

Chapter 463-36 WAC

PROCEDURE--AMENDING OR TERMINATING A SITE CERTIFICATION AGREEMENT

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WAC

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WAC 463-36-010 Council policy. The council may take such action as may be necessary to protect the public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-010, filed 11/19/87.]

WAC 463-36-020 Termination. Termination of a site certification agreement (SCA), except pursuant to its own terms, is an amendment of the agreement.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-020, filed 11/19/87.]

WAC 463-36-030 Request for amendment. A request for amendment of an agreement shall be made in writing by a certificate holder to the council. The council will consider the request and determine a schedule for action at the next feasible council meeting. (~~The council will then refer the question to committee for recommendation, determine a schedule for action, or take action upon the request.~~) The council may, if appropriate and required for full understanding and review of the proposal, secure the assistance of a consultant or take other action at the expense of the certificate holder. The council shall hold one or more public hearing sessions upon the request for amendment at times and places determined by the council.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-030, filed 11/19/87.]

WAC 463-36-040 Amendment review. In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-040, filed 11/19/87.]

WAC 463-36-050 Environmental impact--Alternatives. In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal. Reasonable alternative means by which the

purpose of the proposal might be achieved shall be considered¹ as shall the availability of funding to implement the proposal.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-050, filed 11/19/87.]

WAC 463-36-060 Council determinations. The council in acting upon a requested amendment may accept the amendment; reject the amendment; or reject the amendment, and state conditions or terms under which the amendment will be reconsidered.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-060, filed 11/19/87.]

WAC 463-36-070 Approval by resolution. An amendment which changes a technical provision or requirement within the terms of the SCA, and constitutes no substantial alteration of any provisions of the SCA,~~((and))~~ is determined to have no detrimental effect upon the environment or potential environmental impact will be mitigated, shall be effective upon adoption of a council resolution.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-070, filed 11/19/87.]

WAC 463-36-080 Approval by governor. An amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor of Washington state.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-080, filed 11/19/87.]

WAC 463-36-090 Council powers. The council has power to initiate proceedings leading to the SCA amendment where it perceives that a certificate may be abandoned or when it deems such action to be appropriate.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), §463-36-090, filed 11/19/87.]

1. **WAC 463-36-100 Transfer of a site certification agreement.** No site certification agreement, any portion of a site certification agreement, nor any legal or equitable interest in such an agreement issued under this chapter shall be transferred, assigned, or in any manner disposed of (including abandonment), either voluntarily or involuntarily, directly or indirectly, through transfer of control of the site certification agreement or the site certification agreement owner or project sponsor without express council approval of such action. In the event a site certification agreement is to be acquired via a merger, leveraged buy-out, or other change in corporate or partnership ownership, the successor in interest must file a formal petition under the terms of this section to continue operation or other activities at the certificated site.
2.
 - a. A certification holder seeking to transfer or otherwise dispose of a site certification agreement must file a formal application with the council including information about the new owner required by WAC 463-42-065 and 463-42-075 that demonstrates¹ the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the original site certification agreement including council approved plans for termination of the plant and site restoration. The council may place conditions on the transfer of the certification agreement including provisions that reserve liability for the site in the original certification holder.

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- b. If the certification holder is seeking an alternative disposition of a certificated site, the certification holder must petition the council for an amendment to its site certification agreement pursuant to the provisions of this chapter and gain council approval of its alternative disposition plan. In submitting a request for an alternative disposition of a certificated site, the certification holder must describe the operational and environmental effects of the alternative use of the site on the certified facility. If the proposed alternative use of the site is inconsistent with the terms and conditions of the original site certification agreement the council may reject the application for alternative use of the site.
3. The council shall require any person who submits an application to acquire a site certification agreement under provisions of this section to file a written consent from the current certification holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right, subject to the provisions of chapter 80.50 RCW et seq. and the rules of this chapter, to possession of the energy facility involved.
4. After mailing a notice of the pending application for transfer of the site certification agreement to all persons on its mailing list, the council shall hold an informational hearing on the application. Following the hearing the council may approve an application for transfer of the site certification agreement if the council determines that:
 - a. The applicant satisfies the provisions of WAC 463-42-065 and 463-42-075;
 - b. The applicant is entitled to possession of the energy facility described in the certification agreement; and
 - c. The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.
5. The council shall issue a formal order either approving or denying the application for transfer of the site certification agreement. If the council denies the request, it shall state the reasons for its denial.

[Statutory Authority: RCW 80.50.040. 92-23-012, §463-36-100, filed 11/6/92, effective 12/7/92.]

NEW SECTION

WAC 463-36-110 – Site Certificat~~(e)~~tion Agreement Expiration.

1. The State of Washington authorizes a Certificate Holder to construct and operate an energy facility as defined in RCW 80.50.060 and 80.50.020 at the site subject to the terms and conditions of the SCA approved by the Governor, and any amendments approved pursuant to applicable laws and rules.
2. A Site Certification Agreement authorizes the construction of the facility to begin within ten (10) years from the effective date of the Agreement. Construction is deemed to begin with the initiation of any actual construction activities such as:
 - a. form work, rebar, and pouring concrete for the power block structures;
 - b. excavation of the natural gas and/or makeup water supply pipeline trenches for the construction of the natural gas and makeup water supply pipeline laterals;
 - c. the start of earthwork and road foundation construction for access or service roads; and/or
 - d. the pouring of footings for, or the erection of, transmission line or switchyard structures for the electrical transmission lines.
3. A Certificate Holder shall notify the council thirty (30) days prior to beginning construction and may begin construction within the first eighteen (18) months of the effective date of the Site Certification Agreement.
4. If construction is requested to begin after eighteen (18) months and during the first five (5) years of the effective date of the Site Certification Agreement, six (6) -months before construction is

intended to begin, the Certificate Holder shall identify to the council any substantial relevant change or certify the lack substantial change in relevant environmental conditions, regulatory environment, or economically available technology.

5. If construction is requested to begin five(5) years after and within ten (10) years of the effective date of the Site Certification Agreement, the Certificate holder shall notify the council, in writing, six (6) months before construction is intended to begin, certifying that the representations of the Application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identifying any changes and proposing appropriate amendments to the Site Certification Agreement to address those changes.
6. Under subparagraphs (4) and (5) the council may retain an independent consultant, at the Certificate Holder's expense, to verify environmental conditions, regulatory environment, and pertinent technology. Construction may begin only upon council authorization and upon the council finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the council's approving of any necessary or appropriate changes.