Chapter 371-08 WAC
PRACTICE AND PROCEDURE

WAC

PART A
GENERAL

371-08-300 Purpose of this chapter and applicability of the board's rules of practice and the civil rules of procedure and the rules of evidence.
371-08-305 Definitions.
371-08-306 Livestock nutrient management program (LNMP).
371-08-310 Computation of time.

PART B
BOARD ADMINISTRATION AND JURISDICTION

371-08-315 Membership, function and jurisdiction.
371-08-320 Environmental and land use hearings office hours, telephone number and address.
371-08-325 Public information about practice before the board and public records.
371-08-330 Board decision making on appeals.

PART C
FILING AN APPEAL WITH THE BOARD AND SERVICE

371-08-335 Filing a timely appeal with the board.
371-08-340 Contents of notice of appeal.
371-08-345 Service of the notice of appeal on the agency and other interested parties.
371-08-350 Service of documents on representatives.
371-08-355 Petitions for declaratory ruling.
371-08-360 Petitions for rule making.

PART D
APPEARANCE AND PRACTICE BEFORE THE BOARD

371-08-365 Persons who may appear before the board.
371-08-370 Procedure for representing a party before the board.
371-08-375 Withdrawal or substitution of representatives.
371-08-380 Conduct before the board by representatives.
371-08-385 Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.
371-08-390 Presiding officer—Powers and duties.
371-08-395 Mediation.
371-08-400 Subpoenas.

PART E
PREHEARING PRACTICE

371-08-405 Jurisdictional requirements of the board—Dismissal on jurisdictional grounds.
371-08-410 Correction or amendment of notice.
371-08-415 Stays.
371-08-420 Intervention.
371-08-425 Joinder of parties.
371-08-430 Scheduling letter.
371-08-435 Prehearing conferences.
371-08-440 Settlement and mediation agreements.
371-08-445 Use of telephone conferences, motion hearings and hearings.
371-08-450 Motions.
371-08-455 Setting primary and secondary hearing dates.
371-08-460 Postponements or continuances of hearings.
371-08-465 Dismissal, default or withdrawal of the appeal.

PART F
HEARINGS

371-08-470 Hearing briefs.
371-08-475 Procedures at hearings.
371-08-480 Additional evidence by presiding officer.
371-08-485 Standard and scope of review and burden of proof at hearings.
371-08-490 Provision of interpreters and of reasonable accommodations to individuals with special needs.
371-08-500 Rules of evidence—Admissibility criteria.
371-08-505 Rules of evidence—Official notice—Matters of law.
371-08-510 Rules of evidence—Official notice—Material facts.
371-08-515 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.

PART G
DECISIONS BY THE BOARD AFTER HEARING

371-08-520 Contents of the record.
371-08-525 Preparation of transcripts.
371-08-530 Preparation of findings, conclusions and orders.
371-08-535 Final decisions and orders.
371-08-540 Review of permits under the National Pollutant Discharge Elimination System.
371-08-545 Review of permits issued under chapter 173-303 WAC.
371-08-550 Petitions for reconsideration.

PART H
APPEALS FROM BOARD DECISIONS

371-08-555 Time for filing petitions for review to superior court.
371-08-560 Direct review to the court of appeals upon certification by the board.
371-08-565 Certification of record.

PART I
SEPA REVIEW OF BOARD ACTIVITIES

371-08-570 Applicability of SEPA guidelines.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

371-08-001 Purpose and applicability. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-001, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-002 Commencement of adjudicative proceedings. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-002, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-005 Membership, function and jurisdiction. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-005, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-005, filed 8/18/81; Order 75-1, § 371-08-005, filed 1/9/75; Order 70-1, § 371-08-005, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-006 Public records. [Order, § 371-08-006, filed 5/31/73.] Repealed by Order 74-3, filed 5/8/74. See chapter 371-12 WAC.

371-08-010 Board administration—Office and address of the board. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-010, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-010, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-010, filed 8/18/81; Order 75-1, § 371-08-010, filed 1/9/75; Order 70-1, § 371-08-010, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-015 Board administration—Meeting of the board. [Order 75-1, § 371-08-015, filed 1/9/75; Order 70-1, § 371-08-015, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

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

12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-025 Board administration—Office of the clerk of the board. [Order 75-1, § 371-08-025, filed 1/9/75; Order 70-1, § 371-08-025, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.

371-08-030 Board administration—Communications with the board—Public records. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-030, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-030, filed 8/18/81; Order 75-1, § 371-08-030, filed 1/9/75; Order 70-1, § 371-08-030, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-031 Procedures applicable. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-031, filed 8/18/81; Order 75-1, § 371-08-031, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-110(3).

371-08-032 Definitions. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-032, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-032, filed 8/18/81; Order 75-1, § 371-08-032, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-033 Service of documents on representatives. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-033, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-035 Appearance and practice before the board—Persons who may and may not appear. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-035, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-035, filed 8/18/81; Order 75-1, § 371-08-035, filed 1/9/75; Order 70-1, § 371-08-035, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-040 Appearance and practice before the board—Appearance by representative. [Statutory Authority: RCW 43.21B.-110(3). 91-03-028, § 371-08-040, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-040, filed 8/18/81; Order 75-1, § 371-08-040, filed 1/9/75; Order 70-1, § 371-08-040, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-045 Appearance and practice before the board—No formal admission to practice. [Order 75-1, § 371-08-045, filed 1/9/75; Order 70-1, § 371-08-045, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-050 Appearance and practice before the board—Withdrawal or substitution of representatives. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-050, filed 8/18/81; Order 75-1, § 371-08-050, filed 1/9/75; Order 70-1, § 371-08-050, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-055 Appearance and practice before the board—Conduct. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-055, filed 8/18/81; Order 75-1, § 371-08-055, filed 1/9/75; Order 70-1, § 371-08-055, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-060 Presiding officer—Definition. [Order 70-1, § 371-08-060, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.

371-08-061 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-061, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-065 Presiding officer—Powers and duties. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-065, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-065, filed 8/18/81; Order 75-1, § 371-08-065, filed 1/9/75; Order 70-1, § 371-08-065, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-070 Presiding officer—Substitution of presiding officer. [Order 70-1, § 371-08-070, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.

371-08-071 Subpoenas. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-071, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-071, filed 8/18/81.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-075 Appeals to the board—Contents of notice of appeal. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-075, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-075, filed 8/18/81; Order 75-1, § 371-08-075, filed 1/9/75; Order 70-1, § 371-08-075, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-080 Appeals to the board—Time for filing appeals. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-080, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-080, filed 8/18/81; Order 75-1, § 371-08-080, filed 1/9/75; Order 70-1, § 371-08-080, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-085 Appeals to the board—Jurisdictional requirements—Dismissal on jurisdictional grounds. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-085, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-085, filed 1/9/75; Order 70-1, § 371-08-085, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-090 Appeals to the board—Granting the appeal. [Order 75-1, § 371-08-090, filed 1/9/75; Order 70-1, § 371-08-090, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.

371-08-095 Appeals to the board—Cross-appeals. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-095, filed 8/18/81; Order 75-1, § 371-08-095, filed 1/9/75; Order 70-1, § 371-08-095, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-100 Appeals to the board—Correction or amendment of notice. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-100, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-100, filed 8/18/81; Order 75-1, § 371-08-100, filed 1/9/75; Order 70-1, § 371-08-100, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-102 Appeals to the board—Responsive pleadings. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-102, filed 8/18/81.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-104 Appeals to the board—Stays. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-104, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-104, filed 8/18/81.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-105 Conferences—Two types. [Order 75-1, § 371-08-105, filed 1/9/75; Order 70-1, § 371-08-105, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-106 Appeals to the board—Intervention. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-106, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

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

371-08-115 Conferences—When held. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-115, filed 8/18/81; Order 75-1, § 371-08-115, filed 1/9/75; Order 70-1, § 371-08-115, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-120 Conferences—Agreements at informal conferences. [Order 75-1, § 371-08-120, filed 1/9/75; Order 70-1, § 371-08-120, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-125 Conferences—Purpose of prehearing conferences. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-125, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-125, filed 1/9/75; Order 70-1, § 371-08-125, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-130 Conferences—When held. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-130, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-130, filed 1/9/75; Order 70-1, § 371-08-130, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-131 Conferences—Documentary evidence. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-131, filed 8/18/81; Order 75-1, § 371-08-131, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-132 Conferences—Excerpts from documentary evidence. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-132, filed 8/18/81; Order 75-1, § 371-08-132, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-135 Conferences—Failure to supply prehearing information. [Order 75-1, § 371-08-135, filed 1/9/75; Order 70-1, § 371-08-135, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-140 Conferences—Agreements at prehearing conferences—Prehearing orders. [Statutory Authority: RCW 43.21B.-110(3). 91-03-028, § 371-08-140, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-140, filed 1/9/75; Order 70-1, § 371-08-140, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-144 Prehearing procedures—Telephone. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-144, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-144, filed 8/18/81.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-145 Conferences—Applicability of superior court rules. [Order 75-1, § 371-08-145, filed 1/9/75; Order 70-1, § 371-08-145, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.

371-08-146 Prehearing procedures—Use of civil rules—Discovery. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-146, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-147 Procedures—Motions. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-147, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.-110(3). 91-03-028, § 371-08-147, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-148 Prehearing procedures—Summary judgment. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-148, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-150 Hearings—Types of hearings. [Order 75-1, § 371-08-150, filed 1/9/75; Order 70-1, § 371-08-150, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-155 Hearings—Election of type of hearings. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-155, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-155, filed 1/9/75; Order 70-1, § 371-08-155, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-156 Hearings—Assignment of dates. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-156, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-156, filed 8/18/81; Order 75-1, § 371-08-156, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-160 Hearings—Notice of hearing. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-160, filed 8/18/81; Order 75-1, § 371-08-160, filed 1/9/75; Order 70-1, § 371-08-160, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-110(3).

371-08-162 Hearings—Primary and secondary setting. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-162, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-162, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-163 Hearings—Briefs. [Statutory Authority: RCW 43.21B.-170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-163, filed 8/18/81.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-165 Hearings—Continuances, dismissal. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-165, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-165, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-165, filed 8/18/81; Order 75-1, § 371-08-165, filed 1/9/75; Order 70-1, § 371-08-165, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-167 Dismissal or default. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-167, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-170 Hearings—Continuances. [Order 70-1, § 371-08-170, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.

371-08-175 Hearings—Setting subsequent hearings. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-175, filed 8/18/81; Order 75-1, § 371-08-175, filed 1/9/75; Order 70-1, § 371-08-175, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-180 Hearings—Procedures at hearings. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-180, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-180, filed 8/18/81; Order 75-1, § 371-08-180, filed 1/9/75; Order 70-1, § 371-08-180, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-183 Hearings—Standard and scope of review—Burden of proof. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-183, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-183, filed 8/18/81.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-184 Hearings—Interpreters. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-184, filed 1/8/91, effective 2/8/91.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-185 Hearings—Additional evidence by presiding officer. [Statutory Authority: RCW 43.21B.170. 81-17-055

(Order 82-1, Resolution No. 82-1), § 371-08-185, filed 8/18/81; Order 75-1, § 371-08-185, filed 1/9/75; Order 70-1, § 371-08-185, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-186 Rules of evidence—Admissibility criteria. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-186, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-186, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-187 Rules of evidence—Official notice—Matters of law. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-187, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-187, filed 8/18/81; Order 75-1, § 371-08-187, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-188 Rules of evidence—Official notice—Material facts. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-188, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-188, filed 8/18/81; Order 75-1, § 371-08-188, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-189 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-189, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-189, filed 8/18/81; Order 75-1, § 371-08-189, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-190 Disposition of contested cases—Definition. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-190, filed 8/18/81; Order 75-1, § 371-08-190, filed 1/9/75; Order 70-1, § 371-08-190, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-195 Disposition of adjudicative proceedings—Record. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-195, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-195, filed 1/9/75; Order 70-1, § 371-08-195, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.-170.

371-08-196 Disposition of adjudicative proceedings—Transcripts. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-196, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-196, filed 8/18/81; Order 75-2, § 371-08-196, filed 11/5/75; Order 75-1, § 371-08-196, filed 1/9/75.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-197 Disposition of adjudicative proceedings—Preparation of findings, conclusions and orders. [Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-197, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-200 Disposition of adjudicative proceedings—Final decisions and orders—Petition for reconsideration. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-200, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-200, filed 8/18/81; Order 75-2, § 371-08-200, filed 11/5/75; Order 75-1, § 371-08-200, filed 1/9/75; Order 70-1, § 371-08-200, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-201 Disposition of contested cases—Presentation of additional evidence. [Statutory Authority: RCW 43.21B.-170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-201, filed 8/18/81; Order 75-1, § 371-08-201, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-110(3).

371-08-205 Disposition of contested cases—Exceptions. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-205, filed 8/18/81; Order 75-1, § 371-08-205, filed 1/9/75; Order 70-1, § 371-08-205, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-210 Disposition of contested cases—Finality of proposed decisions and orders. [Order 75-1, § 371-08-210, filed 1/9/75; Order 70-1, § 371-08-210, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-08-215 Disposition of adjudicative proceedings—Final decisions and orders. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-215, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.-170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-215, filed 8/18/81; Order 75-1, § 371-08-215, filed 1/9/75; Order 70-1, § 371-08-215, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-220 Appeals to the courts—Notice of appeal to the superior court. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-220, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-220, filed 8/18/81; Order 77-1, § 371-08-220, filed 9/8/76; Order 75-1, § 371-08-220, filed 1/9/75; Order 70-1, § 371-08-220, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-225 Appeals to the courts—Notice of appeal to the court of appeals. [Order 75-1, § 371-08-225, filed 1/9/75; Order 70-1, § 371-08-225, filed 12/18/70.] Repealed by Order 77-1, filed 9/8/76. Later promulgation, see WAC 371-08-220.

371-08-230 Appeals to the courts—Certification of record. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-230, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-230, filed 8/18/81; Order 77-1, § 371-08-230, filed 9/8/76; Order 75-1, § 371-08-230, filed 1/9/75; Order 70-1, § 371-08-230, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-235 Computation of time. [Order 75-1, § 371-08-235, filed 1/9/75; Order 70-1, § 371-08-235, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-240 Petitions for declaratory ruling. [Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-240, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-240, filed 1/9/75; Order 70-1, § 371-08-240, filed 12/18/70.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

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

371-08-250 Review of permits under the National Pollutant Discharge Elimination System. [Order 75-1, § 371-08-250, filed 1/9/75; Order 74-2, § 371-08-250, filed 2/7/74.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-255 Review of permits issued under chapter 173-303 WAC. [Statutory Authority: RCW 43.21B.170. 83-14-074 (Order 83-1, Resolution No. 83-1), § 371-08-255, filed 7/6/83.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

371-08-260 Applicability of SEPA guidelines. [Order 77-2, § 371-08-260, filed 12/6/77.] Repealed by 96-15-003, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 43.21B.170.

PART A
GENERAL

WAC 371-08-300 Purpose of this chapter and applicability of the board's rules of practice and the civil rules of procedure and the rules of evidence. (1) The purpose of chapter 371-08 WAC is to provide rules of practice before the

pollution control hearings board (hereinafter "board"). The interpretation of these rules of practice may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Washington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding pretrial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules of evidence, is admissible pursuant to WAC 371-08-500.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC, except where specifically noted.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-300, filed 7/3/96, effective 8/3/96.]

WAC 371-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

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

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

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

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Party" means:

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

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

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

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

(10) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-305, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-305, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-305, filed 7/3/96, effective 8/3/96.]

WAC 371-08-306 Livestock nutrient management program (LNMP). As used in this chapter, and chapter 43.21B RCW, when referring to appeals related to civil penalties and orders issued by the department of agriculture, under the LNMP, pursuant to chapters 90.48 and 90.64 RCW, the following terms shall have the following meaning:

(1) "Department" means the department of agriculture.

(2) "Director" means the director of the department of agriculture.

[Statutory Authority: RCW 34.05.360 and 2003 c 325. 04-03-001, § 371-08-306, filed 1/7/04, effective 2/7/04.]

WAC 371-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation.

(2) This section also pertains to the period for filing an appeal with the board, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-310, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170 and 1997 c 125. 97-19-064, § 371-08-310, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-016, § 371-08-310, filed 8/12/96, effective 9/12/96.]

PART B
BOARD ADMINISTRATION AND JURISDICTION

WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110, the decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7); forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180; decisions of the department of fish and wildlife to issue, deny, condition or modify a hydraulic project approval permit under chapter 77.55 RCW; decisions of the department of natural resources that are reviewable under RCW 78.44.270 and 78.44.380, and decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, 76.09.170, section 10, chapter 130, Laws of 2010, section 11, chapter 130, Laws of 2010, RCW 77.55.291, 78.44.250, section 1, chapter 84, Laws of 2010, RCW 86.16.081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330, 90.58.560 and chapter 90.64 RCW.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.107.060, 88.46.070, 90.14.130, 90.14.190, 90.48.120 and chapter 90.64 RCW.

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

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under chapter 285, Laws of 2010.

(e) Decisions by the department disapproving a comprehensive solid waste management plan or any amendments to that plan that are appealed by the submitting entity pursuant to RCW 70.95.094.

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

(g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

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

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

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-315, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 34.05.360 and 2003 c 325. 04-03-001, § 371-08-315, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-315, filed 7/3/96, effective 8/3/96.]

WAC 371-08-320 Environmental and land use hearings office hours, telephone number and address. (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. The board holds meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is housed at the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington 98501. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(3) The mailing address of the board is:

Pollution Control Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

(4) The telephone number of the board is 360-664-9160. The telefacsimile number is 360-586-2253.

(5) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

[Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). 12-05-110, § 371-08-320, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 43.21B.170. 02-06-011, § 371-08-320, filed 2/22/02, effective 3/25/02; 96-15-003, § 371-08-320, filed 7/3/96, effective 8/3/96.]

WAC 371-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, telefacsimile, or e-mail.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The form for requests for public records is set forth on the agency's web site at eluho@eluho.wa.gov.

(3) The environmental and land use hearings office maintains a web site with information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web

site may be accessed via the internet at http://www.eluho.wa.gov.

[Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). 12-05-110, § 371-08-325, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-325, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-325, filed 7/3/96, effective 8/3/96.]

WAC 371-08-330 Board decision making on appeals. The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 43.21B.-305, an appeal that involves a penalty of fifteen thousand dollars or less imposed by the department of ecology, another state agency or an air pollution control authority may be heard by a single member of the board. Such appeals are called short-board appeals. The decision of that single member shall be the final decision of the entire board.

(2) **Full-board appeals.** All other types of appeals are called full-board appeals. The chairperson may assign a single member to hold the hearing in a full-board appeal; however, at least two members shall review the record and issue a decision. Two members of the board shall constitute a quorum for making a decision and may act although one position on the board is vacant or one board member is unavailable.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

[Statutory Authority: Chapters 43.21B, 34.05 RCW, RCW 43.21B.305. 08-03-045, § 371-08-330, filed 1/10/08, effective 2/10/08. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-330, filed 7/3/96, effective 8/3/96.]

PART C
FILING AN APPEAL WITH THE BOARD AND SERVICE

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board is initiated by filing a notice of appeal with the board at the environmental hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, facsimile, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-335, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-335, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-335, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170 and 1997 c 125. 97-19-064, § 371-08-335, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.-170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-016, § 371-08-335, filed 8/12/96, effective 9/12/96.]

WAC 371-08-340 Contents of notice of appeal. The notice of appeal shall contain:

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

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

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

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

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

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

(7) The signature of the representative of the appealing party or the appealing party. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the notice of appeal and that it is consistent with civil rule 11;

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-340, filed 7/3/96, effective 8/3/96.]

WAC 371-08-345 Service of the notice of appeal on the agency and other interested parties. (1) Within thirty days of the date of receipt of the agency's order or decision, the appellant shall also serve a copy of the notice of appeal on the agency whose order or decision is being appealed. Proof of service may be made by certificate or affidavit filed with the board.

(2) A copy of the notice of appeal shall also be served on all other persons named as parties to the appeal. There is no time limit on when such service must be made.

[Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-345, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-016, § 371-08-345, filed 8/12/96, effective 9/12/96.]

WAC 371-08-350 Service of documents on representatives. Service of any document required to be served on a party to a case, including final decisions of the board, may be made by serving the party's representative in the matter.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-350, filed 7/3/96, effective 8/3/96.]

WAC 371-08-355 Petitions for declaratory ruling. (1) As prescribed by RCW 34.05.240, any interested person may petition the board for a declaratory ruling. The board shall consider any petition for declaratory ruling in accordance with these rules and the Administrative Procedure Act.

(2) Two members of the board shall constitute a quorum when the board acts on a declaratory judgment petition. Two members of the board may act although one position on the board is vacant.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-355, filed 7/3/96, effective 8/3/96.]

WAC 371-08-360 Petitions for rule making. (1) As prescribed by RCW 34.05.330, any person may petition the board to promulgate, amend or rescind the board's administrative rules, as set forth in this chapter. The provisions of these rules and the Administrative Procedure Act shall apply to petitions for rule making.

(2) Two members of the board shall constitute a quorum when the board promulgates, amends or rescinds its administrative rules. Two members of the board may act although one position on the board is vacant.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-360, filed 7/3/96, effective 8/3/96.]

PART D
APPEARANCE AND PRACTICE BEFORE THE BOARD

WAC 371-08-365 Persons who may appear before the board. (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

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

(b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government subdivision or agency.

(c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

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

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

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-365, filed 7/3/96, effective 8/3/96.]

WAC 371-08-370 Procedure for representing a party before the board. (1) An attorney or authorized representative as defined in WAC 371-08-365 may appear for a party by either of the following actions:

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

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

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

(3) Unless the department notifies the board otherwise, the attorney general shall, in all appeals from decisions and orders of the department and director, be deemed to have entered an appearance for the department, and shall be exempt from the requirements herein relating to the filing of written notices of appearance and to the furnishing of copies of same to other parties and their representatives.

(4) After a representative appears on behalf of a party, the board shall serve all future notices, orders and correspondence upon such representative. Service upon the representative shall constitute service upon the party.

(5) After a representative appears on behalf of a party, all other parties to the appeal shall serve all future pleadings and correspondence upon that representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-370, filed 7/3/96, effective 8/3/96.]

WAC 371-08-375 Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record, together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-375, filed 7/3/96, effective 8/3/96.]

WAC 371-08-380 Conduct before the board by representatives. All persons who are representing parties before the board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington even if the representative is not an attorney. Representatives who, in the opinion of the presiding officer, violate those ethical stan-

dards may be reprimanded or sanctioned as appropriate. Sanctions may include, among other measures, the imposition of costs and the exclusion of the representative from the proceedings. The board may, after notifying the representative and holding a hearing, take appropriate disciplinary action including, but not limited to, barring such person from representing any party in any future proceedings before the board.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-380, filed 7/3/96, effective 8/3/96.]

WAC 371-08-385 Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice. The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-385, filed 7/3/96, effective 8/3/96.]

WAC 371-08-390 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and enter protective orders as provided in the Administrative Procedure Act;

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

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

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

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

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

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

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

(10) To hold prehearing conferences and settlement conferences;

(11) To permit and regulate the taking of discovery;

(12) To regulate the course of the hearing;

(13) To dismiss an appeal or take other appropriate actions if a party or representative fails to appear at a prehearing conference, hearing or at any other stage of the appeal proceeding;

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-390, filed 7/3/96, effective 8/3/96.]

WAC 371-08-395 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the environmental hearings boards must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-395, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-395, filed 7/3/96, effective 8/3/96.]

WAC 371-08-400 Subpoenas. (1) **Issuance.** Subpoenas may be issued by any member of the board, the presiding officer assigned to the case or an attorney of record, as provided in the Administrative Procedure Act. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer or a board member shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, shall prepare the subpoenas for issuance, shall send them to the board's office for signature at least ten days before the hearing, and, upon return, shall make arrangements for service.

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

(3) **Service.** Service of subpoenas to a witness who is not a party to the case shall be made by personally serving a copy of the subpoena to such person, in accordance with civil rule 45, and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

(4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person subpoenaed and upon notice to the party for whom the subpoena was issued, the presiding officer may:

(a) Quash; or

(b) Modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or

(c) Condition denial of the motion upon just and reasonable conditions.

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

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-400, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-400, filed 7/3/96, effective 8/3/96.]

PART E
PREHEARING PRACTICE

WAC 371-08-405 Jurisdictional requirements of the board—Dismissal on jurisdictional grounds. (1) Timely filing of the notice of appeal with the board and timely service of the notice of appeal on the appropriate agency are required for the board to acquire jurisdiction.

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

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-405, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-405, filed 7/3/96, effective 8/3/96.]

WAC 371-08-410 Correction or amendment of notice. (1) If any notice of appeal is found to be defective or insufficient, the board may require the party filing said notice of appeal to correct, clarify or amend the same to conform to the requirements of the board's rules. The board may refuse to schedule any conference or hearing thereon until compliance with such requirements, or may issue an appropriate order which may include providing for dismissal of such appeal upon failure to comply within a specified time.

(2) Other amendments and supplemental pleadings shall conform to civil rule 15.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-410, filed 7/3/96, effective 8/3/96.]

WAC 371-08-415 Stays. (1) A person appealing an order not stayed by the issuing agency may obtain a stay of the effectiveness of that order only as set forth in this section.

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

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

(4) The requester makes a prima facie case for a stay if the requester demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the board shall grant the stay unless the agency demonstrates either:

(a) A substantial probability of success on the merits; or

(b) Likelihood of success and an overriding public interest which justifies denial of the stay.

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

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-415, filed 7/3/96, effective 8/3/96.]

WAC 371-08-420 Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the interests of justice and that the prompt and orderly conduct of the appeal will not be impaired.

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-420, filed 7/3/96, effective 8/3/96.]

WAC 371-08-425 Joinder of parties. The presiding officer shall order the joinder of the permittee, permitting agency or any other interested person or entity in accordance with civil rule 19. The presiding officer may also permit the joinder of the persons who are not necessary to the determination of the appeal in accordance with civil rule 20.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-425, filed 7/3/96, effective 8/3/96.]

WAC 371-08-430 Scheduling letter. (1) Upon receipt of a notice of appeal which complies with the requirements of these regulations, the board shall mail written notice to each party of the primary and, if applicable, the secondary hearing dates. The notice or scheduling letter will identify the case to be heard, the identity of the parties and the time and location of the hearing. The letter shall also state that an interpreter can be made available upon reasonable notice to the board for any witness or party who is hearing impaired or who does not speak English.

(2) The letter may set out a filing schedule for motions and prehearing briefs. Where the presiding officer decides to hold a prehearing conference, the letter shall also state the date, time and location of the prehearing conference.

(3) The scheduling letter shall control the subsequent course of the appeal unless modified for good cause by subsequent order of the board or the presiding officer.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-430, filed 7/3/96, effective 8/3/96.]

WAC 371-08-435 Prehearing conferences. (1) The board may, upon written request by a party or on its own, schedule a prehearing conference on not less than seven days notice mailed to each party to the appeal, at a time and place fixed by the board. At the prehearing conference, parties may engage in settlement negotiations. Where settlement proves unavailing, the presiding officer may schedule all deadlines for motions and discovery and memorialize those dates in a prehearing order. The prehearing order may also identify the issues to be tried, stipulations, admissions, witnesses and exhibits for the hearing.

(2) The issues which the prehearing order identifies for the hearing shall control the subsequent course of the appeal,

and shall be the only issues to be tried at the hearing, unless modified for good cause by subsequent order of the board or the presiding officer.

(3) Appearance by a party or by the party's representative at the prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or take other appropriate action.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-435, filed 7/3/96, effective 8/3/96.]

WAC 371-08-440 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare and submit to the board a written order of dismissal to which the written settlement agreement is attached. If the agreement is in accordance with the law, the board shall enter the order and dismiss the case.

(2) This section also pertains to settlement agreements reached during mediation.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-440, filed 7/3/96, effective 8/3/96.]

WAC 371-08-445 Use of telephone conferences, motion hearings and hearings. Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, motion hearing or hearing by telephone call to promote the fair, speedy and economical processing of a matter.

[Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-445, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-445, filed 7/3/96, effective 8/3/96.]

WAC 371-08-450 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence.

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

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party then has ten days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

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

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-450, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-450, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170. 02-06-012, § 371-08-450, filed 2/22/02, effective 3/25/02; 96-15-003, § 371-08-450, filed 7/3/96, effective 8/3/96.]

WAC 371-08-455 Setting primary and secondary hearing dates. (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-455, filed 7/3/96, effective 8/3/96.]

WAC 371-08-460 Postponements or continuances of hearings. (1) Postponement or continuance of a hearing is within the discretion of the presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) A party may seek the postponement or continuance of a hearing by written motion and according to the procedure set forth in WAC 371-08-450.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-460, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-460, filed 7/3/96, effective 8/3/96.]

WAC 371-08-465 Dismissal, default or withdrawal of the appeal. (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before the appellant rests its case-in-chief during the hearing are mandatory and afterwards are permissive.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-465, filed 7/3/96, effective 8/3/96.]

PART F
HEARINGS

WAC 371-08-470 Hearing briefs. Hearing briefs, if filed, must be submitted to the board at least seven days before the hearing or such other time as directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-470, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-470, filed 7/3/96, effective 8/3/96.]

WAC 371-08-475 Procedures at hearings. (1) **Presiding officer.** All hearings are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

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

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

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

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

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

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

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

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

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department may appear as an expert witness on behalf of other parties in a formal board proceeding in which he or she took an active part in the matter giving rise to the appeal as an employee of the department.

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

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-480 through 371-08-515.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-475, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-475, filed 7/3/96, effective 8/3/96.]

WAC 371-08-480 Additional evidence by presiding officer. The presiding officer may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably. Any such evidence secured and presented by the presiding officer shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the presiding officer, application shall be made therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-480, filed 7/3/96, effective 8/3/96.]

WAC 371-08-485 Standard and scope of review and burden of proof at hearings. (1) Hearings shall be formal and quasi-judicial in nature. The scope and standard of review shall be de novo unless otherwise provided by law.

(2) The board shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

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

[Statutory Authority: RCW 43.21B.170. 02-06-013, § 371-08-485, filed 2/22/02, effective 3/25/02; 96-15-003, § 371-08-485, filed 7/3/96, effective 8/3/96.]

WAC 371-08-490 Provision of interpreters and of reasonable accommodations to individuals with special needs. (1) Whenever any person involved in an adjudicative proceeding is eligible for an interpreter, as that eligibility is defined in WAC 10-08-150, or qualifies for reasonable accommodations as a person with disabilities, that person shall request an interpreter or other reasonable accommodation from the presiding officer not later than three weeks before the date of the hearing, conference or other situation

for which the interpreter or accommodation is needed. The board shall comply with the provisions of WAC 10-08-150 and 10-08-160(2) regarding interpreters.

(2) Information about proceedings before the board is available in alternate format upon request.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-490, filed 7/3/96, effective 8/3/96.]

WAC 371-08-500 Rules of evidence—Admissibility criteria. (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. All relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington.

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-500, filed 7/3/96, effective 8/3/96.]

WAC 371-08-505 Rules of evidence—Official notice—Matters of law. The presiding officer, upon request made before or during a hearing, will officially notice:

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

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

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

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

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

[Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-016, § 371-08-505, filed 8/12/96, effective 9/12/96.]

WAC 371-08-510 Rules of evidence—Official notice—Material facts. (1) In the absence of controverting evidence, the presiding officer, upon request made before or during a hearing, or in a proposed decision, may officially notice:

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-510, filed 7/3/96, effective 8/3/96.]

WAC 371-08-515 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evi-

dence shall state the precise grounds of such objection at the time such evidence is offered.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-515, filed 7/3/96, effective 8/3/96.]

PART G
DECISIONS BY THE BOARD AFTER HEARING

WAC 371-08-520 Contents of the record. The record before the board in any adjudicative proceeding shall consist of the decision or order appealed from, the notice of appeal therefrom, responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party and written reports or orders of the presiding officer. Such record shall also include all depositions, if they are admitted at the hearing, the transcript of testimony as provided in WAC 371-08-525, and other proceedings at the hearing, together with all exhibits admitted. No part of the department's record or other documents shall be made part of the record of the board unless admitted in evidence.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-520, filed 7/3/96, effective 8/3/96.]

WAC 371-08-525 Preparation of transcripts. (1) The board, in its discretion, may at any time cause a transcript to be printed, but will not normally do so.

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

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-525, filed 7/3/96, effective 8/3/96.]

WAC 371-08-530 Preparation of findings, conclusions and orders. Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel and be based upon the board's oral or memorandum opinion. The board or presiding officer may adopt, in whole or in part, the parties' findings, conclusions and orders or the board may prepare its own findings, conclusions and orders.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-530, filed 7/3/96, effective 8/3/96.]

WAC 371-08-535 Final decisions and orders. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2) The record before the board shall be considered by at least two of the members of the board: Provided, That if two members cannot agree on a decision, the third member must consider the record before the board: And provided further, That if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control.

(3) The board shall mail copies of the final decision and order to each party to the appeal or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-535, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-535, filed 7/3/96, effective 8/3/96.]

WAC 371-08-540 Review of permits under the National Pollutant Discharge Elimination System. (1) The provisions of this section shall apply only to review proceedings before the board pertaining to permits issued by the department under the provisions of the National Pollutant Discharge Elimination System.

(2) In those cases where the board determines that the department issued a permit that is invalid in any respect, the board shall order the department to reissue the permit as directed by the board and consistent with all applicable statutes and guidelines of the state and federal governments.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-540, filed 7/3/96, effective 8/3/96.]

WAC 371-08-545 Review of permits issued under chapter 173-303 WAC. (1) This section shall only apply to the board's review of permits issued by the department under chapter 173-303 WAC.

(2) In the event that the board determines that a department permit under chapter 173-303 WAC is invalid in any respect, the board shall remand the permit to the department for reconsideration and appropriate action consistent with the board's order and federal and state law.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-545, filed 7/3/96, effective 8/3/96.]

WAC 371-08-550 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

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

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

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

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration to each party to the appeal or to the attorney or representative of record. Service on the representative constitutes service on the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-550, filed 1/17/07, effective 2/17/07.

Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-550, filed 7/3/96, effective 8/3/96.]

PART H
APPEALS FROM BOARD DECISIONS

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days from the date of service of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-555, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW and RCW 43.21B.190. 06-07-088, § 371-08-555, filed 3/15/06, effective 4/15/06. Statutory Authority: RCW 43.21B.170 and SHB 1314. 97-19-064, § 371-08-555, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-555, filed 7/3/96, effective 8/3/96.]

WAC 371-08-560 Direct review to the court of appeals upon certification by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request to file a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review of the board's decision shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-560, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-560, filed 7/3/96, effective 8/3/96.]

WAC 371-08-565 Certification of record. Within thirty days of receipt of a copy of the petition for judicial review to the superior court or notice of acceptance of the certificate of appealability by the court of appeals, the board shall certify and transmit to the reviewing court the record made before the board. Additional time for certification and transmission of the record may be allowed by the reviewing court. Normally the record will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party seeking judicial review.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-565, filed 7/3/96, effective 8/3/96.]

PART I
SEPA REVIEW OF BOARD ACTIVITIES

WAC 371-08-570 Applicability of SEPA guidelines. The board has reviewed its authorized activities pursuant to the SEPA rules and has found them all to be exempt from that chapter.

[Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-570, filed 7/3/96, effective 8/3/96.]