

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-010 Purpose. This chapter sets forth rules relating to monitoring the construction and operation of energy facilities to determine compliance with the terms of certification ((agreements)) and/or permits pursuant to RCW 80.50.040(9).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-020 Compliance to be determined. Compliance monitoring procedures shall be implemented by the council as necessary to determine compliance and keep it and the public properly informed as to the status of compliance with the terms of certification agreements and the Prevention of Significant Deterioration (PSD), National Pollutant Discharge Elimination System (NPDES), or other permits issued by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-070 Enforcement actions. (1) General. The council establishes four types of enforcement action in order to provide the council with a range of responses to apparent violations of a site certification agreement or the laws and rules enforced by the council. The range allows the chair or the council to choose an approach which it determines, in its discretion, to be best suited in light of the seriousness of an apparent violation, the potential danger to humans or the environment, the willingness and ability of the violator to make required corrections, and the speed with which corrective action should be taken.

(2) Emergency action by chair.

(a) Emergency action is appropriate when the chair or chair's designee believes that the nature of an apparent violation requires action too swiftly to allow for deliberation and decision by the full council or that action is required pending the completion of other enforcement action.

(b) The chair of the council or the chair's designee is authorized to take immediate action to halt or eliminate any imminent or actual substantial danger to health or welfare of persons or the environment resulting from violation of law or of terms of the site certification agreement, including the release of pollutants from facilities sited under chapter 80.50 RCW. The chair may:

(i) Order the immediate termination of an endangerment or an endangering release and the immediate suspension of a PSD, NPDES, or other permits issued by the council, or order the immediate commencement of corrective action;

(ii) Notify appropriate agencies that protective measures are required immediately to safeguard public health and safety;

(iii) Request the prosecuting attorney of an affected county or the attorney general to take immediate enforcement action for violations of certification agreements or permits pursuant to RCW 80.50.150(6).

(c) The council shall consider any emergency action at a regular or special meeting as soon as practical after the action is taken. It may adopt, rescind, or modify emergency action and may take other enforcement action as specified in this rule. The council retains jurisdiction to maintain or modify emergency action until the circumstances requiring the action are cured to the council's satisfaction or until other enforcement actions supersede the emergency action, whichever first occurs.

(d) If feasible, the council shall allow the subject of emergency action to present its views prior to adopting, affirming, or modifying the action.

(3) Notice of incident and request for assurance of compliance.

(a) A notice of incident is appropriate when the council believes that a violation has occurred; that it is being corrected quickly and effectively by the violator; that the violation caused no substantial danger to humans or the environment; and that a penalty assessment does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

(b) Whenever the council has probable cause to believe that any term or condition of a certificate agreement or permit has been violated, the council may serve a notice of incident and request for assurance of compliance upon the certificate holder. Within (~~thirty~~) 30 days after service of the notice, the certificate holder shall provide the council with a report of the incident and assurance of compliance, including appropriate measures to preclude a recurrence of the incident. The council shall review the assurance of compliance. It may close out the matter by resolution or take such further action as it believes to be necessary.

(4) Notice of violation.

(a) A notice of violation is appropriate when the council believes: That a violation has occurred; that a violation is not being timely or effectively corrected; that a violation may cause a substantial risk of harm to humans or the environment; or that a penalty may be appropriate as an incentive to future compliance.

(b) Whenever the council has probable cause to believe that a violation of any term or condition of a certificate agreement or permit has occurred, the council may serve upon the certificate holder a notice of violation and may include the assessment of a penalty pursuant to RCW 80.50.150(~~(+5)~~) or (~~(RCW 74.90.431)~~) 70A.15.3160 if the violation is of the Washington Clean Air Act. The notice shall specify the provisions of law or rule or the certificate agreement or permit which are alleged to have been violated and shall include a requirement that corrective action be taken.

(c) Review procedure. The certificate holder named in a notice of violation may appeal the notice to the council and it may seek remission or mitigation of any penalty.

(i) A request for mitigation or remission of a penalty must be filed within (~~fifteen~~) 15 days after service of the notice of violation. A decision upon a request for remission or mitigation of a penalty is an administrative decision which the council may make in its discretion.

(ii) An appeal of a notice of violation must be filed within (~~thirty~~) 30 days after service of the notice of violation. The ap-

peal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

(iii) Any penalty imposed in a notice of violation shall be due and payable (~~(thirty)~~) 30 days after the following: Service of the notice of violation, if no review is sought; service of the council's decision upon remission or mitigation, if no appeal is made; or service of the council's final order on review of an appeal of a notice of violation. If the penalty is not paid when due, the council shall request the attorney general to commence an action in the name of the state to recover the penalty pursuant to RCW 80.50.150.

(5) Air emission violations. Consistent with RCW (~~(70.94.422)~~) 70A.15.3130, all council enforcement actions and penalties for all air emission violations shall be consistent with RCW (~~(70.94.332, 70.94.430, 70.94.431)~~) 70A.15.3010, 70A.15.3150, 70A.15.3160 (1) through (7), and (~~(70.94.435)~~) 70A.15.3170. The council may enter such orders as authorized by chapter 80.50 RCW regarding air pollution episodes or violations, as set forth in WAC 463-78-230.

(6) NPDES permit violations. In addition to the provisions of this chapter, council enforcement actions related to noncompliance with or violations of NPDES permits administered by the council shall be consistent with RCW 80.50.150, chapter 90.48 RCW, and chapter 463-76 WAC.

(7) Judicial enforcement.

(a) Judicial enforcement is available through chapter 80.50 RCW. It is appropriate when the council believes that judicial action may be of substantial assistance in securing present or future compliance or resolution of the underlying problem.

(i) The council may request the attorney general or the prosecuting attorney of any county affected by a violation to commence civil proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(ii) The council may request the prosecuting attorney of any county affected by a violation to commence criminal proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(b) The council may also secure judicial enforcement of its rules or orders pursuant to RCW 34.05.578.