

WAC 173-441-060 Authorization and responsibilities of the designated representative.

(1) **General.** Except as provided under subsection (6) of this section, each facility, and each supplier, that is subject to this chapter, must have one and only one designated representative, who must be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to ecology under this chapter. If the facility is required to submit a GHG emissions report to EPA under 40 C.F.R. Part 98, that designated representative must also be the designated representative responsible for certifying, signing, and submitting GHG emissions reports to ecology under this chapter.

(2) **Authorization of a designated representative.** The designated representative of the facility or supplier must be an individual selected by an agreement binding on the owners and operators of such facility or supplier and must act in accordance with the certification statement in subsection (9)(d) of this section.

(3) **Responsibility of the designated representative.** Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation must represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this chapter, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators must be bound by any decision or order issued to the designated representative by ecology, pollution control hearings board, or a court.

(4) **Timing.** No GHG emissions report or other submissions under this chapter for a facility or supplier will be accepted until ecology has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation must be submitted at least sixty days before the deadline for submission of the facility's or supplier's initial emission report under this chapter.

(5) **Certification of the GHG emissions report.** Each GHG emission report and any other submission under this chapter for a facility or supplier must be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and 40 C.F.R. § 3.10 as adopted on October 13, 2005.

(a) Each such submission must include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) Ecology will accept a GHG emission report or other submission for a facility or supplier under this chapter only if the submission is certified, signed, and submitted in accordance with this section.

(6) **Alternate designated representative.** A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who must be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected must include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(a) Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative:

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative must be deemed to be a representation, action, inaction, or submission by the designated representative.

(b) Except in this section, whenever the term "designated representative" is used in this chapter, the term must be construed to include the designated representative or any alternate designated representative.

(7) **Changing a designated representative or alternate designated representative.** The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by ecology may be changed at any time upon receipt by ecology of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when ecology receives such later signed certificate of representation must be binding on the new designated representative and the owners and operators of the facility or supplier.

(8) **Changes in owners and operators.** In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator must be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within ninety days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative must submit a certificate of representation that is complete under this section except that such list must be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative must submit, within ninety days of making such determination, a certificate of representation that is complete under this section except that such list must be amended to include such owner or operator.

(9) **Certificate of representation.** A certificate of representation shall be complete if it includes the following elements in a format prescribed by ecology in accordance with this section:

(a) Identification of the facility or supplier for which the certificate of representation is submitted.

(b) The name, organization name (company affiliation-employer), address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(c) A list of the owners and operators of the facility or supplier identified in (a) of this subsection, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners must not make the certificate of representation incomplete.

(d) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or binding on the supplier, as applicable."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under chapter 173-441 WAC on behalf of the owners and operators of the facility and on behalf of suppliers, as applicable, and that each such owner and operator must be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the supplier or owners and operators of the facility, as applicable, must be bound by any order issued to me by ecology, the pollution control hearings board, or a court regarding the facility or supplier."

(iv) "If there are multiple owners and operators of the facility or multiple suppliers, as applicable, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and each supplier."

(e) The signature of the designated representative and any alternate designated representative and the dates signed.

(10) **Documents of agreement.** Unless otherwise required by ecology, documents of agreement referred to in the certificate of representation shall not be submitted to ecology. Ecology shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(11) **Binding nature of the certificate of representation.** Once a complete certificate of representation under this section for a facility or supplier has been received, ecology will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by ecology.

(12) **Objections concerning a designated representative.**

(a) Except as provided in subsection (7) of this section, no objection or other communication submitted to ecology concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative must affect any representation, action, inaction, or submission of the designated representative or alternate designated representa-

tive, or the finality of any decision or order by ecology under this chapter.

(b) Ecology will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

(13) Delegation by designated representative and alternate designated representative.

(a) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology provided for or required under this chapter, except for a submission under this subsection.

(b) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology in accordance with (a) of this subsection, the designated representative or alternate designated representative must submit electronically to ecology a notice of delegation, in a format prescribed by ecology, that includes the following elements:

(i) The name, organization name (company affiliation-employer), address, email address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an "agent").

(iii) For each such individual, a list of the type or types of electronic submissions under (a) of this subsection for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with subsection (13)(b)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) "I agree that any electronic submission to ecology that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under WAC 173-441-060 (13)(c) must be deemed to be an electronic submission certified, signed, and submitted by me."

(B) "Until this notice of delegation is superseded by a later signed notice of delegation under WAC 173-441-060 (13)(c), I agree to maintain an email account and to notify ecology immediately of any change in my email address unless all delegation of authority by me under WAC 173-441-060(13) is terminated."

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(c) A notice of delegation submitted in accordance with (b) of this subsection must be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by ecology and until receipt by ecology of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously

identified agent, add a new agent, or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification in (b)(v)(A) of this subsection and made in accordance with a notice of delegation effective under (c) of this subsection must be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

[Statutory Authority: Chapters 70.235 and 70.94 RCW. WSR 15-04-051 (Order 13-13), § 173-441-060, filed 1/29/15, effective 3/1/15. Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. WSR 10-24-108 (Order 10-08), § 173-441-060, filed 12/1/10, effective 1/1/11.]