

AMENDATORY SECTION (Amending WSR 15-24-041, filed 11/23/15, effective 12/24/15)

**WAC 463-76-005 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 (FWPCA), as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state 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)) section 402(b) of the FWPCA, and applicable state laws and regulations through the issuance of individual permits or coverage under stormwater general permits issued by the department of ecology.

(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 WSR 15-24-041, filed 11/23/15, effective 12/24/15)

**WAC 463-76-010 Definitions.** As used in this chapter, the following terms shall have the meanings indicated below:

(1) "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, (33 U.S.C. 1251, et seq.).

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

(3) "Applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under 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 C.F.R. 131.36.

(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to this chapter.

(5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state, 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.

(6) "Chair" means the ((~~chairman~~)) chair 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) "Council" means the Washington state energy facility site evaluation council.

- (9) "Council (~~(manager)~~) director" means the individual holding the position of (~~(manager)~~) director of the council.
- (10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:
- (a) Any addition of any pollutant or combination of pollutants to surface waters of the state from any point source;
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source.
- (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 groundwater 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)~~) 14,500 gallons per day at any common point.
- (13) "Ecology" means the Washington state department of ecology.
- (14) "Effluent limitations" means any restriction established 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 surface waters, the waters of the state, including schedules of compliance.
- (15) "Energy facility" means any energy facility, as defined in RCW (~~(80.50.014)~~) 80.50.010.
- (16) "EPA" means the United States Environmental Protection Agency.
- (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" means the governor of the state of Washington.
- (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.
- (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:
- (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)~~) 120 days of their proposal.

(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 prescribed by the council for use in the Washington state NPDES program.

(23) "NPDES form" means any issued NPDES permit, 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.

(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.

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

(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.

(27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" includes issuance of coverage under a stormwater general permit issued by the department of ecology. "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 stormwater 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.

(32) "State" means any of the ((fifty)) 50 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.

(33) "Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater 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, stormwater 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 C.F.R. 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 stormwater. 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 stormwater drained from the above-described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. 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 C.F.R. 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 C.F.R. 122.2 and 122.26(b) shall be used.

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

**WAC 463-76-031 Application filing with the council.** (1) For each energy facility proposing to commence a discharge of pollutants to surface waters of the state, there shall be filed with the council:

(a) A complete NPDES application at the time of submitting an application for site certification to the council pursuant to RCW 80.50.071((~~r~~)) for proposals to discharge wastewater or stormwater to surface waters of the state. Applicants may seek coverage for stormwater discharge associated with construction activity or stormwater 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 stormwater drained from the areas described in WAC 463-76-010(33) under a NPDES stormwater 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)) 80.50.071 has been received.

(b) A complete NPDES application for any energy facility and not covered above shall be filed either:

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

(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, 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 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 C.F.R. 122.26(c).

(3) If an NPDES application is determined to be incomplete or otherwise deficient, the NPDES portion of any application filed pursuant to RCW ((80.50.070)) 80.50.071 shall not be processed until the applicant has supplied the missing information or otherwise corrected the deficiency.

(4) The council shall not consider any NPDES application for ((a)) an energy facility until and unless an application for certification is filed with the council pursuant to RCW ((80.50.070)) 80.50.071.

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

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

**WAC 463-76-032 Signature form.** (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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-034 Fact sheets.** (1) The council shall prepare and include in any public notice given pursuant to WAC 463-76-041 a fact sheet with respect to the 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;
- (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; 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, the estimated maximum, minimum, and average summer and winter temperatures; 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;
- (d) The tentative determinations required under WAC 463-76-033.
- (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 463-76-041(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 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 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-041 Public notice.** (1) The council shall circulate notice of the NPDES application and tentative determination within the geographical areas of the proposed discharge. Circulation shall include one or more of the following:

(a) Posting for a period of (~~thirty~~) 30 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~~) 30 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~~) 30 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 (~~thirty~~) 30-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 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 (~~thirty~~) 30-day comment period required by paragraph (2) of this section and any other means set forth in WAC 463-76-034 (1)(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 463-76-033(2), request a copy of the fact sheet described in WAC 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) The council shall mail the notice to any person or group carried on the mailing list identified in WAC 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 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 463-76-033(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, 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))~~ and archaeology and historic preservation ~~((office))~~, applicable Indian tribes, and any other applicable government agency.

(iii) Any other federal, state, or local agency, Indian tribe, upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-76-042.

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

**WAC 463-76-042 Public hearings.** (1) 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 on the council's tentative determination under WAC 463-76-033. Any such request or petition for public hearing shall be filed within ~~((thirty))~~ 30 days after the giving of public notice pursuant to WAC 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.

(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 463-76-042 (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;

(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))~~ 30 days in advance of the

hearing. The council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-76-041.

(6) The contents of public notice of any hearing held pursuant to WAC 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 463-76-033(2) (~~above~~), request a copy of each fact sheet prepared pursuant to WAC 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-043 Public access to information.** (1) All records relating to NPDES applications (including the draft NPDES permit prepared pursuant to WAC 463-76-033(2) or any public comment upon those records pursuant to WAC 463-76-041(2)) shall be available to the public for inspection and copying 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. 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 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 council ((manager)) director 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-051 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, stormwater, 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 ((one hundred eighty)) 180 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 chapter. A majority vote of council members shall resolve any dispute and shall determine the approval or rejection of an NPDES application.

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

**WAC 463-76-052 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:

(a) 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 C.F.R. 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 surface waters of the state;

(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;

(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;

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

**WAC 463-76-053 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) 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;

(iv) Necessary to prevent or control pollutant discharges from facility site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage; and

(v) Necessary to 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

(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 finding.

(3) In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to subsections (1) and (2) 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-054 Schedules of compliance.** (1) 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 463-76-053 (1)(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) Water quality standards; or

(iii) Legally applicable requirements listed in WAC 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 (~~fourteen~~) 14 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-055 Other terms and conditions.** In addition to the requirements of WAC 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;

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

**WAC 463-76-061 Reissuance of NPDES permits.** (1) Any permittee shall make application for reissuance of an NPDES permit or continuation of discharges after the expiration date of the NPDES permit by filing with the council an application for reissuance of the permit at least (~~one hundred eighty~~) 180 days prior to its expiration.

(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 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 463-76-053 (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 463-76-041 and 463-76-042 are applicable to each request for reissuance of an NPDES permit.

(4) 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-062 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 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 (~~thirty~~) 30 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 463-76-041, 463-76-042 and 463-76-043.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

**WAC 463-76-0625 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-064 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~~)) 90-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 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-065 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 may establish an inter-agency contract with ecology for compliance monitoring activities of water discharges under a certification agreement which incorporates

the NPDES permit. 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-080 Transmittal of data to regional administrator.**

(1) A complete NPDES form or relevant portions of any forms received by the council as outlined below shall be transmitted to the regional administrator upon receipt by the council.

(2) The regional administrator may object in writing to deficiencies in any NPDES application or reporting form and (~~to~~ may require) such deficiency to be corrected, so long as the adminis-

trator acts to inform the council by letter within (~~twenty~~) 20 days after 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 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 (~~thirty~~) 30 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~~) 90 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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-76-090 Conflict of interest.** No member of the council shall have received, or has during the previous two years received, a significant portion of (~~his~~) their 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~~) their income" shall mean (~~ten~~) 10 percent of gross personal income for a calendar year, except that it shall mean (~~fifty~~) 50 percent of gross personal income for a calendar year if the recipient is over (~~sixty~~) 60 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.