

## **APPROVED BUT NOT INCORPORATED BY REFERENCE REGULATIONS**

### **Washington Department of Ecology Regulations**

#### **173-400-220 Requirements for Board Members.**

(1) Public Interest. A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) Disclosure. Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

(3) Define Significant Income. For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

*State effective: 3/22/91; EPA effective: 6/2/95*

#### **173-400-230 Regulatory Actions.**

Ecology may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

(1) Enforcement Actions by Ecology--Notice to Violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the 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, ecology may require that the alleged violator or violators appear before it for the purpose of providing ecology information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with ecology prior to the commencement of enforcement action.

(2) Civil Penalties.

(a) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 or 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of 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 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first 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 day following final resolution of the appeal.

The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of the 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 43.21B.300.

(d) All penalties recovered under this section by ecology shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by ecology under subsection (a) of this section shall be reduced by the amount of the payment.

(e) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(f) Public or private entities that are recipients or potential recipients of ecology grants, whether for air quality related activities or not, may have such grants rescinded or withheld by ecology for failure to comply with provisions of this chapter.

(g) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety 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. Personnel of ecology or an authority 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 or any order

issued thereunder 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 director, 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. Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter 70.94 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. Ecology 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.

*State effective: 3/20/93; EPA effective: 6/2/95*

#### **173-400-240 Criminal Penalties.**

Persons in violation of Title 173 WAC may be subject to the provisions of RCW 70.94.430.

*State effective: 3/22/91; EPA effective: 6/2/95*

#### **173-400-250 Appeals.**

Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC.

*State effective: 9/20/93; EPA effective: 6/2/95*

#### **173-400-260 Conflict of Interest.**

All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest (Section 128).

*State effective: 07/01/16; EPA effective: 11/07/16 (81 FR 69385, October 6, 2016)*

#### **WAC 173-433-200 Regulatory actions and penalties**

A person in violation of this chapter may be subject to the provisions of WAC 173-400-230 Regulatory actions and WAC 173-400-240 Criminal penalties.

*State effective: 10/18/90; EPA effective: 1/15/93*

## **Energy Facility Site Evaluation Council Regulations**

### **WAC 163-78-135 Criminal penalties**

Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW 70.94.422.

*State effective: 11/11/04; EPA effective: 6/29/17*

### **WAC 163-78-140(1)&(2) 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.

*State effective: 3/26/06; EPA effective: 6/29/17*

### **WAC 163-78-170 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 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 income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross

personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

*State effective: 11/11/04; EPA effective: 6/29/17*

### **WAC 163-78-230 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.

(1) Enforcement actions - Notice of violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (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 (1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. 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 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first 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 day following final resolution of the appeal.

The maximum penalty amount established in RCW 70.94.431 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.

(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.

(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 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 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.

*State effective: 11/11/04; EPA effective: 6/29/17*

## **Benton Clean Air Agency – Regulation 1**

### **Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)**

[Statutory Authority: RCW 70.94.081, and RCW 70.94.141.]

- A. RCW 70.94.081 deems Benton Clean Air Agency a municipal corporation with the following authorities:
1. Right to perpetual succession;
  2. Adopt and use a seal;
  3. Sue and be sued in the name of the Agency in all courts and in all proceedings;
  4. Receive, account for, and disburse funds;
  5. Employ personnel; and
  6. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.
  7. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW 70.94.081 and 70.94.141.

*State/local effective: 12/11/14; EPA effective: 12/17/15*

### **Section 2.02 Requirements for Board of Directors Members**

[Statutory Authority: RCW 70.94.100]

- A. Public interest.
1. A majority of the members of the Agency's Board of Directors (Board) will represent the public interest.
  2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts.
  3. An elected public official and the Board will be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she will delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.
- B. Disclosure.
1. Each member of the Board will disclose any potential conflict of interest in any matter prior to any action or consideration before the Board.
  2. The member will remove themselves from participation as a Board member in any action, including voting on the matter.
  3. The Board will, if the potential conflict of interest, in the judgment of a majority of the Board, may prevent the member from a fair and objective

review of the case, remove the member from participation in the action.

- a. Definition of significant income: For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government will not be considered in the determination of "significant portion of income."

*State/local effective: 12/11/14; EPA effective: 12/17/15*

### **Section 2.03 Powers and Duties of the Board of Directors**

- A. Pursuant to the provisions of chapter 70.94 RCW, the Board will:
  1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;
  2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and
  3. Appoint a Control Officer, in accordance with RCW 70.94.170, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.
- B. Under RCW 70.94.141, the Board will have the power to:
  1. Adopt, amend, and repeal its own rules and regulations, implementing chapter 70.94 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations will also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules will not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency will be in accordance with Part V of chapter 34.05 RCW;
  2. Hold hearings relating to any aspect of or matter in the administration of chapter 70.94 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex.sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;
  3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;



4. Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere;
5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;
7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;
8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;
9. Collect and disseminate information and conduct educational and training programs relating to air pollution;
10. Advise, consult, cooperate and contract with:
  - a. State agencies, departments, and educational institutions;
  - b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government;
  - c. Industries, interested persons or groups.
11. Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and
12. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or local law or regulation.

C. Exception to powers of the Agency:

The Agency may not hold adjudicative proceedings pursuant to the Administrative Procedures Act, chapter 34.05 RCW. Decisions and orders may be appealed to the Pollution Control Hearings Board as provided in WAC 173-400-250.

*State/local effective: 12/11/14; EPA effective: 12/17/15*

## **Section 2.04 Powers and Duties of the Control Officer**

[Statutory Authority: RCW 70.94.141, RCW 70.94.170, RCW 70.94.200 RCW]

- A. The Control Officer and duly authorized representatives of the Agency will observe and enforce applicable federal, state, and local air pollution laws and regulations and all orders, ordinances, resolutions, or rules and regulations of the Agency pertaining to the control and prevention of air pollution pursuant to the policies set down by the Board.
- B. The Control Officer, with the approval of the Board, will have the authority to

appoint and remove such staff persons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.

- C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.
- D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.
- E. As authorized under RCW 70.94.200, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting non-multiple unit private dwellings housing two (2) families or less. No person may refuse entry or access to the Control Officer or duly authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.
- F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:
  - 1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and
  - 2. Will give a receipt to the owner or operator for the sample obtained.
- G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

*State/local effective: 12/11/14; EPA effective: 12/17/15*

### **Section 2.05 Severability**

[Statutory Authority: chapter 43.218 RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

*State/local effective: 12/11/14; EPA effective: 12/17/15*

### **Section 2.06 Confidentiality of Records and Information**

[Statutory Authority: RCW 70.94.205]

Whenever any records or other information, other than ambient air quality data or emission data,

furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section: PROVIDED FURTHER, That emission data furnished to or obtained by the Agency will be correlated with applicable emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

*State/local effective: 12/11/14; EPA effective: 12/17/15*

## **Northwest Clean Air Agency Regulations**

### **SECTION 103 - DUTIES AND POWERS**

103.1 Pursuant to the provisions of the Washington Clean Air Act RCW 70.94 and RCW 43.21A and 43.21B, the Board may take such reasonable action as may be necessary to prevent air pollution which may include control or measurement of emissions of air contaminants from a source.

The Board shall appoint a Control Officer competent in the field of air pollution control whose sole responsibility shall be to observe and enforce the provisions of all ordinances, orders, resolution, or rules and regulations of the NWCAA pertaining to the control and prevention of air pollution. The Board shall establish such procedures and take such action as may be required to implement Section 102 in a manner consistent with the State Act and other applicable laws.

103.2 The Board shall require that the Control Officer maintain appropriate records and prepare periodic reports.

103.3 The Board shall receive minutes of meetings of the Advisory Council as required. The decisions of the Advisory Council shall be forwarded to the Board in writing and shall include minority opinions in cases of serious disagreement.

103.4 The Control Officer is empowered by the board to sign official complaints and/or issue violations and/or apply to any court of competent jurisdiction for necessary orders and with Board approval or ratification, commence legal action. Nothing herein contained shall be construed to limit the Control Officer from using any other legal means to enforce the provisions of the Regulations of the NWCAA.

### **SECTION 105 - SEPARABILITY**

105.1 If a section of the Regulation of the NWCAA is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provisions of the Regulation of the NWCAA shall not be affected thereby.

### **SECTION 110--INVESTIGATION AND STUDIES**

110.1 The Control Officer and/or his qualified agents may make any reasonable investigation or study which is necessary for the purpose of standards or any amendments thereto on reducing the amount or kind of contaminant.

110.2 When investigating conditions specific to the control, recovery or release of air contaminants, the Control Officer or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property, except non-multiple unit private dwellings housing two families or

less.

- 110.3 If an authorized employee of the NWCAA, during the course of an inspection desires to obtain a sample of air contaminant, he shall notify the owner or lessee of the time and place of obtaining a sample so the owner or lessee has the opportunity to take a similar sample at the same time and place. A receipt shall be given to the owner or lessee for the sample obtained.

### **SECTION 111 - INTERFERENCE OR OBSTRUCTION**

- 111.1 No person shall willfully interfere with or obstruct the Control Officer or any NWCAA employee and/or assigned agent in carrying out any lawful duty.

### **SECTION 112 - FALSE AND MISLEADING ORAL STATEMENT: UNLAWFUL REPRODUCTION OR ALTERATION OF DOCUMENTS**

- 112.1 No person shall willfully make a false or misleading oral statement to the NWCAA Board, Control Officer, or their duly authorized representatives as to any matter within the jurisdiction of the Board.
- 112.2 No person shall reproduce or alter or cause to be reproduced or altered any order, registration certificate, or other paper issued by the NWCAA if the purpose of such reproduction or alteration is to evade or violate any provision or Regulation of the NWCAA, or any other law.

### **SECTION 113 - SERVICE OF NOTICE**

- 113.1 Service of any written notice required by the Regulation of the NWCAA shall be made on the owner, operator or his registered agent, as follows:
- 113.11 Either by mailing the notice certified mail, with return receipt requested; or
- 113.12 By personal service.
- 113.2 Any individual, owner, operator, or registered agent of any business, corporation or government coming under the Regulations of the NWCAA may be required to submit evidence that said person is authorized to sign and execute documents on behalf of said corporation, business or government.

### **SECTION 114 - CONFIDENTIAL INFORMATION**

- 114.1 Whenever any records or other information other than ambient air quality data or emission data furnished to or obtained by the NWCAA, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the

confidential use of the NWCAA.

- 114.2 Nothing herein shall be construed to prevent the use of records or information by the NWCAA in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: provided, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section : provided further, that emission data furnished to or obtained by the Board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at the office of the NWCAA.

## **SECTION 120 - HEARINGS**

- 120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.
- 120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- 120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- 120.13 Every party shall have the right to cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.
- 120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.
- 120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70.94 and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.

## **SECTION 123 – APPEAL OF ORDERS**

- 123.1 Any order issued by the NWCAA shall become final unless, no later than thirty (30) days after the date that the order is served, any person appeals the order to the Pollution Control Hearings Board as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order.
- 123.2 Any order issued by the NWCAA under appeal in accordance with chapter 43.21B RCW shall remain in effect during the pendency of such appeal unless the Control Officer, at his/her discretion, issues a stay of the original order. At any time during the pendency of an appeal of such an order to the Pollution Control Hearings Board, the appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

## **SECTION 124 - DISPLAY OF ORDERS, CERTIFICATES AND OTHER NOTICES: REMOVAL OR MUTILATION PROHIBITED**

- 124.1 Any order, registration certificate or other certificate required to be obtained by the Regulations of the NWCAA shall be available on the premises designated on the order or certificate.
- 124.2 In the event that the NWCAA requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Board or the Control Officer.

## **SECTION 131 – NOTICE TO VIOLATORS**

- 131.1 At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, or NWCAA 132 or 133, the NWCAA shall cause written notice of violation to be served upon the alleged violator. The notice shall specify the provisions of chapter 70.94 RCW or the orders, rules, or regulations adopted pursuant thereto alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order pursuant to NWCAA 121 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Control Officer may require that the alleged violator appear before the Board for a hearing pursuant to NWCAA 120. Every notice of violation shall offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of enforcement action.
- 131.2 The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond shall constitute a prima facie violation of this Regulation and the NWCAA may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

## **SECTION 132 - CRIMINAL PENALTY**

- 132.1 Any person who knowingly violates any of the provisions of Chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000, or by imprisonment in the county jail for up to 364 days, or by both for each separate violation.
- 132.2 Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for up to 364 days, or both.
- 132.3 Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than \$50,000, or by imprisonment for not more than five years, or both.
- 132.4 Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 as referenced in NWCAA 104.1 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000.
- 132.5 Any person who knowingly renders inaccurate any required monitoring device or method required by chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.
- 132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation, in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.



## **SECTION 133 - CIVIL PENALTY**

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAA may incur a civil penalty in an amount not to exceed \$19,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of 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 shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91<sup>st</sup> day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31<sup>st</sup> day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

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

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within five years from the date of said suspension. After five years the suspended portion of the Penalty shall be considered void and of no force or effect.

## **SECTION 134 - RESTRAINING ORDERS - INJUNCTIONS**

134.1 Notwithstanding the existence or use of any other remedy, 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 provisions of the Regulation of the NWCAA, or any rule, regulation or order issued by the Board or the Control Officer or his authorized agent, the Board, 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.

## **SECTION 135 – ASSURANCE OF DISCONTINUANCE**

135.1 The NWCAA may accept an assurance of discontinuance of any act or practice deemed in violation of these Regulations from any person engaging in, or who has engaged in, such an act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of these Regulations or an order issued which makes the practice unlawful for the purpose of securing an injunction or other relief from the Superior Court as provided in Section 134.

## **SECTION 303 – WORK DONE WITHOUT AN APPROVAL**

When actual construction has begun on a new source or modification for which a Notice of Construction is required and a final Order of Approval has not been issued, the Control Officer or designee may conduct an investigation as part of the Notice of Construction application review. In such a case, an investigation fee, in addition to the fees of NWCAA 324.2, may be assessed in an amount up to 3 times the fees of NWCAA 324.2. Payment of the fees does not relieve any person from the requirement to comply with any air regulation nor from any penalties for failure to comply.

## **Olympic Region Clean Air Agency Regulations**

### **Rule 8.1.6 Penalties**

A person in violation of this Rule 8.1 may be subject to the provisions of Rule 2.5.

*State effective: 5/22/10; EPA effective: 11/4/13*

## Puget Sound Clean Air Agency Regulations

### ARTICLE 3: GENERAL PROVISIONS

#### SECTION 3.01 DUTIES AND POWERS OF THE CONTROL OFFICER

Adopted 03/13/68 (12)

Revised 08/08/91 (702), 02/10/94 (777), 09/09/99 (895)

Pursuant to the provisions of the "Washington Clean Air Act" (Chapter 70.94 RCW), the Board has appointed a Control Officer whose sole responsibility is to observe and enforce the provisions of the Act and all orders, rules, and regulations pursuant thereto, including but not limited to Regulations I, II, and III of the Puget Sound Clean Air Agency. The Control Officer is empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Act.

#### SECTION 3.05 INVESTIGATIONS BY THE CONTROL OFFICER

Adopted 03/13/68 (12)

Revised 12/09/82 (531), 02/13/86 (597), 11/12/87 (616), 08/08/91 (702), 02/10/94 (777)

- (a) For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the Control Officer or a duly authorized representative shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse access to the Control Officer or a duly authorized representative who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.
- (b) For the purpose of determining compliance with an emission standard, the Control Officer or a duly authorized representative shall have the authority to conduct testing of a source or to order the owner or operator of the source to have it tested and to report the results to the Agency. In the event the Agency conducts the test, the Agency shall provide the owner or operator an opportunity to observe the sampling and to obtain a sample at the same time.

#### SECTION 3.07 COMPLIANCE TESTS Adopted 02/10/94 (777)

Revised 02/09/95 (813), 03/23/06 (1063)

- (a) Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection

Agency approved methods unless specific methods have been adopted by the Board. Where there is no federally approved or Board approved method, testing shall be performed in accordance with a method approved in writing by the Control Officer.

- (b) The owner or operator of a source shall notify the Agency in writing at least 21 days prior to any compliance test. Notification of a compliance test shall be submitted on forms provided by the Agency. Test notifications using the Agency forms do not constitute test plans. Compliance with this notification provision does not satisfy any obligation found in an order or other regulatory requirement to submit a test plan for Agency review. Notification under Section 3.07(b) of this regulation does not waive or modify test notification requirements found in other applicable regulations.
- (c) The owner or operator of any source required to perform a compliance test shall submit a report to the Agency no later than 60 days after the test. The report shall include:
  - (1) A description of the source and the sampling location;
  - (2) The time and date of the test;
  - (3) A summary of results, reported in units and for averaging periods consistent with the applicable emission standard;
  - (4) A description of the test methods and quality assurance procedures employed;
  - (5) The amount of fuel burned or raw material processed by the source during the test;
  - (6) The operating parameters of the source and control equipment during the test;
  - (7) Field data and example calculations; and
  - (8) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

**SECTION 3.09 VIOLATIONS – NOTICE** Adopted 03/13/68 (12)

Revised 11/10/71 (135), 11/12/87 (616), 08/08/91 (702)

- (a) At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, the Board or Control Officer shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter 70.94 RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the Control Officer may require that the

alleged violator or violators appear before the Board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

- (b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.
- (c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

### **SECTION 3.11 CIVIL PENALTIES** Adopted 07/09/69 (25)

Revised 11/10/71 (135), 05/10/84 (556), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 09/10/92 (734), 07/08 /93 (756), 09/08/94 (798), 09/14/95 (821), 09/12/96 (839), 09/11/97 (856), 09/10/98 (870), 09/09/99 (895), 07/13/00 (925), 09/13/01 (954), 09/26/02 (978), 09/25/03 (1009), 09/23/04 (1036), 09/22/05 (1055), 10/26/06 (1082), 09/27/07 (1106), 09/25/08 (1131), 09/24/09 (1170), 09/23/10 (1196), 09/22/11 (1222), 09/27/12 (1253), 09/26/13 (1284), 09/25/14 (1309), 09/24/15 (1328), 09/22/16 (1350), 9/28/17 (1371), 09/27/18 (1394), 09/26/19 (1407)

- (a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$20,131.00, per day for each violation.
- (b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$20,131.00, for each day of continued noncompliance.
- (c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.
- (d) A mitigation request must contain the following:
  - (1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;
  - (2) A copy of the Notice and Order of Civil Penalty involved;
  - (3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or

unlawful;

- (4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;
- (5) The relief sought, including the specific nature and extent; and
- (6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

- (e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.
- (f) A civil penalty shall become due and payable on the later of:
  - (1) 30 days after receipt of the notice imposing the penalty;
  - (2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or
  - (3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.
- (g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.
- (h) Civil penalties incurred but not paid shall accrue interest beginning on the 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 31st day following final resolution of the appeal.
- (i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III

which shall be enforced as provided in RCW 60.36.050.

**SECTION 3.13 CRIMINAL PENALTIES** Adopted 03/13/68 (12)  
Revised 10/10/73 (214), 05/10/84 (556), Revised/Renumbered 08/08/91 (702)

- (a) Any person who knowingly violates any of the provisions of Chapter 70.94 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.
- (b) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.
- (c) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

**SECTION 3.15 ADDITIONAL ENFORCEMENT** Adopted 03/13/68 (12)  
Revised/Renumbered 08/08/91 (702)

- (a) Notwithstanding the existence or use of any other remedy, 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 Chapter 70.94 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly authorized agent, the Board, 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.
- (b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in



violation of Chapter 70.94 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such 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 or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

**SECTION 3.17 APPEAL OF ORDERS** Adopted 03/13/68 (12)  
Revised 07/09/69 (25), 11/10/71 (135), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 10/08/98 (872)

- (a) Any order of the Board or Control Officer may be appealed to the Pollution Control Hearings Board if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt of the order. This is the exclusive means of appeal of such an order.
- (b) The Control Officer may stay the effectiveness of an order during the pendency of such an appeal. At any time during the pendency of such an appeal of such an order to the Hearings Board, the appellant may apply to the Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC for a stay of the order or for the removal thereof.
- (c) Upon failure to comply with any final order of the Board or Control Officer, the attorney for the Agency, upon request of the Board or Control Officer, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary.

**SECTION 3.19 CONFIDENTIAL INFORMATION** Adopted 03/13/68 (12)  
Revised 10/10/73 (214), 06/09/88 (621), Revised/Renumbered 08/08/91 (702)

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter 70.94 RCW, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this section: Provided further, that

emission data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

**SECTION 3.21 SEPARABILITY** Adopted 03/13/68 (12)

Revised/Renumbered 08/08/91 (702)

If any provision of Regulation I, II, or III is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provision of the Regulations shall not be affected thereby.



**SWCAA**  
*Southwest Clean Air Agency*

## **SWCAA 400**

# **General Regulations for Air Pollution Sources**

Effective: September 10, 2021

### SWCAA 400-220 Requirements for Board Members

- (1) **Public interest.** A majority of the members of the Agency's Board of Directors shall represent the public interest. A majority of the members of the Board shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts. An elected public official and the Board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.
- (2) **Disclosure.** Each member of the Agency's Board of Directors shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a Board member in any action or voting on such matter.
- (3) **Define significant income.** For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income".

[Statutory Authority: Chapter 70A.15.2000 RCW, and 70A.15.2040 RCW. Original adoption as 400-170 12/18/79; Amended by Board 4/17/84 renumbered to 400-190; Amended by Board deleted section and renumbered to 400-220 in 93-21-005 filed 10/7/93, effective 11/8/93; 01-05-057 filed 2/15/01, effective 3/18/01]

### SWCAA 400-230 Regulatory Actions and Civil Penalties

- (1) The Agency shall have the power to issue such orders as necessary to effectuate the purpose of Chapter 70A.15 RCW and Chapter 43.21B RCW as provided in, but not limited to: RCW 70A.15.2040, RCW 70A.15.2210, RCW 70A.15.2220, RCW 70A.15.3010 and RCW 43.21B.300. For informational purposes, a list of specific regulatory orders issued by the Agency in the past is presented below.
  - (a) **Order of Approval.** An order issued by the Agency to provide approval for an air discharge permit or ERC application. Orders of Approval are also known as air discharge permits.
  - (b) **Order of Denial.** An order issued by the Agency in response to an air discharge permit application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or applicable emission standard.
  - (c) **Order of Violation.** An order issued by the Agency to document specific regulation(s) alleged to be violated and establish the facts surrounding a violation.
  - (d) **Order of Prevention.** An order issued by the Agency to prevent installation or construction of an "emission unit", performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Agency review and approval, or actions being conducted in addition to a previous Agency approval without prior approval.
  - (e) **Consent Order.** An order issued by the Agency to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements,

testing requirements, or other limits or controls that are determined by the Agency to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a "source" may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. Consent Orders are agreed to and signed by an appropriate officer of the company or "source" for which the Consent Order is prepared and the Control Officer, or designee, of the Agency. A Consent Order does not sanction noncompliance with applicable requirements.

- (f) **Compliance Schedule Order.** An order issued by the Agency to a "source" to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed.
  - (g) **Order of Discontinuance.** An order issued by the Agency for any "source" that has permanently shutdown, has not maintained registration for affected "emission units", or that continues to operate in violation of applicable regulations and requirements.
  - (h) **Corrective Action Order.** An order issued by the Agency to any "source" to provide measures to correct or rectify a situation that is an immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health, welfare or enjoyment of personal or public property.
  - (i) **Administrative Order.** An order issued by the Agency to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattainment boundaries, establish working relationships with other regulatory agencies, establish authority for enforcement of identified actions, and other activities identified by the Agency.
  - (j) **Resolutions.** A document issued by the Agency as a means to record a Board of Directors decision, authorize or approve budget transactions, establish Agency policies, or take other actions as determined by the Agency.
- (2) The Agency may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.
- (a) **Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70A.15.3150 and RCW 70A.15.3160, the Agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement 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 Agency may require that the alleged violator or violators appear before it for the purpose of providing the Agency information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

- (b) **Civil penalties.**
- (i) In addition to or as an alternate to any other penalty provided by law, any person (e.g., owner, owner's agent, contractor, operator) who violates any of the provisions of Chapter 70A.15 RCW or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70A.15.3160. Each such violation shall be a separate and distinct offense, and in case of 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 regulation shall be liable for a civil penalty as set forth by RCW 70A.15.3160 for each day of continued noncompliance.
  - (ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first 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 day following final resolution of the appeal. The maximum penalty amounts established in RCW 70A.15.3160 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.
  - (iii) Each act of commission or omission that 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 43.21B.300.
  - (iv) All penalties recovered under this section by the Agency, shall be paid into the treasury of the Agency and credited to its funds.
  - (v) To secure the penalty incurred under this section, the Agency shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Agency shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.
  - (vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety 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 Control Officer may accept an assurance of discontinuance as provided in RCW 70A.15.3170 of any act or practice deemed in violation of this regulation as written and certified to by the "source." Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued there under 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 its regulations, the Control Officer, 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 Agency may issue such orders as authorized by SWCAA 435 whenever an air pollution episode forecast is declared.
- (6) **Compliance Orders.** The Agency may issue a Compliance Order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. 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 and completed. Compliance Orders are not subject to the public notice requirements of SWCAA 400-171.

[Statutory Authority: Chapter 70A.15.2040 RCW, 70A.15.2520 RCW, 70A.15.3010 RCW, 70A.15.3140 RCW, 70A.15.3160, 70A.15.3170 RCW and 70A.15.6010 RCW. Original adoption 12/17/68 (Regulation 1 Sec 2 & 3); Amended by Board renumbered to 400-130 12/18/79; Amended by Board renumbered to 400-200 4/17/84; Amended by Board 12/16/86; Amended by Board 1/21/92, 92-04-030 filed 1/28/92; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03, 16-19-009 filed 9/8/16, effective 10/9/16; 21-17-054 filed 8/10/21, effective 9/10/21]

### ~~SWCAA 400-235 Credible Evidence~~

~~For the purpose of establishing whether or not a person has violated or is in violation of any provision of Chapter 70A.15 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation precludes the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.~~

[Statutory Authority: Chapter 70A.15.2040 RCW. Original adoption 21-17-054 filed 8/10/21, effective 9/10/21]

### SWCAA 400-240 Criminal Penalties

Persons in violation of the Agency's regulations or Title 173 WAC may be subject to the provisions of RCW 70A.15.3150.

[Statutory Authority: Chapter 70A.15.2040 RCW, and 70A.15.3150 RCW. Original adoption 12/17/68 (Regulation 1 Sec 2.09); Amended by Board 10/29/69 (Regulation 2 Sec 2.03); Amended by Board and renumbered to 400-135 12/18/79; Amended by Board renumber to 400-210 4/17/84; Amended by Board 1/21/92, 92-04-030 filed 1/28/92; 93-21-005 filed 10/7/93, effective 11/8/93; 01-05-057 filed 2/15/01, effective 3/18/01; 21-17-054 filed 8/10/21, effective 9/10/21]

### SWCAA 400-250 Appeals

Any decision or regulatory order issued by the Agency may be appealed to the Pollution Control Hearings Board as provided by Chapter 43.21B RCW and Chapter 371-08 WAC.

[Statutory Authority: Chapter 70A.15.2040 RCW, and 70A.15.2530 RCW. Original adoption 12/18/79 as 400-140; Amended by Board renumbered to 400-220 4/17/84; renumbered to 400-250 93-21-005, filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

**~~SWCAA 400-260 Conflict of Interest~~**

~~All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act (Section 128), as it pertains to conflict of interest.~~

~~[Statutory Authority: Chapter 70A.15.2000 RCW, and 70A.15.2040 RCW. Original adoption 93-21-005 filed 10/7/93, effective 11/8/93; 01-05-057 filed 2/15/01, effective 3/18/01; 21-17-054 filed 8/10/21, effective 9/10/21]~~

**~~SWCAA 400-265 Duty to Provide Information~~**

~~The owner or operator of a "source" must furnish, within a time frame specified by the Agency, any information requested by the Agency in writing specific to the control, recovery or release of air contaminants into the atmosphere. The Executive Director may allow an extension of the submittal deadline on a case-by-case basis.~~

~~[Statutory Authority: Chapter 70A.15.2040 RCW. Original adoption 21-17-054 filed 8/10/21, effective 9/10/21]~~

**SWCAA 400-270 Confidentiality of Records and Information**

- (1) The owner or operator of a "source" (or the agent submitting the information) is responsible for clearly identifying information that is considered proprietary and confidential prior to submittal to the Agency. Information submitted to the Agency that has not been identified as confidential at the time of submittal may not be classified as confidential at a later date.
- (2) Confidential information submitted to the Agency by an owner, operator or agent shall be stamped or clearly marked in red ink at the time of submittal. Such information considered to be confidential or proprietary by the owner or operator will be handled as such, and will be maintained by the Agency, to the extent that release of such information may provide unfair economic advantage or compromise processes, products, or formulations to competitors as provided under RCW 70A.15.2510. Such information shall be released to the public only after:
  - (a) Legal opinion by the Agency's legal counsel, and
  - (b) Notice to the source of the intent to either release or deny the release of information.
- (3) Records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, related to processes or production unique to the owner or operator, or likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, shall be only for the confidential use of the Agency as provided in RCW 70A.15.2510.
- (4) Emissions data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at the office of the Agency.

[Statutory Authority: Chapter 70A.15.2040 RCW, and 70A.15.2510 RCW. Original adoption 10/29/69 (Regulation 2 Sec 2.05); recodified and removed by Board 12/18/79; new section 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 21-17-054 filed 8/10/21, effective 9/10/21]



**SWCAA 400-280 Powers of Agency**

In addition to any other powers vested in the Agency, consistent with RCW 70A.15.2040, the Agency shall have the power to:

- (1) Adopt, amend, and repeal its own rules and regulations, implementing Chapter 70A.15 RCW and consistent with it, after consideration at a public hearing held in accordance with Chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with Chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with Chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency shall be in accordance with Part V of Chapter 34.05 RCW.
- (2) Hold hearings relating to any aspect of or matter in the administration of Chapter 70A.15 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex.sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.
- (3) Issue such orders as may be necessary to effectuate Chapter 70A.15 RCW and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.
- (4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.
- (5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract, or otherwise.
- (6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within the jurisdiction of the Agency.
- (7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of Chapter 70A.15 RCW.
- (8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.
- (9) Collect and disseminate information and conduct educational and training programs relating to air pollution.
- (10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.
- (11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with Chapter 70A.15 RCW, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.
- (12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of Chapter 70A.15 RCW.

except:

- (13) SWCAA may not hold adjudicative proceedings pursuant to the Administrative Procedures Act (Chapter 34.05 RCW). Such hearings shall be held by the Pollution Control Hearings Board as provided at RCW 43.21B.240.

[Statutory Authority: Chapter 70A.15.2040 RCW. 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 21-17-054 filed 8/10/21, effective 9/10/21]

### ~~SWCAA 400-290 Severability~~

~~The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.~~

[Statutory Authority: Chapter 70A.15.2040 RCW and RCW 43.21B.001 notes. Original adoption 12/17/68 (Regulation 1 See 2.08); Amended by Board 10/29/69 (Regulation 2 See 2.02); Amended by Board renumbered to 400-175-12/18/79; Amended by Board deleted section 4/17/84; new section 96-21-100 filed 10/21/96; effective 11/21/96; 01-05-057 filed 2/15/01, effective 3/18/01]

### ~~SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area~~

~~SWCAA 400-800 through 400-860 shall apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.~~

[Statutory Authority: Chapter 70A.15.2040 RCW. Original adoption 16-19-009 filed 9/8/16, effective 10/9/16]

### ~~SWCAA 400-810 Major Stationary Source and Major Modification Definitions~~

~~The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in SWCAA 400-800 through 400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in SWCAA 400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit (PAL) program:~~

- ~~(1) "Actual emissions" means:~~
- ~~(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under SWCAA 400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (24) and (2) of this section apply for those purposes.~~
  - ~~(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24 month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~
  - ~~(c) The permitting authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

## Spokane Regional Clean Air Agency Regulations

### SECTION 2.01 POWERS AND DUTIES OF THE BOARD

- (A) Board Procedures and Actions. Pursuant to, and consistent with, the provisions of the Washington Clean Air Act (WCAA) Chapter 70.94 RCW, the Board shall establish such procedures and take such action as may be required to implement SRCAA Regulation I, Article I, Section 1.01. The Board may take such action as may be necessary to prevent air pollution, including control and measurement of the emission of any air contaminant from a source. The Board shall appoint a Control Officer, competent in the control of air pollution who shall, with the Board's advice and approval, enforce the provisions of all ordinances, orders, resolutions, rules, and regulations of this Agency, pertinent to the control and prevention of air pollution in Spokane County.
- (B) Hearings. The Board shall have the power to hold hearings relating to any aspect of or matter in the administration of Regulation I and in connection therewith; issue subpoenas to compel the attendance of witnesses and production of evidence, administer oaths and take the testimony of any person under oath.
- (C) Ordinances, Resolutions, Rules, Orders and Regulations. The Board shall have the power to adopt, amend, and repeal its own ordinances, resolutions, rules, orders, and regulations. Any adoption, amendment, or repeal of the Board's ordinances, resolutions, rules, orders, and regulations shall be made after due consideration at a public hearing held in accordance with Chapter 42.30 RCW, and shall have the same force and effect as all other of the Board's ordinances, resolutions, rules, orders, and regulations as soon as adopted by the Board. (See RCW 70.94.141)

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

### SECTION 2.02 CONTROL OFFICER'S DUTIES AND POWERS

- (A) Control Officer and Authorized Representative. The Control Officer and authorized representatives shall observe and enforce the provisions of the WCAA and all orders, ordinances, resolutions, rules, and regulations of the Agency pertaining to the control and prevention of air pollution according to the policies set forth by the Board.
- (B) Employees. The Control Officer, with the approval of the Board, shall have the authority to appoint and remove such employees as are necessary to the

performance of the duties assigned, and to incur necessary expenses within the limitations of the budget.

- (C) **Records and Reports.** The Control Officer shall maintain appropriate records and submit reports as required by the Board, Ecology, and EPA.
- (D) **Consultants.** The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity, or degree of any air contaminants which are or may be discharged from any source within the Agency's jurisdiction.
- (E) **Right of Entry.** For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer, Ecology, or their authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to the Control Officer, Ecology, or their authorized representative who requests entry for the purpose of inspecting, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.
- (F) **Samples.** If an Agency authorized representative desires to obtain a sample of air contaminant, fuel, process material, or other material, that affects or may affect the emission of air contaminants, the authorized representative shall notify the owner or operator of the time and place of obtaining a sample, so the owner or operator has the opportunity to take a similar sample at the same time and place; and the Control Officer or the authorized representative of the Agency shall give a receipt to the owner or operator for the sample obtained.
- (G) **Enforcement.** The Control Officer shall be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Agency's Regulation.
- (H) **Information and Analyses from the Source.** The Control Officer or authorized representative may obtain, from the owner or operator of a source, information or analyses that discloses the nature, extent, or quantity of air contaminants which are, or may be, discharged by such a source, and the control equipment in use on such source.
- (I) **Access.** The Control Officer or authorized representative may require that safe access and adequate sampling facilities be provided to the Agency by the owner or operator of a source that is to be tested.

- (J) Source Records. The Control Officer or authorized representative may require the owner or operator of a source to provide copies of any records, including but not limited to, maintenance plans, maintenance records, equipment operation manuals, process information, production information, and material usage information.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.03 CONFIDENTIAL OR PROPRIETARY INFORMATION**

The Agency implements and enforces RCW 70.94.205 – Confidentiality of records and information.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.04 VIOLATIONS**

The Agency implements and enforces RCW 70.94.211 – Enforcement actions by air authority – Notice to violators.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.05 ORDERS AND HEARINGS**

The Agency implements and enforces RCW 70.94.221 – Order final unless appealed to pollution control hearings board.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.06 APPEAL OF BOARD ORDERS**

- (A) Appeal. Any order issued by the Board or by the Control Officer, shall become final unless such order is appealed to the PCHB as provided in Chapter 43.21B RCW. This is the exclusive means of appeal of such an order.
- (B) Stay. The Control Officer may stay the effectiveness of an order during the pendency of such an appeal. At any time during the pendency of such an appeal of such an order to the PCHB, the appellant may apply to the PCHB as provided in Chapter 43.21B RCW and Chapter 371-08 WAC for a stay of the order or for the removal thereof.

- (C) Action. Upon failure to comply with any final order of the Board or Control Officer, the Agency's attorney, upon request of the Board or Control Officer, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.10 SEVERABILITY**

If any phrase, clause, subsection or section of SRCAA Regulation I shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the Board would have enacted Regulation I without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of Regulation I shall not be affected as a result of said part being held unconstitutional or invalid.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.11 PENALTIES, CIVIL PENALTIES, AND ADDITIONAL MEANS FOR ENFORCEMENT**

The Agency implements and enforces RCW 70.94.430 – Penalties, RCW 70.94.431 – Civil penalties, and RCW 70.94.435 – Additional means of enforcement.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 2.12 RESTRAINING ORDERS – INJUNCTIONS**

The Agency implements and enforces RCW 70.94.425 – Restraining orders – Injunctions.

*State effective: 9/1/2020; EPA effective: 6/9/2021 (86 FR 24718, 5/10/2021)*

## **SECTION 8.11 REGULATORY ACTIONS AND PENALTIES**

A person in violation of this article may be subject to the provisions of Article II, Section 2.11 – Penalties.

*State effective: 9/2/2014; EPA effective: 10/28/15 (80 FR 58216, 9/28/15)*

# Yakima Regional Clean Air Agency Regulations

**REGULATION 1 OF THE  
YAKIMA REGIONAL CLEAN AIR AGENCY**

**YAKIMA REGIONAL CLEAN AIR AGENCY  
YAKIMA, WASHINGTON**



Recommend Approval

*Keith M. Hurley*

Keith M. Hurley, Air Pollution Control Officer

*10/8/2020*  
Date

Adopted this 8<sup>th</sup> Day of October, 2020 by the Board of Directors,

Yakima Regional Clean Air Agency

Yakima, Washington

DocuSigned by:

*Jon DeVaney personal*

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Chairman

DocuSigned by:

*[Signature]*

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Director

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*[Signature]*

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Director

DocuSigned by:

*Steven R Jones*

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Director

Director

1. Innovative solutions;
2. Early planning; and
3. The integration of air pollution control in the work of other agencies and businesses.

- F. GUIDELINES.** ~~Preparing guidelines which interpret, implement, and enforce these regulations.~~
- G. BUSINESS ASSISTANCE POLICY.** ~~Providing reasonable business and technical assistance to the community.~~
- H. STATE ENVIRONMENTAL POLICY ACT (SEPA).** ~~Fully complying with all the requirements of the SEPA and holding other agencies, businesses, and individuals accountable for decisions within the jurisdiction of the agency.~~
- I. STATE IMPLEMENTATION PLAN (SIP).** ~~Fully complying with the SIP.~~

#### **1.04 APPLICABILITY.**

- A.** ~~The agency implements and enforces the Washington Administrative Code (WAC) adopted by Ecology under the authority in chapter 70A.15 RCW, as in effect now and including all future amendments, except where specific provisions of Regulation 1 apply;~~
- B.** ~~The provisions of this regulation shall apply within Yakima County of Washington State, excluding all lands located within the external boundaries of the Yakama Indian Nation;~~
- C.** ~~The agency is authorized to enforce this regulation and may also adopt standards or requirements;~~
- D.** ~~The agency does not have jurisdiction over the following sources:~~
1. ~~Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction;~~
  2. ~~Automobiles, trucks, aircraft; and~~
  3. ~~Those sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) through chapter 80.50 RCW.~~

#### **1.05 ROLES AND RESPONSIBILITIES.**

- A. THE AGENCY.** The agency is a municipal corporation with the vested powers and duties in RCW 70A.15.1560 within its jurisdiction in Yakima County.
- B. THE BOARD OF DIRECTORS.** The governing body of the agency is the board of directors. The board has the power to:
1. Adopt, amend and repeal its own rules and regulations in accordance with chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act;

2. Hold hearings relating to any aspect related to the administration of the WCAA and other applicable law;
3. Issue any orders necessary to carry out the functions of the WCAA and enforce them by all appropriate administrative and judicial proceedings;
4. Require access to records, books, files and other information specific to the control, recovery or release of air pollutants into the atmosphere;
5. Obtain necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
6. Prepare and develop comprehensive plans for the prevention, abatement and control of air pollution;
7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of the state and federal laws and regulations;
8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;
9. Collect and disseminate information and conduct educational and training programs relating to air pollution;
10. Consult, cooperate, or contract with other agencies, departments, educational institutions, governments, and interested persons or groups.
11. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out the functions of WCAA and other applicable laws.
12. Appoint an Air Pollution Control Officer (APCO) whose sole responsibility shall be to observe and enforce the provisions of chapter 70A.15 RCW and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution.
13. The board may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of chapter 70A.15 RCW.
14. Approve legal action.

**C. DUTIES OF THE AIR POLLUTION CONTROL OFFICER.** The APCO is appointed by the board and serves as the Executive Director of the agency. The APCO observes and enforces state and federal laws, orders, ordinances, and regulations of the agency pertaining to the control and prevention of air pollution. The APCO shall implement Regulation 1 consistent with:

1. Applicable federal and state laws and regulations;
2. County and/or city municipal ordinances where they are at least as stringent as those of the agency; and
3. Policies and directives of the board unless specifically limited elsewhere in this regulation or by other laws or regulations.

**D. SIGNING AUTHORITY.** The APCO shall take the following actions for the agency:

1. Sign official complaints, issue notices of violations, impose penalties, issue permits, sign regulatory or approval orders, sign contracts, and

- administrative correspondence.
- 2. Approve SEPA documents as the Responsible Official.
- 3. Apply to any court for necessary orders.

E. **ADVISORY COUNCIL.** The board may appoint an advisory council to advise and consult with the board and the APCO in implementing these regulations. The board may submit to the advisory council recommendations for the adoption or modification of regulations or emission standards or other matters that it considers appropriate.

## 1.06 RECORDS.

A. **PURPOSE.** ~~To define the policy for protecting records and making them available to the public.~~

B. **APPLICATION.** ~~To provide access to any information available under federal or state law concerning the business of the agency. The provisions of this section shall be interpreted to assure continuing public confidence in the agency.~~

### C. **PUBLIC RECORDS.**

- 1. **Availability.** ~~All public records of the agency are available for public inspection and copying during normal working hours at the office of the agency.~~
- 2. **Legal Exemptions.** ~~Availability of public records is subject to exemptions and requirements of chapters 42.56 and 70A.15 RCW.~~
- 3. **Process.** ~~All requests for records shall be processed according to chapter 42.56 RCW and the current YRCAA Administrative Code part C.~~

### D. **CONFIDENTIAL RECORDS.**

- 1. **Availability.** ~~Whenever the agency obtains any information, other than ambient air quality data or emission data, which:~~
  - a. ~~The owners or operators certify in writing that the information relates to unique processes or production or the release of the information will likely have an adverse effect on the competitive position of the source; and~~
  - b. ~~Subject to review and approval by the agency; then~~
  - c. ~~The information is only for the confidential use of the agency.~~
- 2. **Summaries for Publication.** ~~The agency may use confidential information to compile or publish analyses or summaries of the outdoor atmosphere; if:~~
  - a. ~~The analyses or summaries do not reveal any information otherwise confidential under the provisions of this subsection; and~~
  - b. ~~The emission data given to the agency is correlated with applicable emission limitations and other control measures and shall be available for public inspection at the office of the agency.~~

## ARTICLE 2 - GENERAL REGULATIONS

### 2.01 AUTHORITY AND INVESTIGATION

- A. DELEGATED AUTHORITY.** In this regulation, the term “APCO” applies to any authorized representative of the agency conducting official business on behalf of the APCO.
- B. INVESTIGATIONS.** The APCO may make investigations or inspections.
1. **Purpose of Investigations.** To investigate or inspect conditions for the control, recovery or release of air pollutants into the atmosphere.
  2. **Scope of Investigations.** These investigations or inspections shall be limited to investigating and/or enforcing the following:
    - a. *Bona fide* complaints about an alleged violation of this regulation, an amendment, or revision;
    - b. An alleged or actual violation of this regulation, an amendment, or revision;
    - c. An alleged or actual violation of a federal or state law or regulation enforced by the agency;
    - d. Any permit, order, or condition of approval issued by the agency;
    - e. Periodic testing and inspection of any source; or
    - f. Any other records, files, or other information obtained under B 1 above.
- C. RIGHT TO OBTAIN SAMPLES.**
1. **Notification of Owner or Lessee.** If, during the course of an inspection, the APCO desires to obtain a sample of air contaminant, fuel, process material or other material which affects or may affect the emission of air contaminants, the APCO shall notify the owner or lessee of the time and place of obtaining a sample.
  2. **Owner/Operator Sampling.**
    - a. The owner or operator may take a sample at the same time, place, and method as the sample taken by the APCO.
    - b. As an alternative the owner or operator may request a representative portion of the sample taken by the APCO.
    - c. The representative sample shall not be provided to the owner or operator if the actions needed to obtain the representative sample can compromise the ability of the APCO to obtain an accurate sample.
  3. **Receipt for Sample.** If requested the APCO shall give a receipt to the owner or operator for the sample obtained.
- D. MAINTAIN RECORDS.** The APCO shall maintain appropriate records and prepare periodic reports to the board.
- E. LEGAL ACTION.** When directed by the board, the APCO may commence legal action. Nothing in this regulation may be construed to limit the APCO from using any other legal means to enforce the provisions of these regulations.

## 2.02 AUTHORITY TO COLLECT FEES.

- A. LEGAL AUTHORITY.** The WCAA authorizes the agency to assess fees and recover costs for permits, registrations, and professional services.
- B. FEES.** All fees will comply with the board approved fee schedule. Fees may include but are not limited to the following:
1. Reimbursement of agency staff time for review of complex projects or lengthy enforcement actions;
  2. Costs incurred by the agency for the implementation of the air operating permit program in WAC 173-401-905 and WAC 173-401-940 (1).
  3. Reimbursement of agency staff time for costs to prepare notices of construction and initial Synthetic Minor (SM) regulatory orders;
  4. Reimbursement of all costs incurred for administration of the annual registrations program, including periodic inspections;
  5. Charges from Ecology for state level support and oversight work; and
  6. Charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.
- C. REFUNDS.**
1. The following fees are non-refundable:
    - a. Actual costs incurred by the agency.
    - b. Application fees.
  2. Fees collected in excess of actual costs will be refunded without interest.
  3. Fees collected in error will be refunded with interest.
- D. FEES.**
1. **Adoption of Fee Schedules.** Fee schedules shall be adopted by board resolution pursuant to the requirements of chapter 42.30 RCW (Open Public Meetings Act).
  2. **Availability of Fee Schedules and Related Information.** The fee schedule and billing rate schedule for reimbursable fees shall be made available upon request or may be obtained from the agency website.

## 2.03 APPLICABLE STATE AND FEDERAL REGULATIONS.

~~The agency implements and enforces the following air pollution rules. Definitions contained within the following listed rules in effect now and including all future amendments apply, except for specific definitions in Appendix A of YRCAA Regulation 1.~~

- A. STATE REGULATIONS.**
- |                                |   |
|--------------------------------|---|
| <del>Chapter 173-400 WAC</del> | <del>General Regulations for Air Pollution Sources</del>          |
| <del>Chapter 173-401 WAC</del> | <del>Operating Permit Regulation</del>                            |
| <del>Chapter 173-420 WAC</del> | <del>Conformity of Transportation Activities to Air Quality</del> |

## **2.04 PUBLIC PARTICIPATION IN PERMITTING.**

- A.** ~~Public notices and opportunity for public comments concerning all general air pollution permits shall comply with WAC 173-400-171.~~
- B.** ~~Public notices and opportunity for public comments concerning all Title V Permits (Air Operating Permits) shall comply with Chapter 173-401 WAC, Part IX.~~

## **2.05 APPEALS**

- A. PURPOSE.** This section define local policy for appeals of decisions by the APCO or board.
- B. APPLICABILITY.** This provision applies to an appeal of any final written decision, order, penalty, fee, permit action, or resolution made by the APCO or board.
- C. PROCESS.**
  - 1. General Direction.** The specific details for appeals are in RCW 34.05.060, chapter 43.21B RCW, chapter 70A.15 RCW, WAC 173-400-250 and WAC 173-401-735.
  - 2. Voluntary Compliance.** Nothing in this regulation shall prevent the APCO or board from obtaining voluntary compliance through warning, mutual settlement or any other appropriate means.

## ARTICLE 5 - COMPLIANCE AND ENFORCEMENT

### 5.01 GENERAL INFORMATION.

- A. **PURPOSE.** To establish general compliance and enforcement procedures.
- B. **APPLICABILITY.** Applies to all sources regulated by the agency for any violation of this regulation, any permit, order of approval issued by the agency, or any applicable law.
- C. **INVESTIGATION.** The agency will conduct investigations for the purpose of determining compliance with this regulation, any of the laws or regulations enforced by the agency, any permit issued by the agency, any order issued by the agency, or any condition of approval issued by the agency.
- D. **NOTICES Of Violations (NOV)**
  - 1. At least thirty days prior to the commencement of any formal enforcement action, the agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the rule alleged to be violated, the facts alleged to constitute a violation, and offer the alleged violator an opportunity to meet with the agency prior to the commencement of formal enforcement action. The notice may include one of the following:
    - a. an order that necessary corrective action be taken within a reasonable time;
    - b. the agency may require that the alleged violator or violators appear before it for the purpose of providing the agency information pertaining to the alleged violation.

### 5.02 ADDITIONAL OR ALTERNATIVE ENFORCEMENT ACTIONS

- A. **PURPOSE.** To describe other provisions to use with or in addition to civil or criminal penalties to avoid a violation or gain compliance.
- B. **APPLICABILITY.** Applies to all sources regulated by the agency for any violation of this regulation, any permit, order condition of approval issued by the agency, or any applicable law.
- C. **CORRECTIVE ACTION ORDER.** The agency may issue a corrective action order that describes the actions necessary to correct or avoid a violation. The order may be included as part of a NOV or issued as a separate document.
- D. **PROHIBITORY ORDER.** The agency may issue a prohibitory order for the purpose of protecting human health or safety. The order will prohibit specific actions from being taken at a specific location.



- E. INJUNCTIVE RELIEF.** Notwithstanding the existence or use of any other remedy, 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 regulation or order issued thereunder, the APCO after providing notice to such person and an opportunity to comply, may petition the superior court of Yakima for a restraining order, or a temporary or permanent injunction or other appropriate order.
- F. ASSURANCE OF DISCONTINUANCE.** As an additional means of enforcing this regulation, the APCO may accept an assurance of discontinuance of any act or practice deemed in violation of this regulation. The assurance must specify a time limit during which the discontinuance is to be accomplished.

### **5.03 PENALTIES**

- A. PURPOSE.** Describes the provisions for assessing penalties for violations.
- B. APPLICABILITY.** This section applies to any person found to be in violation of this regulation, any applicable law, permit, order or condition of approval issued by the agency.
- C. CRIMINAL PENALTIES.** Shall be imposed in accordance with Chapter 70A.15 RCW.
- D. CIVIL PENALTIES.**

  - 1. General Civil Penalty.** In addition to or as an alternate to any other penalty provided by law, any person who violates the provisions of Chapter 70A.15 RCW or any other air pollution rules or regulations, the agency may impose a civil penalty in an amount not to exceed \$12,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.
  - 2. Penalty for Failure to Comply with an Order.** Any person who fails to take action as specified by an order issued under this article shall be liable for a civil penalty of not more than \$12,000 per day for each day of continued noncompliance.
- E. INTEREST ON PENALTIES.** Penalties incurred but not paid shall accrue interest beginning on the 91<sup>st</sup> 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 31<sup>st</sup> day following the final resolution of the appeal.
- F. AIDING OR ABETTING.** Each act of commission or omission which procures, aids or abets in the violation shall be considered a separate violation and subject to penalty. The penalties provided in this section shall be imposed pursuant to RCW

43.21(B).300.

- G. UNDER-REPORTING.** In addition to the other penalties provided above, any person knowingly under-reporting emissions or other information used to set fees or persons required to pay emissions or permit fees who are more than 90 days late with payments may be subject to a penalty equal to three times the amount of the original fee owed.
- H. DISBURSEMENT.** All penalties recovered under this section by the agency shall be paid into the treasury of the agency and rendered into its funds.
- I. WITHHOLDING GRANTS.** Public or private entities that are recipients or potential recipients of grants from the agency, whether for air quality related activities or not, may have the grants rescinded or withheld by the agency for failure to comply with provisions of this regulation.
- J. PENALTY DETERMINATION.**

  - 1. Evaluation Criteria.** The following criteria shall be used to evaluate a violation prior to assessing a penalty:

    - a. Gravity of the violation;
    - b. Economic benefit gained by the violator;
    - c. Agency expenses for investigating, notifying, and processing the documents for the violation; and
    - d. When requested, the costs incurred by a fire department to respond or suppress an illegal outdoor or agricultural fire.