

NEW SECTION

**WAC 463-38-005 Purpose.** (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state individual permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, EPA, and applicable state laws and regulations.

(3) These regulations apply to:

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

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

(1) ~~((The term))~~ "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, ~~((Public Law 92-500))~~ (33 U.S.C. ~~((1314))~~ 1251, et seq.).

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

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

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

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

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

~~(5) The term) state and federal law, including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 CFR 131.36.~~

~~(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to ((the act and section 402(b) thereof)) this chapter.~~

~~((6) The term)) (5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state ((which embodies compliance with the siting guidelines adopted in RCW 80.50.050)), and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.~~

~~((7) The term "chairman")) (6) "Chair" means the chairman of the energy facility site evaluation council.~~

~~(7) "Contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.~~

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

~~(9) ((The term)) "Council manager" means the individual holding the position of manager of the council.~~

~~(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:~~

~~(a) Any addition of any pollutant ((to navigable waters)) or combination of pollutants to surface waters of the state from any point source((7));~~

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

~~((10) The term "DOE")) (11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration or surface waters as may be present.~~

~~(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen~~

thousand five hundred gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

~~((11) The term))~~ (14) "Effluent limitations" means any restriction established ~~((pursuant to the act))~~ by the state of Washington or the administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into ~~((navigable))~~ surface waters, the waters of the ((contiguous zone or the ocean)) state, including schedules of compliance.

~~((12) The term))~~ (15) "Energy facility" means any energy facility, as defined in RCW 80.50.014.

(16) "EPA" means the United States Environmental Protection Agency.

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

~~(14) The term))~~ (17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(18) "Governor" ~~((shall))~~ means the governor of the state of Washington.

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

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

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

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

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

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

~~(17) The term))~~ (19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).

(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits

under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.

~~((18) The term)~~ (21) "New source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced ~~((after the publication of proposed regulations prescribing a standard of performance under section 306 of the act, which will be applicable to such source if such standard is thereafter promulgated in accordance with section 306 of the act))~~ ):

(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or

(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty days of their proposal.

~~((19) The term)~~ (22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) as ~~((adopted))~~ prescribed by the council for use in the Washington state NPDES program.

~~((20) The term)~~ (23) "NPDES form" means any issued NPDES permit, ~~((refuse action application,))~~ the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

~~((21) The term)~~ (24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

~~((22) The term)~~ (25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

~~((23) The term)~~ (26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

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

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

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

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

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

~~(29) The term)~~ (27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

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

(a) Sewage from vessels within the meaning of section 312 of the act; or

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

(31) "Regional administrator" means the EPA's region X administrator.

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

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

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

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

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

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

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

~~(b) The term) (32) "State" means ((a)) any of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.~~

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

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

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

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

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

~~(f) The term "navigable waters" means the waters of the~~

United States, including the territorial seas.

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

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

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

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

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

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

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

~~(ii) At appropriate frequencies and locations.~~

~~(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.)~~ (33) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, storm water discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse

sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 CFR 122.2 and 122.26(b) shall be used.

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**WAC 463-38-025 Authorization required.** No waste materials or pollutants may be discharged from any energy facility as defined in WAC 463-76-010 into surface waters of the state, except as authorized pursuant to this chapter or as authorized by the council pursuant to its authority under chapter 80.50 RCW for coverage under a general permit promulgated by ecology.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-031 Application filing with the council.** (1) For each energy facility ((described in WAC 463-38-020(3)) proposing to commence a discharge of pollutants to surface waters of the state, there shall be filed with the council:

(a) A complete ((Refuse Act)) NPDES application ((as previously submitted to the U.S. Corps of Engineers unless such application has been transmitted to the council by the regional administrator; or,)) at the time of submitting an application for site certification to the council pursuant to RCW 80.50.071, for proposals to discharge wastewater or storm water to surface waters of the state. Applicants may seek coverage for storm water discharge associated with construction activity or storm water from areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the areas described in WAC 463-76-010(33) under a NPDES storm water general permit, promulgated by ecology. Any subsequent determination of such an NPDES application's adequacy shall not affect the council's finding that a complete application pursuant to RCW 80.50.070 has been received.

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

(c) A complete NPDES application at the time of submitting an application to the council pursuant to RCW 80.50.070. Any subsequent determination of such an NPDES application's adequacy

~~shall not affect the council's finding that a complete application pursuant to RCW 80.50.070 has been received.~~

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

~~(i) No less than ((180)) one hundred eighty days in advance of the day on which it desires to commence the discharge of pollutants((7)); or((7))~~

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

~~(2) Each person requesting an NPDES permit from the council shall be required to submit additional information as determined necessary by the council after ((a Refuse Act or)) an NPDES application has been filed and reviewed by the council. Information shall be provided in sufficient detail such as to fulfill the requirements of 40 CFR 122.26(c).~~

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

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

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

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

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

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

~~proprietor.~~

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

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation. By a responsible corporate officer. For the purpose of this section, responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility.

(2) All reports required by permits, and other information requested by the council shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of facility manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the council.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the council prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-033 Tentative determination on NPDES permits.**

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

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

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

(i) Proposed effluent limitations, identified pursuant to

WAC ((463-38-053)) 463-76-053(1) ~~((, (2))~~;

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

~~((iii))~~ (ii) A brief description of any other proposed special conditions (other than those required pursuant to WAC ((463-38-055)) 463-76-055) which will have a significant impact upon the discharges described in the NPDES application.

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

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-034 Fact sheets.** (1) ~~((For every discharge in excess of 500,000 gallons on any one day of the year,))~~ The council shall prepare and include in any public notice given pursuant to WAC ((463-38-041)) 463-76-041 a fact sheet with respect to the ~~((Refuse Act or))~~ NPDES application described in the public notice. Such fact sheet shall include at least the following:

(a) The type of facility or activity which is subject of the application;

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

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

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

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

(iii) The average daily discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under this chapter and RCW 90.48.010, 90.54.020 and sections 301, 302, 306 or 307 of the act and regulations published thereunder;

~~((e))~~ (d) The tentative determinations required under WAC ((463-38-033)) 463-76-033.

~~((d))~~ A brief citation, including a brief identification of the uses for which the waters receiving said discharges have

~~been classified by DOE, of the water quality standards and of the effluent standards and limitations applied to the proposed discharge; and~~

~~(c) A fuller description than that given in the public notice))~~ (e) The legal and technical grounds for the tentative determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the act and chapters 90.48, 90.52, and 90.54 RCW;

(f) The effluent standards and limitations applied to the proposed discharge;

(g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified by ecology;

(h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(i) A description of the procedures to be used by the council in formulating final determinations for an NPDES permit, which shall include, but not be limited to:

(i) Thirty day comment period required by WAC ((~~463-38-041~~) 463-76-041(2);

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

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

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to the applicant and each person or group on such mailing list. Each person or group on such mailing list will be sent notice of any subsequent revision of the permit or fact sheet.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-38-041 Public notice (~~(, — provisions)~~).** (1)  
~~((Notices shall be circulated))~~ The council shall circulate notice of the NPDES application and tentative determination within the geographical areas of the proposed discharge~~((, — and shall be published in a local or daily newspaper of general circulation; such))~~. Circulation (~~(may)~~) shall include (~~(any)~~) one or (~~(all)~~) more of the following:

(a) Posting for a period of thirty days in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting for a period of thirty days at or near the entrance of the applicant's principal place of business and in nearby places;

(c) Posting on the council's internet website;

(d) Publishing in a major local newspaper of general circulation.

(2) Any persons may, within thirty days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the ~~((30))~~ thirty-day comment period shall be retained by the council and considered in their final determination with respect to the NPDES applications. The period for comments may be extended at the discretion of the council.

(3) The contents of public notice of application for NPDES permits shall include at least the following:

(a) Name, address and telephone number of ~~((agency issuing the public notice))~~ the council;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;

(f) A brief description of the procedures for the

formulation of final determinations, including the ~~((30))~~ thirty-day comment period required by paragraph (2) of this section and any other means set forth in WAC ~~((463-38-034))~~ 463-76-034 (1) ~~((e))~~ (i).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC ~~((463-38-033))~~ 463-76-033(2), request a copy of the fact sheet described in WAC ~~((463-38-034))~~ 463-76-034 and inspect and copy NPDES forms and related documents at a reasonable charge.

(4) The council shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received and reference to the procedures for contesting the decision.

(5) Public and agency notice will be given as set forth below:

(a) ~~((Notice shall be mailed))~~ The council shall mail the notice to any person or group carried on the mailing list identified in WAC ~~((463-38-034))~~ 463-76-034(2). Upon written request, the name of any person or group shall be added upon written request to a mailing list for distributing copies of notices for all NPDES applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to ~~((WAC 463-38-041))~~ this section a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such state and interstate agencies with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to WAC ~~((463-38-033))~~ 463-76-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the council and to the regional administrator, which shall be duly considered by the council in accordance with the policies, provisions and regulations of the act, chapter 80.50 RCW et seq., and chapter 34.05 RCW et seq.

(ii) The district engineer of the Army Corps of Engineers ~~((for NPDES applications for discharges (other than minor discharges) into navigable waters))~~, the United States Fish and Wildlife Service, the United States National Oceanic and Atmospheric Administration - Fisheries, the state departments of ecology, fish and wildlife, natural resources, and social and health services, the office of archaeology and historic preservation office, applicable Indian tribes and any other applicable government agency.

(iii) Any other federal, state or local agency (~~or any affected county~~), Indian tribe, upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC (~~463-38-042~~) 463-76-042. (~~Such agencies shall include at least the following:~~

~~(a) The agency responsible for the preparation of an approved plan pursuant to section 208(b) of the act;~~

~~(b) DOE; and~~

~~(c) Appropriate public health agencies, including those represented on the council.)~~)

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-38-042 Public hearings.** (1) (~~Any~~) The applicant, any affected state, any affected interstate agency, any affected county, any interested agency, any affected tribe, person or group of persons, or the regional administrator may request of or petition the council for a public hearing (~~to be held with respect to an NPDES application~~) on the council's tentative determination under WAC 463-76-033. Any such request or petition for public hearing shall be filed within thirty days after the giving of public notice pursuant to WAC (~~463-38-041~~) 463-76-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing. (~~Instances of doubt should be resolved by the council in favor of holding the hearing.~~)

(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.05 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC (~~463-38-042~~) 463-76-042 (1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one major local newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet (~~((for the NPDES application))~~);

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least [thirty] days in advance of the hearing. The council may give notice of a public hearing concurrent with public notice given pursuant to WAC (~~((463-38-041))~~) 463-76-041.

(6) The contents of public notice of any hearing held pursuant to WAC (~~((463-38-042))~~) 463-76-042 (1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address and phone number of the council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC (~~((463-38-033))~~) 463-76-033(2) above, request a copy of each fact sheet prepared pursuant to WAC (~~((463-38-034))~~) 463-76-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(7) The council shall cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-043 Public access to information.** (1) All ~~((NPDES forms))~~ records relating to NPDES applications (including the draft NPDES permit prepared pursuant to WAC ~~((463-38-033))~~ 463-76-033(2) or any public comment upon those ~~((forms))~~ records pursuant to WAC ~~((463-38-041))~~ 463-76-041(2)) shall be available to the public for inspection and copying ~~((at a nominal charge. Any other records, reports, plans or information received by the council or the state pursuant to its participation in the NPDES program shall be available at a reasonable charge to the public in accordance with existing law))~~ consistent with WAC 463-06-110 - Copying and fees.

(2) Any information (other than effluent data) received by the council and contained in any NPDES forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. ~~((If, however, the information being considered for confidential treatment is contained in an NPDES form, the council shall forward such information to the regional administrator for his concurrence in any determination of confidentiality. If the regional administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the office of general counsel stating the reasons for his disagreement with the determination of the council. The regional administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional information submitted to the office of the general counsel within 30 days of receipt of the request from the regional administrator. If the general counsel determines that the information being considered does not contain trade secrets he shall so advise the regional administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the regional administrator shall communicate to the council his decision not to concur in the withholding of such information and the council and the regional administrator shall then make available to the public upon request that information determined not to constitute trade~~

~~secrets-))~~ Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee;

(b) Permit applicants, permits, and effluent data;

(c) Information required by NPDES application forms pursuant to WAC 463-76-031 may not be claimed confidential.

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

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

AMENDATORY SECTION (Amending Order 86-1, filed 12/17/86)

**WAC 463-38-051 General conditions.** (1) Any NPDES permit shall be issued for a period of not longer than five years, which period shall start on the date of issuance of said permit. Review and reissuance of this authorization per WAC 463-76-061 to discharge wastewater, storm water, and sanitary sewer wastes and any related changes to the site certification agreement shall not require approval of the governor. However, the permittee shall inform the council at least (~~180~~) one hundred eighty days prior to any initiation of such a discharge.

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

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

(a) (~~(Discharge)~~) When the conditions of the permit do not provide for compliance with the applicable requirements of the act, or regulations promulgated under the act;

(b) When the applicant is required to obtain a state certification under section 401 of the act and 40 CFR 124.53 and that certification has not been obtained or waived;

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Washington state;

(d) For the discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into (~~navigable~~) surface waters of the state;

(~~(b)~~) (e) For the discharge of any pollutants which the secretary of the Army acting through the chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(~~(e)~~) (f) For the discharge of any pollutant to which the regional administrator has objected in writing pursuant to any right to object provided the administrator in section 402(d) of the act;

(~~(d)~~) (g) For discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act;

(h) For the discharge of any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the act;

(i) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(i) Before the promulgation of guidelines under section 403(c) of the act, unless the council determines permit issuance to be in the public interest;

(ii) After promulgation of guidelines under section 403(c) of the act, when insufficient information exists to make a reasonable judgment whether the discharge complies with them;

(j) To a new source or a new discharger, if the discharge

from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the act, and for which the state has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of comment period, that:

(i) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The council may waive the submission of information by the new source or new discharger required by (j) of this subsection if the council determines that the council already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet;

(k) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-053 Effluent limitations, water quality standards and other requirements for NPDES permits.** (1) Any NPDES permit issued by the council shall apply and insure compliance with all of the following, whenever applicable:

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

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

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

(d)) All known, available, and reasonable methods of treatment; including effluent limitations established under sections 301, 302, 306, and 307 of the act. The effluent limitations shall not be less stringent than those based upon the treatment facility design efficiency contained in approved engineering plans and reports or approved revisions thereto. The effluent limitations shall reflect any seasonal variation in industrial loading;

(b) Any more stringent limitation, including those:

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

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

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

~~((+e))~~ (iv) Prevent or control pollutant discharges from facility site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage; and

(v) Meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5).

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

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

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

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to ~~((paragraphs))~~ subsections (1) and (2) ((hereof)) of this section, each issued NPDES permit shall specify:

(a) Average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate;

(b) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution

zone.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-054 Schedules of compliance.** (1) (~~In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, all pursuant to WAC 463-38-053 (1), (2), the council shall establish schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.~~) With respect to any discharge which is found by the council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC (~~463-38-053~~) 463-76-053 (1) (~~(d)-(e)~~) (b) and (c), the permittee shall be required to take specific steps to achieve compliance with the following:

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

- (i) Applicable effluent standards and limitations;
  - (ii) (~~If more stringent,~~) Water quality standards; or
  - (iii) (~~If more stringent,~~) Legally applicable requirements listed in WAC (~~463-38-053 (1)(d)-(e)~~) 463-76-053;
- or

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

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

(3) Either before or up to (~~14~~) fourteen days following each interim date and the final date of compliance, the

permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the council may modify or revoke the permit or take direct enforcement action.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-055 Other terms and conditions.** In addition to the requirements of WAC (~~463-38-051, 463-38-052 and 463-38-053~~) 463-76-051, 463-76-052 and 463-76-053, each issued NPDES permit shall require that:

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

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

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

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

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

(d) A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.

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

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

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

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

(d) To sample any discharge of pollutants.

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

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the ~~((council shall revise or modify the NPDES permit in accordance with the toxic effluent standard of prohibition and so notify the))~~ permittee shall comply with that toxic effluent standard or prohibition even if this permit has not yet been modified to incorporate the requirement.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

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

(b) That the council has up-to-date information on the

permittee's production levels, permittee's waste treatment practices, and the nature, content and frequencies of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports ((resubmitted)) submitted to the council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC ((463-38-053)) 463-76-053 (1) and (2), including any additions to, or revisions or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC ((463-38-041 and 463-38-042)) 463-76-041 and 463-76-042 are applicable to each request for reissuance of an NPDES permit.

(4) ((Notwithstanding any other provision any point source of a discharge having a thermal component the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.)) When a permittee has made timely and sufficient application for the renewal of a permit, an expiring permit remains in effect and enforceable until the application has been denied or a replacement permit has been issued by the council pursuant to WAC 463-76-0625 - Permit issuance.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-062 Modification of NPDES permit.** (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended or revoked ((~~for cause~~)) in whole or in part during its term for cause including, but not limited to, the causes listed in WAC 463-76-055(2).

(2) The council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES permit if the council determines good and valid cause exists for such revision

and if within ((30)) thirty days following receipt of notice from the council, the regional administrator does not object in writing.

(3) Any such modifications shall be executed by the council and the permittee in the same manner as the NPDES permit was executed, including full compliance with the requirements of WAC ((463-38-041, 463-38-042 and 463-38-043)) 463-76-041, 463-76-042 and 463-76-043.

#### NEW SECTION

**WAC 463-38-0625 Permit issuance.** Any permit issued by the council pursuant to this chapter shall become an attachment to a site certification agreement. For an energy facility proposal requiring the execution of a governor-approved site certification agreement, the permit shall be effective upon the governor's approval and execution of the site certification agreement. For existing facilities under the jurisdiction of the council, revisions, modifications or reissuance of the NPDES permit shall be effective when approved by the council and signed by the chair.

#### AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

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

waived or withdrawn by the regional administrator in writing. Should no such objection be received within said period, it shall be presumed that the administrator has no objection to the issuance of the proposed permit.

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

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-065 Monitoring and enforcement.** (1)  
Monitoring.

(a) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the council, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include:

- (i) Flow (in gallons per day);
- (ii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to limitation, reduction, or elimination under the terms and conditions of the permit;
- (iii) Pollutants which the council finds could have a significant impact on the quality of waters of the state; and
- (iv) Pollutants specified by the administrator, in regulations issued pursuant to the act, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(c) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required when determined necessary by the council to verify compliance with net discharge limitations or removal

requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the surface waters of the state.

(2) Recording of monitoring activities and results. Any permit which requires monitoring of the authorized discharge shall require that:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of them in their permit;

(b) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses; and

(c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the council or regional administrator.

(3) Reporting of monitoring results.

(a) The permittee shall periodically report (at a frequency of not less than once per year) on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a permit. In addition to the required reporting form, the council at its discretion may require submission of such other results as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, by a responsible corporate officer or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

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

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

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

(4) Use of registered or accredited laboratories.

(a) Except as established in (b) of this subsection, monitoring data submitted to the council in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC. These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as

conditions of a permit.

(b) The following parameters need not be done by an accredited or registered lab:

(i) Flow;

(ii) Temperature;

(iii) Settleable solids;

(iv) Conductivity, except that conductivity shall be accredited if the laboratory must otherwise be registered or accredited;

(v) pH, except that pH shall be accredited if the laboratory must otherwise be registered or accredited;

(vi) Turbidity, except that turbidity shall be accredited if the laboratory must otherwise be registered or accredited;  
and

(vii) Parameters which are used solely for internal process control.

(5) Compliance monitoring. The council ((hereby delegates to the DOE the)) may establish an interagency contract with ecology for compliance monitoring activities of water discharges under a certification agreement which incorporates the NPDES permit. ((As a result of said monitoring activities, DOE shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The council shall then take or initiate action to enforce the terms of any certification agreement and the incorporated NPDES permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it is delegated the enforcement authority and responsibility to carry out such immediate action as it deems necessary and shall report such actions to the council. Such action shall remain in effect until confirmed or modified by the council.)) Monitoring and/or appropriate enforcement activities by ecology are authorized by WAC 463-70-060(1).

(6) Enforcement.

(a) Enforcement activities regarding the NPDES program, including the levying of civil and criminal fines pertaining to all energy facilities where the permit is issued by the council, shall be undertaken by the council, with assistance from ecology, the attorney general, or the prosecuting attorney, as appropriate.

(b) Pursuant to the provisions of RCW 80.50.150 - Enforcement of compliance penalties, the council shall take or initiate such actions to enforce the terms of any site certification agreement and the incorporated NPDES permit. The council may take any or all of the following actions:

(i) Assess or sue to recover in court such civil fines,

penalties, and other civil relief as may be appropriate for the violation by any person of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term or condition thereof;

(C) Any filing requirements;

(D) Any duty to permit or carry out inspection, entry, or monitoring activities; or

(E) Any rules, regulations, or orders issued by the council.

(ii) Request the prosecuting attorney to seek criminal sanctions for the violation of any permits or conditions thereof without the necessity of a prior revocation of the permit;

(iii) Request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term condition thereof; or

(C) Any filing requirements.

(iv) Seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the council.

(v) Enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

**WAC 463-38-080 Transmittal of data to regional administrator.** (1) ~~((Copies of NPDES))~~ A complete NPDES form or relevant portions of any forms received by the council as outlined below shall be transmitted to the regional administrator(

~~(a)) upon receipt by the council((~~

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

(2) The regional administrator may object in writing to deficiencies in any NPDES application or reporting form ~~((received by him))~~ and to ~~((have))~~ required such deficiency to

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

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

(4) On the last day of the months of February, May, August, and November, the council shall transmit to the regional administrator a list of all instances in the previous ninety days of failure or refusal of a permittee to comply with an interim or final requirement. Such list shall be available to the public for inspection or copying and shall contain at least the following information on each instance of noncompliance:

(a) Name and address of each noncomplying permittee;

(b) A short description of the instance of noncompliance (e.g., failure to submit preliminary plans, delay in commencement of construction of treatment facility, failure to notify the council of compliance with an interim requirement, etc.);

(c) A short description of any actions or proposed actions by the permittee or the council to comply or enforce compliance with the interim or final requirement; and

(d) Any details which explain or mitigate an instance of noncompliance with an interim or final requirement.

#### AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

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

(3) For the purposes of this section, the term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over ((60)) 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.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 463-38-010     | 463-76-010     |
| 463-38-031     | 463-76-031     |
| 463-38-032     | 463-76-032     |
| 463-38-033     | 463-76-033     |
| 463-38-034     | 463-76-034     |
| 463-38-041     | 463-76-041     |
| 463-38-042     | 463-76-042     |
| 463-38-043     | 463-76-043     |
| 463-38-051     | 463-76-051     |
| 463-38-052     | 463-76-052     |
| 463-38-053     | 463-76-053     |
| 463-38-054     | 463-76-054     |
| 463-38-055     | 463-76-055     |
| 463-38-061     | 463-76-061     |

|            |            |
|------------|------------|
| 463-38-062 | 463-76-062 |
| 463-38-063 | 463-76-063 |
| 463-38-064 | 463-76-064 |
| 463-38-065 | 463-76-065 |
| 463-38-080 | 463-76-080 |
| 463-38-090 | 463-76-090 |

REPEALER

The following sections of the Washington Administrative Code are repealed:

|                |   |
|----------------|---|
| WAC 463-38-020 | Scope and purpose.                              |
| WAC 463-38-030 | NPDES application and tentative determination.  |
| WAC 463-38-040 | Notice, hearings and information accessibility. |
| WAC 463-38-050 | NPDES permit contents.                          |
| WAC 463-38-060 | NPDES permits review and appeal.                |