

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-010 Purpose. The energy facility site evaluation council, under the authority vested in it by chapters 80.50 and ((70.94)) 70A.15 RCW, is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional, and local units of government in dealing with problems of air pollution.

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

WAC 463-78-070 Radioactive emissions. (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW ((70.94.331)) 70A.15.3000, as promulgated by chapters 173-480 and 246-247 WAC.

(2) The council will enter into a memorandum of agreement with the state department of health regarding the regulation of radionuclides.

(3) The monitoring and regulation of radionuclides emissions from major energy facilities shall be consistent with the memorandum of agreement referenced in subsection (2) of this section between the state department of health and the council.

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-095 Permit issuance. (1) Permit(s) issued for air emissions in accordance with chapter 463-78 WAC shall become an attachment(s) to a site certification agreement.

(2) For new energy facilities the permit(s) shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the governor's approval and execution of the site certification agreement.

(3) Except as provided in subsection (4) of this section, for certified energy facilities, any change in terms or conditions, extension, revision, or reissuance of permit(s) issued for air emissions in accordance with chapter 463-78 WAC, shall be governed by applicable law and regulation and shall not require modification of the site certification agreement, or governor approval.

(4) Permit(s) for air emissions revised or issued in conjunction with a request for amendment of a site certification agreement that requires governor approval under WAC 463-66-080, shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the signed approval of the governor of Washington state.

AMENDATORY SECTION (Amending WSR 19-16-025, filed 7/26/19, effective 8/26/19)

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide.....	5.0
Nitrogen oxides.....	2.0
Sulfur dioxide.....	2.0
Particulate Matter (PM).....	1.25
Fine Particulate (PM10).....	0.75
Volatile Organic Compounds (VOC)....	2.0
Lead.....	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A toxic air pollutants specified in WAC 173-460-150.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within (~~ninety~~) 90 days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15th of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

- (a) Name of the source and the nature of the business;
- (b) Street address, telephone number, and email address of the source;
- (c) Name, mailing address, telephone number, and email address of the owner or operator;
- (d) Name, mailing address, telephone number, and email address of the local individual responsible for compliance with this rule;
- (e) Name, mailing address, telephone number, and email address of the individual authorized to receive requests for data and information;
- (f) A description of the production processes and a related flow chart;
- (g) Identification of emission units and air pollutant generating activities;
- (h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;
- (i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;
- (j) Type and quantity of raw materials used on a daily and annual basis;
- (k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM₁₀ emissions, sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H₂S), total reduced sulfur (TRS), and reduced sulfur compounds;
- (l) Calculations used to determine the estimated emissions in (k) of this subsection;
- (m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and
- (n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

- (a) Source-specific emission tests;
 - (b) Mass balance calculations;
 - (c) Published, verifiable emission factors that are applicable to the source;
 - (d) Other engineering calculations; or
 - (e) Other procedures to estimate emissions specifically approved by the council.
- (8) Other reports required.

(a) A report of closure shall be filed with the council within ((~~ninety~~)) 90 days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than ((~~ninety~~)) 90 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ((~~ninety~~)) 90 days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

- (a) Public meetings or hearings on draft operating permits;
- (b) Receipt of complete applications;
- (c) Permit appeals;
- (d) Issuance or denial of final permit, permit modifications, or renewals;
- (e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;
- (f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

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

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW ((~~70.94.422~~)) 70A.15.3130.

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council

pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) Appeal of operating permits issued pursuant to chapter 173-401 WAC.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78

and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than (~~thirty~~) 30 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within (~~thirty~~) 30 days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4) (c).

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

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a

significant portion of (~~his or her~~) their income directly or indirectly from permit holders or applicants for a 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.

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

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or (~~70.94.422~~) 70A.15.3130.

(1) Enforcement actions—Notice of violation. At least (~~thirty~~) 30 days prior to the commencement of any formal enforcement action under RCW (~~70.94.430~~) 70A.15.3150 and (~~70.94.431~~) 70A.15.3160 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing information to the council pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of 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. Any person who violates any of the provisions of chapter (~~70.94~~) 70A.15 RCW may incur a civil penalty in an amount as set forth in RCW (~~70.94.431~~) 70A.15.3160. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW ((70.94.431)) 70A.15.3160 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ((~~ninety-first~~)) 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the ((~~thirty-first~~)) 31st day following final resolution of the appeal.

The maximum penalty amount established in RCW ((70.94.431)) 70A.15.3160 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW ((70.94.422)) 70A.15.3130.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW ((70.94.015)) 70A.15.1010.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than ((~~ninety~~)) 90 days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of discontinuance. The chair, or ((~~his/her~~)) their authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the council, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.