

**WSR 23-17-034**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed August 9, 2023, 9:28 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 1.01, 1.07, 3.01, 3.03, 3.06, 3.09, 3.13, 3.15, 3.19, 4.01, 5.07, 7.01, 8.05, 13.02, 13.05 and 13.07; and Regulation II Section 1.01.

Hearing Location(s): On September 28, 2023, at 8:45 a.m., via Zoom <https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09>, Meeting ID 912 850 0665, Passcode 1904, Call in 888 788 0099 US Toll-free; or in person at 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), fax 206-343-7522, by September 27, 2023.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), by September 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These sections currently reference chapter 70.94 RCW, which was recodified as chapter 70A.15 RCW pursuant to section 2010, chapter 20, Laws of 2020. Regulation I, Section 1.07 also references chapter 70.98 RCW, which was recodified as chapter 70A.388 RCW pursuant to section 2025, chapter 20, Laws of 2020. These actions by the Washington state legislature did not make any material changes to these sections of RCW. The agency is updating its regulations to reflect the proper RCW references.

Reasons Supporting Proposal: To provide clarification to the public and ease of reference to the applicable RCW.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide

significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

Scope of exemption for rule proposal:

Is fully exempt.

August 8, 2023  
Christine Cooley  
Executive Director

**REGULATION I ARTICLE I**  
**AMENDATORY SECTION**  
**SECTION 1.01 POLICY**

The Puget Sound Clean Air Agency, consisting of the counties of Pierce, King, Snohomish, and Kitsap, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopts the following Regulation to control the emission of air contaminants from all sources within the jurisdiction of the Agency, to provide for the uniform administration and enforcement of this Regulation, and to carry out the requirements and purposes of the Washington Clean Air Act and the Federal Clean Air Act.

It is hereby declared to be the public policy of the Puget Sound Clean Air Agency to secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the Puget Sound area, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

**AMENDATORY SECTION**  
**SECTION 1.07 DEFINITIONS**

When used herein:

- (a) **AGENCY** means the Puget Sound Clean Air Agency.
- (b) **AIR CONTAMINANT** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.
- (c) **AIR POLLUTION** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.
- (d) **AMBIENT AIR** means the surrounding outside air.
- (e) **BOARD** means the Board of Directors of the Puget Sound Clean Air Agency.
- (f) **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.
- (g) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

- (h) **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.
- (i) **EMISSION** means a release of air contaminants into the ambient air.
- (j) **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter ((70.94)) 70A.15 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or chapter ((70.94)) 70A.15 RCW.
- (k) **EQUIPMENT** or **EMISSIONS UNIT** means any part of a stationary source or source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.
- (l) **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.
- (m) **GASOLINE** means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than 4 pounds per square inch absolute at 20°C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than 4 pounds per square inch absolute at 20°C shall be considered "gasoline" for purpose of this regulation.
- (n) **GASOLINE STATION** means any site dispensing gasoline into motor vehicle, marine vessel, or aircraft fuel tanks from stationary storage tanks.
- (o) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. § 7412.
- (p) **MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.
- (q) **MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.
- (r) **OWNER** or **OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.
- (s) **PERSON** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.
- (t) **REASONABLY AVAILABLE CONTROL TECHNOLOGY** or RACT means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.
- (u) **REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.
- (v) **SOURCE** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or

adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same 2-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 supplement.

(w) **TOXIC AIR POLLUTANT (TAP) or "toxic air contaminant"** means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(x) **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996.

(y) **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

(z) **VOLATILE ORGANIC COMPOUND or VOC** means an organic compound that participates in atmospheric photochemical reactions as defined in 40 CFR 51.100(s) in effect as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference.

### **REGULATION I ARTICLE 3**

#### **AMENDATORY SECTION**

##### **SECTION 3.01 DUTIES AND POWERS OF THE CONTROL OFFICER**

Pursuant to the provisions of the "Washington Clean Air Act" (Chapter ((70.94)) 70A.15 RCW), the Board has appointed a Control Officer whose sole responsibility is to observe and enforce the provisions of the Act and all orders, rules, and regulations pursuant thereto, including but not limited to Regulations I, II, and III of the Puget Sound Clean Air Agency. The Control Officer is empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Act.

#### **AMENDATORY SECTION**

##### **SECTION 3.03 GENERAL REGULATORY ORDERS**

(a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter ((70.94)) 70A.15 RCW or the rules adopted thereunder. In addition, federally enforceable regulatory orders that limit the potential to emit any air contaminant(s) pursuant to WAC 173-400-091 and modifications to such orders are issued under Section 3.03(f) of this regulation.

(b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:

(1) Public notice of the proposed regulatory order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed regulatory order and the requirements included in the proposed regulatory order;

(C) The deadline for submitting written comments to the Agency;

and

(D) The opportunity for a public hearing if the Agency determines that there is significant public interest in the proposed regulatory order.

(2) The initial public comment period shall be at least 30 days.

(3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(c) **Board Action.** The Board shall only issue a regulatory order under this section after:

(1) The public comment period has ended;

(2) Any public hearing scheduled has been held; and

(3) The Board has considered all information and data related to the proposed regulatory order received by the Agency, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed regulatory order at a Board meeting. Unless otherwise ordered by the Board, a regulatory order issued under this section shall be effective on the date the Board approves the regulatory order.

(d) **Appeals.** Regulatory orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

(e) **Fees.** When a regulatory order is requested by an applicant, the Agency shall assess a fee of \$4,000 to cover the costs of processing and issuing a regulatory order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) When an applicant requests a federally enforceable regulatory order to limit the potential to emit any air contaminant or contaminants pursuant to WAC 173-400-091, or requests a modification to such an order, the Control Officer or a duly authorized representative may issue such order consistent with the requirements of WAC 173-400-091 and 173-400-171 and Section 3.03(e) above. Regulatory orders issued pursuant to this section are effective the day the Control Officer or representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

#### **AMENDATORY SECTION**

#### **SECTION 3.06 CREDIBLE EVIDENCE**

For the purpose of establishing whether or not a person has violated or is in violation of any provision of chapter ~~((70.94))~~ 70A.15 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

#### **AMENDATORY SECTION**

##### **SECTION 3.09 VIOLATIONS - NOTICE**

(a) At least 30 days prior to the commencement of any formal enforcement action under RCW ~~((70.94.430))~~ 70A.15.3150 or ~~((70.94.431))~~ 70A.15.3160, the Board or Control Officer shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter ~~((70.94))~~ 70A.15 RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the Control Officer may require that the alleged violator or violators appear before the Board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.

(c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

#### **AMENDATORY SECTION**

##### **SECTION 3.13 CRIMINAL PENALTIES**

(a) Any person who knowingly violates any of the provisions of Chapter ~~((70.94))~~ 70A.15 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(b) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(c) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

#### **AMENDATORY SECTION**

**SECTION 3.15 ADDITIONAL ENFORCEMENT**

(a) Notwithstanding the existence or use of any other remedy, 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 Chapter ((70.94)) 70A.15 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly authorized agent, the Board, 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.

(b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of Chapter ((70.94)) 70A.15 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such 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 or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

**AMENDATORY SECTION****SECTION 3.19 CONFIDENTIAL INFORMATION**

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter ((70.94)) 70A.15 RCW, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this section: Provided further, that emission data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

**REGULATION I ARTICLE 4****AMENDATORY SECTION****SECTION 4.01 VARIANCES**

(a) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who owns or controls like processes or like equipment, or any material subject to Article 8 of this regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration, or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed 1 year. Variances to state rules shall require the approval of the Department of Ecology. The Board may grant

such variance, but only after public hearing or due notice, if it finds that:

(1) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) In addition to the requirements of Section 4.01(a) above, applications seeking a variance shall not be considered complete unless the applicant provides:

(1) A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, as deemed necessary by the Air Pollution Control Officer; and

(2) For a variance from Article 8 of this regulation, written estimates of the cost of removing, recycling, or reducing the material in place versus burning the material.

(c) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Air Pollution Control Officer shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Air Pollution Control Officer may require notice to parties beyond 500 feet if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

(1) The time, date, and place of the hearing;

(2) The name and address of the owner or operator and the source;

(3) A brief description of the variance request; and

(4) The deadline for submitting written comments to the Agency.

(d) After the hearing is held, the Air Pollution Control Officer shall make written findings and forward same with a recommended decision on the variance to the Board. The Board shall take action at a regular board meeting.

(e) Any variance or renewal thereof shall be granted within the requirements of Section 4.01(a) and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Board may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Section 4.01 (e) (1) and 4.01 (e) (2), it shall be for not more than 1 year.

(f) In addition to the criteria provided by state and federal statutes, the Air Pollution Control Officer may consider the following factors in making findings regarding requests seeking a variance from Article 8 of this regulation:

(1) Unusual individual sites, such as those that are bisected by the no-burn boundary; and

(2) Unusual economic factors, such as extremely high costs for recycling or hauling, that are attributable to some site-specific condition; and

(3) Whether burning in place would be of lower risk or harm to the environment than either removal or reduction in place (chipping, composting, or decay) in such areas as drainages, steep slopes, beaches, and other inaccessible points.

(g) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of the Board.

(h) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW as now or hereafter amended.

(i) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW ((70.94.710)) 70A.15.6000 through ((70.94.730)) 70A.15.6040 to any person or his or her property.

(j) Variances approved under this section shall not be included in orders or permits provided for in RCW ((70.94.161)) 70A.15.2260 until such time as the variance has been accepted by the United States Environmental Protection Agency as part of an approved State Implementation Plan.

## **REGULATION I ARTICLE 5**

### **AMENDATORY SECTION**

#### **SECTION 5.07 ANNUAL REGISTRATION FEES**

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and

currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. Registration fees shall be deemed delinquent if not fully paid within 45 days of the date of the invoice. Persons or sources that under-report emissions, fail to submit other information used to set fees, or fail to pay required fees within 90 days of the date of the invoice, may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter ((70.94)) 70A.15 RCW).

(c) Except as specified in Section 5.07(d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,350, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$2,450 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,670;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$30 for each ton of CO and \$60 for each ton of NOx, PM10, SOx, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,670;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$6,670; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$26,680.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons. . . . . \$4,740;
- (2) 3,600,001 to 6,000,000 gallons. . . . . \$2,355;
- (3) 1,200,001 to 3,600,000 gallons. . . . . \$1,565;
- (4) 840,001 to 1,200,000 gallons. . . . . \$785;
- (5) 200,001 to 840,000 gallons. . . . . \$395.

(e) The following registered sources shall be assessed an annual registration fee of \$165, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

- (3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
- (4) Unvented dry cleaners using perchloroethylene; and
- (5) Batch coffee roasters subject to notification under Section 6.03(b)(11) of this regulation.

**REGULATION I ARTICLE 7**  
**AMENDATORY SECTION**  
**SECTION 7.01 PURPOSE**

The purpose of this article is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW (~~(70.94.161)~~) 70A.15.2260 and its implementing regulation Chapter 173-401 of the Washington Administrative Code.

**REGULATION I ARTICLE 8**  
**AMENDATORY SECTION**  
**SECTION 8.05 AGRICULTURAL BURNING PERMITS**

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in chapter 173-430 WAC also apply to this section; provided that if there is a conflict between this section and chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

- (1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and
- (2) Burning is necessary for crop propagation or rotation, disease or pest control; and
- (3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW (~~(70.94.6528)~~) 70A.15.5090 as referenced in chapter 173-430 WAC); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards; and
- (4) The proposed burning will not cause a violation of any Agency regulation.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning.

(1) The permit application shall be submitted on forms provided by the Agency and shall include:

- (A) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);
- (B) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and
- (C) A permit fee as required below:

Burn Type	Minimal Fee	Variable Fee
(i) Field Burning of vegetative residue on an area of land used in an agricultural operation. <i>(does not include pile burning)</i>	\$37.50 for the first 10 acres.	\$3.75 for each additional acre.

Burn Type	Minimal Fee	Variable Fee
(ii) Spot Burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists.	\$37.50 for 10 acres or less.	None.
(iii) Pile Burning of stacked vegetative residue from an agricultural operation.	\$80 for the first 80 tons.	\$1.00 for each additional ton.

(2) Any refunds of the variable fee portion of a permit fee are issued in accordance with chapter 173-430 WAC.

(d) **Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

**REGULATION I ARTICLE 13**

**AMENDATORY SECTION**

**SECTION 13.02 DEFINITIONS**

When used herein:

(a) Adequate Source of Heat means a heating system designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in each normally inhabited room. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional.

(b) AGENCY means the Puget Sound Clean Air Agency.

(c) Certified Wood Stove means a wood stove that:

(1) has been determined by Ecology to meet Washington emission performance standards, pursuant to RCW ((~~70.94.457~~)) 70A.15.3530 and WAC 173-433-100; or

(2) has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(3) meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and is certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(d) Coal-only heater means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking and has all of the following characteristics:

- (1) An opening for emptying ash which is located near the bottom or the side of the appliance;
- (2) A system which admits air primarily up and through the fuel bed;
- (3) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and
- (4) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.
- (e) Ecology means the Washington State Department of Ecology.
- (f) EPA means the United States Environmental Protection Agency.
- (g) Fine particulate or PM2.5 means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.
- (h) Fireplace means any permanently installed masonry fireplace or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.
- (i) Nonaffected pellet stove means a pellet stove that has an air-to-fuel ratio equal to or greater than 35.0 to 1.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, Test Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances" as amended through July 1, 1990.
- (j) Nonattainment area means a geographical area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.
- (k) PM10 means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.
- (l) PROPERLY SEASONED FUEL WOOD means untreated wood or untreated lumber with moisture content of 20% or less, wet basis, or 25% or less, dry basis.
- (m) Solid Fuel Burning Device or solid fuel heating device means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel which has a heat input less than one million British thermal units per hour. This includes, but is not limited to, devices used for aesthetic or space-heating purposes in a private residence or commercial establishment.
- (n) SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.
- (o) TACOMA, WASHINGTON Fine Particulate Nonattainment Area means the area of Pierce County that is designated by EPA as not meeting the 2006 federal 24-hr fine particulate National Ambient Air Quality Standard and described in 40 CFR 81.348. This area is also known as the Tacoma, Pierce County Nonattainment Area.
- (p) Treated wood means wood or lumber of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.
- (q) Wood stove or wood heater means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:
  - (1) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;
  - (2) A useable firebox volume of less than twenty cubic feet;

(3) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

(4) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

#### **AMENDATORY SECTION**

#### **SECTION 13.05 RESTRICTIONS ON OPERATION OF SOLID FUEL BURNING DEVICES**

(a) No person in a residence or commercial establishment shall operate a solid fuel burning device under any of the following conditions:

(1) Whenever the Agency has declared the first stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(b)(i) or (ii))~~), 70A.15.3580 (1)(b)(i) or (ii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section or the solid fuel burning device is one of the following:

(A) A nonaffected pellet stove; or

(B) A wood stove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(C) A wood stove meeting the "Oregon Department of Environmental Quality Phase 2" emission standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984; or

(D) A solid fuel burning device approved by Ecology as meeting the standards in RCW (~~(70.94.457 (1)(a)-(b))~~) 70A.15.3530 (1)(a)-(b).

(2) Whenever the Agency has declared the second stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(c)(i), (ii), or (iii))~~) 70A.15.3580 (1)(c)(i), (ii), or (iii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section.

(b) Whenever a first stage of impaired air quality is declared under subsection (a)(1):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the first stage of impaired air quality if that device is restricted from operating under subsection (a)(1) of this section during the first stage of impaired air quality;

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a first stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a first stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(c) Whenever a second stage of impaired air quality is declared under subsection (a)(2):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the second stage of impaired air quality if that device is restricted from operating under

subsection (a)(2) of this section during the second stage of impaired air quality.

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a second stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a second stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(d) Any person desiring an exemption from the Agency for the purposes of subsections (a)(1) or (2) of this section shall apply to the Agency using procedures specified by the Agency.

(1) The following are eligible for exemption:

(A) A residence or commercial building that has no adequate source of heat other than a solid fuel burning device and the building was neither constructed nor substantially remodeled after July 1, 1992.

(B) A residence or commercial building that has no adequate source of heat other than a solid fuel heating device and the building:

- i. was constructed or substantially remodeled after July 1, 1992; and
- ii. is outside an urban growth area, as defined in RCW 36.70A; and
- iii. is outside an area designated by EPA as a PM2.5 or PM10 particulate nonattainment area.

(2) Exemptions shall be valid for a period determined by the Agency. Exemptions may be renewed using procedures specified by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. Exemptions may be revoked if the Agency determines the residence or commercial building for which the exemption was approved no longer qualifies for an exemption.

#### **AMENDATORY SECTION**

#### **SECTION 13.07 PROHIBITIONS ON WOOD STOVES THAT ARE NOT CERTIFIED WOOD STOVES**

(a) Subsections (a)(1) - (a)(4) of this section shall be effective January 1, 2015 and apply only to PM2.5 nonattainment areas or areas where required by EPA.

(1) Any person who owns or is responsible for a wood stove that is both (a) not a certified wood stove and (b) is located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(2) Any person who owns or is responsible for a coal-only heater located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(3) Subsection (a)(1) of section does not apply to:

(A) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(B) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(4) The owner or person responsible for removing or rendering permanently inoperable a wood stove under subsection (a)(1) of this section or a coal-only heater under subsection (a)(2) of this section

must provide documentation of the removal and disposal or rendering permanently inoperable to the Agency using the Agency's procedures within 30 days of the removal or rendering permanently inoperable.

(b) PM10. Subsection (b) of this section is established for the sole purpose of a contingency measure for PM10 nonattainment and maintenance areas. If the EPA makes written findings that: (1) an area has failed to attain or maintain the National Ambient Air Quality Standard for PM10, and (2) in consultation with Ecology and the Agency, finds that the emissions from solid fuel burning devices are a contributing factor to such failure to attain or maintain the standard, the use of wood stoves not meeting the standards set forth in RCW ((70.94.457)) 70A.15.3530 shall be prohibited within the area determined by the Agency to have contributed to the violation. This provision shall take effect one year after such a determination.

**REGULATION II ARTICLE I**  
**AMENDATORY SECTION**  
**SECTION 1.01 PURPOSE**

The Puget Sound Clean Air Agency, consisting of the counties of King, Kitsap, Pierce, and Snohomish, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopted Regulation I on March 13, 1968 to control the emission of air contaminants from all sources, to provide for the uniform administration and enforcement of air pollution control in its jurisdiction and to carry out the requirements and purposes of the Washington Clean Air Act.

The Board of Directors of the Puget Sound Clean Air Agency has amended Regulation I from time to time as necessary and now recognizes the need for a special regulation to reduce ozone concentrations as required by the Federal Clean Air Act as amended. Accordingly, the Board has adopted Regulation II to provide for control of photochemically reactive volatile organic compounds (VOC), which are precursors to ozone, to meet the National Ambient Air Quality Standard for ozone.