shall generally be as follows:

- (1) For applications for site certification, where the total scope and/or volume of work is variable and acts to prevent advance determination of total project cost, the consultant shall be compensated on the basis of actual cost plus a net fee for profit,
- (2) For potential site studies, where the total scope and/or volume of work to be performed can be specified in advance, the consultant shall be compensated on the basis of a lump sum payment.

All payments to independent consultants shall be subject to audit.

[Order 110, § 463-50-050, filed 11/16/76.]

**Chapter 463-54 WAC**

**CERTIFICATION COMPLIANCE DETERMINATION AND ENFORCEMENT**

**WAC**

463-54-010	Intent and purpose of this chapter.
463-54-020	Compliance to be determined.
463-54-030	Compliance inspections and reports.
463-54-040	Compliance reports and determinations.
463-54-050	Noncompliance determinations and enforcement.

463-54-060	Ecology monitoring and enforcement.
463-54-070	Enforcement actions.
463-54-080	Site preservation or restoration plan.

**WAC 463-54-010 Intent and purpose of this chapter.** This chapter sets forth rules relating to effects and compliance determination of energy facility construction and operation pursuant to RCW 80.50.040(11).

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-54-010, filed 6/23/78; Order 108, § 463-54-010, filed 11/4/76.]

**WAC 463-54-020 Compliance to be determined.** Compliance determination procedures shall be implemented by the council as necessary to keep it and the public properly informed as to the status of compliance with the terms of certification agreements, PSD, NPDES, or other permits issued by the council.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-54-020, filed 7/26/94, effective 8/26/94; 78-07-036 (Order 78-3), § 463-54-020, filed 6/23/78; Order 108, § 463-54-020, filed 11/4/76.]

**WAC 463-54-030 Compliance inspections and reports.** Compliance determinations shall include consideration of on-site inspections, data analyses and/or reporting activities as prescribed by the council and performed by other state agencies pursuant to annual interagency agreements.

[Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-54-030, filed 6/23/78; Order 108, § 463-54-030, filed 11/4/76.]

**WAC 463-54-040 Compliance reports and determinations.** Written reports by state agencies, or their authorized representatives reporting to the council under interagency agreements shall be submitted regularly and contain certifications as to the certificate holders satisfactory compliance or noncompliance with the appropriate terms of the site certification agreement. Certifications of satisfactory compliance in the absence of compelling evidence to the contrary shall be deemed by the council as bona fide compliance by the certificate holder.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-54-040, filed 7/26/94, effective 8/26/94; 78-07-036 (Order 78-3), § 463-54-040, filed 6/23/78; Order 108, § 463-54-040, filed 11/4/76.]

**WAC 463-54-050 Noncompliance determinations and enforcement.** The council shall make the determination of noncompliance with the terms of a certification agreement, PSD, NPDES, or other permits where circumstances so warrant and on such finding of noncompliance will institute appropriate enforcement action.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-54-050, filed 7/26/94, effective 8/26/94; 78-07-036 (Order 78-3), § 463-54-050, filed 6/23/78; Order 108, § 463-54-050, filed 11/4/76.]

**WAC 463-54-060 Ecology monitoring and enforcement.** (1) The department of ecology, or its authorized representative, is delegated the monitoring activities pertaining to air and water discharges except as provided in subsection (2) of this section, and when it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement and the incorporated

PSD, NPDES, or other permits. Immediate enforcement action as needed may be undertaken by ecology, or its authorized representative, subject to subsequent confirmation or modification by the council.

(2) The department of health is responsible for monitoring activities pertaining to radionuclide emission to the air in accordance with an approved memorandum of agreement. When it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement or attached permit. Immediate enforcement action as needed may be undertaken by health subject to subsequent confirmation or modification by the council.

[Statutory Authority: RCW 80.50.040(1), 94-16-031, § 463-54-060, filed 7/26/94, effective 8/26/94; 78-07-036 (Order 78-3), § 463-54-060, filed 6/23/78.]

**WAC 463-54-070 Enforcement actions.** Consistent with RCW 70.94.422, all enforcement actions and penalties for all air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431 (1) through (7), and 70.94.435.

(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 a PSD, NPDES, or other permits 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) or RCW 74.90.431 if the violation is of the Washington Clean Air Act. 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 coun-



cil. 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 463-39-230.

(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(1), 94-16-031, § 463-54-070, filed 7/26/94, effective 8/26/94. 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.]

**WAC 463-54-080 Site preservation or restoration plan.** When a site is subject to preservation or restoration pursuant to a plan as defined in WAC 463-42-655 through 463-42-675, the certificate holder shall conduct operations within terms of the plan; shall advise the council of unforeseen problems and other emergent circumstances at the site; and shall provide site monitoring pursuant to an authorized schedule. After approval of an initial site restoration plan pursuant to WAC 463-42-655, a certificate holder shall review its site restoration plan in light of relevant new conditions, technologies, and knowledge, and report to the council the results of its review, at least every five years or upon any change in project status. The council may direct the submission of a site preservation or restoration plan at any time during the development, construction, or operating life of a project based upon the council's review of the project's status. The council may require such information and take or require such action as is appropriate to protect all segments of the public against risks or dangers resulting from the site.

[Statutory Authority: RCW 80.50.040(1), 87-05-017 (Order 87-1), § 463-54-080, filed 2/11/87.]

(1999 Ed.)

## Chapter 463-58 WAC

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

#### WAC

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

#### WAC 463-58-010 Intent and purpose of this chapter.

This chapter sets forth rules relating to fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-010, filed 4/26/78.]

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

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

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

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

(4) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has provided agreement to pay the required costs, and the council has provided the applicant with a statement of amount due.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-020, filed 4/26/78.]

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

costs shall consist of those determined by the council to be reasonable and necessary including:

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

(2) A court reporter(s) for the recording and preparation of transcripts of 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.]

**WAC 463-58-040 Fees for expedited application processing.** Applicants filing applications for expedited processing shall provide fees in accordance with WAC 463-58-020 and 463-58-030 above with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-040, filed 4/26/78.]

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

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

(2) For the period subsequent to beginning of construction or beginning of any work covered by an NPDES permit, twenty thousand dollars.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-050, filed 4/26/78.]

**WAC 463-58-060 Fees for potential site study.** A fee of ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-060, filed 4/26/78.]

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**WAC 463-58-070 Failure to provide necessary fees.**

Failure to provide the initial deposit or subsequently required payments within thirty days following receipt of a statement from the council may result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in suspension of the certification agreement. At the conclusion of the thirty-day period allowed for making necessary payments, the council will notify any delinquent applicant or certificate holder to appear at the next regularly scheduled meeting or a subsequent meeting to show cause why the council should not suspend application processing of the certificate. In the event of suspension, action to reinstate application processing or the certificate will be taken by the council at the next regularly scheduled meeting following deposit of all required fees.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-070, filed 4/26/78.]

**WAC 463-58-080 Payment, reporting and auditing procedures.**

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

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

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

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

(2) All payments shall be made by a cashier's check payable to the state treasurer and delivered to the council office. The council will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

[Statutory Authority: RCW 80.50.071, 78-05-054 (Order 78-2), § 463-58-080, filed 4/26/78.]