Chapter 463-78 WAC

GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

WAC

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WAC 463-78-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following provisions of chapter 173-400 WAC, in effect on November 1, 2008, by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference.

WAC 173-400-030: Definitions.
WAC 173-400-035: Portable and temporary sources.
WAC 173-400-040: General standards for maximum emissions.
WAC 173-400-050: Emission standards for combustion and incineration units.
WAC 173-400-060: Emission standards for general process units.
WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081: Startup and shutdown.
WAC 173-400-091: Voluntary limits on emissions.
WAC 173-400-105: Records, monitoring, and reporting.
WAC 173-400-107: Excess emissions.
WAC 173-400-110: New source review (NSR).
WAC 173-400-112: Requirements for new sources in nonattainment areas.
WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
WAC 173-400-117: Special protection requirements for federal Class I areas.
WAC 173-400-120: Bubble rules.
WAC 173-400-131: Issuance of emission reduction credits.
WAC 173-400-136: Use of emission reduction credits.
WAC 173-400-151: Retrofit requirements for visibility protection.
WAC 173-400-161: Compliance schedules.
WAC 173-400-171: Public involvement.
WAC 173-400-175: Public information.
WAC 173-400-180: Variance.
WAC 173-400-190: Requirements for nonattainment areas.
WAC 173-400-200: Creditable stack height and dispersion techniques.
WAC 173-400-205: Adjustment for atmospheric conditions.
WAC 173-400-700: Review of major stationary sources of air pollution.
WAC 173-400-710: Definitions.
WAC 173-400-720: Prevention of significant deterioration (PSD).
WAC 173-400-730: Prevention of significant deterioration application processing procedures.
WAC 173-400-740: PSD permitting public involvement requirements.
WAC 173-400-750: Revisions to PSD permits.

(2) The energy facility site evaluation council adopts the following provisions of chapter 173-401 WAC, in effect on March 1, 2005, by reference.

WAC 173-401-100: Program overview.
WAC 173-401-200: Definitions.
WAC 173-401-300: Applicability.
WAC 173-401-500: Permit applications.
WAC 173-401-510: Permit application form.
WAC 173-401-520: Certification.
WAC 173-401-530: Insignificant emission units.
WAC 173-401-531: Thresholds for hazardous air pollutants.
WAC 173-401-532: Categorically exempt insignificant emission units.
WAC 173-401-533: Units and activities defined as insignificant on the basis of size or production rate.
WAC 173-401-600: Permit content.
WAC 173-401-605: Emission standards and limitations.
WAC 173-401-610: Permit duration.
WAC 173-401-615: Monitoring and related recordkeeping and reporting requirements.
WAC 173-401-620: Standard terms and conditions. Except (2)(i).
WAC 173-401-625: Federally enforceable requirements.
WAC 173-401-630: Compliance requirements.
WAC 173-401-635: Temporary sources.

WAC 173-401-640: Permit shield.
WAC 173-401-645: Emergency provision.
WAC 173-401-650: Operational flexibility.
WAC 173-401-700: Action on application.
WAC 173-401-705: Requirement for a permit.
WAC 173-401-710: Permit renewal, revocation and expiration.
WAC 173-401-720: Administrative permit amendments.
WAC 173-401-722: Changes not requiring permit revisions.
WAC 173-401-725: Permit modifications.
WAC 173-401-730: Reopening for cause.
WAC 173-401-750: General permits.
WAC 173-401-800: Public involvement.
WAC 173-401-810: EPA Review.
WAC 173-401-820: Review by affected states.

(3) The energy facility site evaluation council adopts the following provisions of chapter 173-406 WAC, in effect on March 1, 2005, by reference.

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

Part II - DESIGNATED REPRESENTATIVE
WAC 173-406-200: Designated representative.
WAC 173-406-201: Submissions.
WAC 173-406-202: Objections.

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

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

Part V - PERMIT CONTENTS
WAC 173-406-500: Acid rain permit.
WAC 173-406-501: Contents.
WAC 173-406-502: Permit shield.

Part VI - PERMIT ISSUANCE
WAC 173-406-600: Acid rain permit issuance procedures.
WAC 173-406-601: General.
WAC 173-406-602: Completeness.

Part VI - PERMIT ISSUANCE
WAC 173-406-603: Statement of basis.
WAC 173-406-604: Issuance of acid rain permits.

Part VII - PERMIT REVISIONS
WAC 173-406-700: Permit revisions.
WAC 173-406-701: General.
WAC 173-406-702: Permit modifications.
WAC 173-406-703: Fast-track modifications.
WAC 173-406-704: Administrative permit amendment.
WAC 173-406-705: Automatic permit amendment.
WAC 173-406-706: Permit reopenings.

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

Part IX - NITROGEN OXIDES
WAC 173-406-900: Nitrogen oxides emission reduction program.

Part X - SULFUR DIOXIDE OPT-IN
WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following provisions of chapter 173-460 WAC, in effect on March 1, 2005, by reference.

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

(5) The energy facility site evaluation council adopts the following provisions of chapter 173-441 WAC, in effect on January 1, 2011, by reference.

WAC 173-441-010: Scope.
WAC 173-441-020: Definitions.
WAC 173-441-030: Applicability.
WAC 173-441-040: Greenhouse gases.
WAC 173-441-050: General monitoring, reporting, recordkeeping and verification requirements.
WAC 173-441-060: Authorization and responsibilities of the designated representative.
WAC 173-441-070: Report submittal.
WAC 173-441-080: Standardized methods and conversion factors incorporated by reference.
WAC 173-441-090: Compliance and enforcement.
WAC 173-441-100: Addresses.
WAC 173-441-110: Fees.
WAC 173-441-120: Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities.
WAC 173-441-140: Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions.
WAC 173-441-150: Confidentiality.
WAC 173-441-160: Ecology to share information with local air authorities and with the energy facility site evaluation council.
WAC 173-441-170: Severability.

[Statutory Authority: Chapters 70.94 and 70.235 RCW. 11-13-048, § 463-78-005, filed 6/9/11, effective 7/10/11. Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-01-046, § 463-78-005, filed 12/10/08, effective 1/10/09. Statutory Authority: RCW 80.50.040 (1) and (12). 06-06-037, § 463-78-005, filed 2/23/06, effective 3/26/06; 04-21-013, recodified as § 463-78-005, filed 10/11/04, effective 11/11/04;04-17-058, § 463-39-005, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-005, filed 8/21/95, effective 9/21/95; 94-16-031, § 463-39-005, filed 7/26/94, effective 8/26/94. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-005, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-39-005, filed 4/2/92, effective 5/3/92.]

WAC 463-78-010 Purpose. The energy facility site evaluation council, under the authority vested in it by chapter 80.50 RCW and 40 C.F.R. Part 52 is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-39-010, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-010, filed 8/6/79.]

WAC 463-78-020 Applicability. The provisions of this chapter shall apply statewide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-020, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-020, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-020, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-020, filed 8/6/79.]

WAC 463-78-030 Additional definitions. (1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-400-710, 173-401-200, 173-406-101, "ecology," "authority," and "permitting authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

[Statutory Authority: RCW 80.50.040 (1) and (12). 06-06-037, § 463-78-030, filed 2/23/06, effective 3/26/06; 04-21-013, recodified as § 463-78-030, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-030, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-030, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-030, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-39-030, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-030, filed 8/6/79.]

WAC 463-78-070 Radioactive emissions. (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW 70.94.331, as promulgated by chapters 173-480 and 246-247 WAC.

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

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-070, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 94-16-031, § 463-39-070, filed 7/26/94, effective 8/26/94.]

WAC 463-78-090 Permit application form. (1) Applications for air operating permits may be on the standard form(s) developed by the department of ecology and shall contain the information required pursuant to WAC 173-401-510(2).

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-090, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-090, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-090, filed 8/21/95, effective 9/21/95; 94-16-031, § 463-39-090, filed 7/26/94, effective 8/26/94.]

WAC 463-78-095 Permit issuance. Permit(s) issued for air emissions in accordance with chapters 173-400, 173-

401, 173-406, and 173-460 WAC shall become an attachment(s) to a site certification agreement. For new energy facilities the permit(s) shall be effective upon the governor's approval and execution of the site certification agreement.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-095, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-095, filed 8/21/95, effective 9/21/95.]

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide	5.0
Nitrogen oxides	2.0
Sulfur dioxide	2.0
Particulate Matter (PM)	1.25
Fine Particulate (PM10)	0.75
Volatile Organic Compounds (VOC)	2.0
Lead	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ninety days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15 of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, facsimile number, and e-mail address of the source;

(c) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator;

(d) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM_{10} emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

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

(b) A report of relocation of the source shall be filed with the council no later than ninety days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement

to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ninety days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

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

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

(b) Receipt of complete applications;

(c) Permit appeals;

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

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

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 06-06-037, § 463-78-100, filed 2/23/06, effective 3/26/06; 04-21-013, recodified as § 463-78-100, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-100, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-100, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-100, filed 8/6/79.]

WAC 463-78-105 Fees and costs. (1) Holders of air operating permits issued to major energy facilities in accordance with RCW 70.04.422 shall be assessed annual fees, by the council, to recover the costs associated with program development, monitoring, compliance, and administration of the air operating permit program.

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

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

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

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

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

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

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-105, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-105, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-105, filed 8/21/95, effective 9/21/95.]

WAC 463-78-115 Standards of performance for new stationary sources. (1) Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), in effect on July 1, 2004, as applicable to new stationary sources subject to chapter 80.50 RCW is by this reference adopted and incorporated herein with the exception listed in subsection (2) of this section. For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council. The following list is provided for informational purposes only:

Subpart A	General Provisions, except C.F.R. 60.5 and 60.6
Subpart D	Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 350 megawatts
Subpart Da	Electric utility steam generating units for which construction commenced after September 18, 1978, which have greater than 73 megawatts but not greater than 350 megawatts
Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products
Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40, 000 gallons
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984
Subpart Y	Standards for Performance for Coal Preparation Plants
Subpart GG	Stationary gas turbines
Subpart XX	Bulk gasoline terminals
Subpart GGG	Petroleum refineries – compressors and fugitive emission sources
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants
Subpart LLL	Onshore natural gas processing; SO_2 emissions
Subpart NNN	VOC emissions from SOCMI distillation operations

Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions
Appendix A	Test Methods
Appendix B	Performance Specifications
Appendix C	Determination of Emission Rate Change
Appendix D	Required Emission Inventory Information
Appendix F	Quality Assurance Procedures

(2) The following sections of 40 C.F.R. Part 60 are not adopted by reference:

(a) Sections 60.5 (Determination of Construction or Modification) and 60.6 (Review of Plans);

(b) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and

(c) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative method of Demonstrating Compliance with 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

[Statutory Authority: RCW 80.50.040 (1) and (12). 06-06-037, § 463-78-115, filed 2/23/06, effective 3/26/06; 04-21-013, recodified as § 463-78-115, filed 10/11/04, effective 11/11/04;04-17-058, § 463-39-115, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 94-16-031, § 463-39-115, filed 7/26/94, effective 8/26/94; 92-09-013, § 463-39-115, filed 4/2/92, effective 5/3/92; 82-14-051 (Order 82-3), § 463-39-115, filed 6/30/82; 79-09-006 (Order 79-1), § 463-39-115, filed 8/6/79.]

WAC 463-78-120 Monitoring and special report. The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-120, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 95-17-088, § 463-39-120, filed 8/21/95, effective 9/21/95. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-120, filed 11/10/93, effective 12/11/93. Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-39-120, filed 4/2/92, effective 5/3/92; 79-09-006 (Order 79-1), § 463-39-120, filed 8/6/79.]

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW 70.94.422.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-135, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-135, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-135, filed 8/6/79.]

WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) **Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.**

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) **Appeal of operating permits issued pursuant to chapter 173-401 WAC.**

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) **Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.**

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act

and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

[Statutory Authority: RCW 80.50.040 (1) and (12). 06-06-037, § 463-78-140, filed 2/23/06, effective 3/26/06; 04-21-013, recodified as § 463-78-140, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. 93-23-035, § 463-39-140, filed 11/10/93, effective 12/11/93.]

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

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

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

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

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

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

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-170, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-170, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-170, filed 8/6/79.]

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

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

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.-430, 70.94.431 (1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil

penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

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

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

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

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

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

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

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

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

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-78-230, filed 10/11/04, effective 11/11/04; 04-17-058, § 463-39-230, filed 8/11/04, effective 9/11/04. Statutory Authority: RCW 80.50.040(1). 94-16-031, § 463-39-230, filed 7/26/94, effective 8/26/94.]