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**TITLE:** PR-050 - 52FR08075 - COMMISSION POLICY STATEMENT  
ON DEFERRED PLANTS

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RULE NAME: COMMISSION POLICY STATEMENT ON DEFERRED PLANTS

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OF RULE :

PRESS PAGE DOWN OR ENTER TO SEE RULE HISTORY OR STAFF CONTACT

PRESS ESC TO SEE ADDITIONAL RULES, (E) TO EDIT OR (S) TO STOP DISPLAY

PAGE 2 OF 2

HISTORY OF THE RULE

PART AFFECTED: PR-050

RULE TITLE: COMMISSION POLICY STATEMENT ON DEFERRED PLANTS

PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE
SECY PAPER: 86-359	SRM DATE: 02/11/87	SIGNED BY SECRETARY: 03/11/87
FINAL RULE	FINAL RULE	DATE FINAL RULE
SECY PAPER: 87-212	SRM DATE: 09/24/87	SIGNED BY SECRETARY: 10/07/87

STAFF CONTACTS ON THE RULE

CONTACT1: THEODORE S. MICHAELS

MAIL STOP:

DOCKET NO. PR-050  
(52FR08075)

In the Matter of  
COMMISSION POLICY STATEMENT ON DEFERRED PLANTS

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/14/87	04/14/87	COMMENT OF WASHINGTON STATE ENERGY FACILITY COUNCIL (CURTIS ESCHELS, CHAIRMAN) ( 1)
04/15/87	04/15/87	COMMENT OF USCG AND KMC, INC. (PETER F. RIEHM) ( 2)
04/17/87	04/15/87	COMMENT OF AIF AD HOC GROUP ON REACTIVATION ETC. (G.K.DYEKMAN, CHAIRMAN) ( 3)
04/20/87	04/20/87	COMMENT OF MARVIN I. LEWIS ( 4)
04/24/87	04/21/87	COMMENT OF WASHINGTON PUBLIC POWER SUPPLY SYSTEM (G.C. SORENSEN) ( 5)
05/14/87	05/11/87	COMMENT OF CONSUMERS POWER COMPANY (KENNETH W. BERRY) ( 6)
10/08/87	10/07/87	FEDERAL REGISTER NOTICE - FINAL POLICY STATEMENT
11/06/87	10/28/87	LTR WASHINGTON PUBLIC POWER SUPPLY SYSTEM (SORENSEN) RE WPPSS RELY TO COMMENTS ON DEFERRED PLANT POLICY STATEMENT



DOCKET NUMBER  
PROPOSED RULE **PR-50**  
(52 FR 8075)

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

DOCKETED  
USNRC

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

October 28, 1987

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Gentlemen:

Subject: WASHINGTON PUBLIC POWER SUPPLY SYSTEM  
REPLY TO COMMENTS ON DEFERRED PLANT  
POLICY STATEMENT

The purpose of this letter is to respond, for the record, to comments related to Supply System projects made in the Deferred Plant Policy Statement proceeding.

Mr. Marvin Lewis, in his comment letter on the Deferred Plant Policy Statement made the unsupported statement that "(d)angerous conditions were discovered during the construction of Marble Hill, Zimmer and the canceled WPPSS reactors. The construction continued even though whistleblowers provided information which showed that the reactors could experience a major accident." With regard to the canceled plants which were being constructed by the Washington Public Power Supply System (WPPSS), the statements of Mr. Lewis are totally false and without basis. The plants (WNP-4 and WNP-5) were canceled only because of a lack of need for power and unavailability of financing. There were no claims by whistleblowers of dangerous conditions or poor quality.

At Page 3 of his letter, Mr. Lewis further states that: "... many deferred and canceled reactors would use this route to bury their problems such as: A. . . .; B. WPPSS had innumerable construction difficulties; C. . . ."

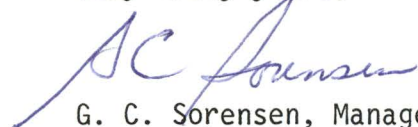


U.S. NRC  
Reply to Comments on Deferred Plants  
Page 2

Again, with respect to the Supply System plants, the statements are unfounded. There is no evidence of "innumerable construction difficulties" as claimed by Mr. Lewis. Obviously, as with any project of this magnitude, there were construction difficulties. However, these were identified and proper corrective actions taken or recorded for future action. Difficulties in construction certainly do not translate directly to unsafe conditions.

As the Commission is aware, the Supply System has prepared, and the NRC has reviewed and approved, preservation plans for our deferred plants. Actions taken under the preservation plan will assure the integrity of plant records as well as equipment and structures.

Very truly yours,



G. C. Sorensen, Manager  
Regulatory Programs

cc: NS Reynolds/BCP&R

DOCKET NUMBER  
PROPOSED RULE **PR-50**  
(52 FR 8075)

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

OFFICE OF SECRETARY  
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COMMISSION POLICY STATEMENT ON DEFERRED PLANTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with regard to the procedures that apply to nuclear power plants while in a deferred status and when they are being reactivated. The regulations and guidance applicable to deferred and terminated plants; maintenance, preservation, and documentation requirements; and the applicability of new regulatory requirements and other general administrative considerations are addressed.

EFFECTIVE DATE: November 13, 1987

FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492-8251.

SUPPLEMENTARY INFORMATION:

## I. BACKGROUND

On March 16, 1987, the Commission published a proposed policy statement on deferred plants in the Federal Register for a 30-day comment period (52 FR 8075). Five commenters offered a total of nine comments on the proposed policy statement. The Commission has modified the policy statement in Section III of this notice in response to Comment B(1) in Section II below. In addition, some minor editorial changes were made.

## II. RESPONSE TO PUBLIC COMMENTS ON THE PROPOSED POLICY STATEMENT

### A. KMC, Inc.

Summary of Comment. KMC, Inc. and the Utility Safety Classification Group recommended that the term "safety-related" be substituted for the term "important to safety" in Sections III.B.2.a and III.B.2.b because there is not yet a clear definition of the latter term.

Commission Response. The Commission rejects this suggestion. The term "safety-related" is a subset of the term "important to safety." Safety-related is more precisely defined at this time because licensees provide a list of structures, systems, and components that come within its scope. However, there is sufficient Commission guidance regarding the term "important to safety" to warrant its use without causing confusion. For example, the Commission has indicated that while there is not "a predefined class of equipment at every plant whose functions have been determined by rule to be 'important to safety,' ... whether any piece of equipment has a function

'important to safety' is to be determined on the basis of a particularized showing of clearly identified safety concerns..., and the requirements of ...GDC 1 must be tailored to the identified safety concerns." Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-9, 19 NRC 1323, 1325 (1984); see also Shoreham, ALAB-788, 20 NRC 1102, 1115-1119 (1984).

In the context of this policy statement, it is expected that a utility, planning to maintain its reactivation option or transfer of ownership to others, will identify any structures, systems, and components (SSC) which are important to safety and establish appropriate maintenance, preservation, and documentation (MPD) for these SSC. If a utility determines, based on an analysis of cost-effectiveness, to develop MPD only for safety-related SSC, it must recognize the possibility that SSC for which adequate MPD were not developed may have to be replaced if and when reactivation or transfer of ownership takes place.

The NRC does not want to limit its application of MPD requirements to safety-related SSC because that could allow other SSC, which are important to safety, to be placed into service without proper MPD.

B. Washington Public Power Supply System (WPPSS)

Summary of Comments. WPPSS submitted the following three comments:

- (1) The commenter recommended that the requirement in Section III.A.6.e (incorrectly referred to by the commenter as 6.c) be amended. This item

requires that a listing of any new applicable regulatory requirements that are made effective during the deferral period be submitted with a description of the licensee's proposed plans for compliance with these requirements. The commenter suggests that this presumes a sufficient level of engineering activity during the deferral period to develop such plans. Since this might not be the case, the commenter asks that the requirement be changed to permit a commitment to submit this information at a specific later date.

Commission Response. This change has been made. However, it should be noted that this information should be submitted at the time of reactivation notification, or as soon thereafter as possible, since the lack of this information could impact the review schedule.

- (2) The commenter recommended that the requirement in Section III.A.6 to notify the NRC at least 120 days before construction resumes be changed to "at least 120 days before construction is expected to resume or as soon as possible after a reactivation decision has been reached." This would permit some construction activities to get under way earlier.

Commission Response. The 120-day advance notification is the minimum period required to evaluate the licensee's submittal to determine the acceptability of reactivation. Any request by the licensee to resume selected non-safety-related activities sooner than 120 days will be considered at the time of the request.

- (3) This comment refers to Section III.A.6.1, which requires an amendment to the Final Safety Analysis Report (FSAR), as applicable and necessary,

discussing the bases for all substantive site and design changes made since the last amendment. The commenter states that, in its specific case, such an amendment would not be available at the time of initial notification. The commenter believes that since no substantive site and design changes will be made during deferral, an FSAR amendment would not be needed at that time.

Commission Response. The amendment is required only if there are substantive changes. If there are none, no amendment is necessary. Therefore, the commenter's concern is satisfied by the text in the proposed policy statement.

C. The State of Washington Energy Facility Site Evaluation Council

Summary of Comments. The following three comments were made:

- (1) The commenter suggested that the policy clearly state, early on, that it applies only to facilities deferred or terminated during construction.

Commission Response. The intent of the policy statement is made clear throughout the document. Deferral and termination refer to construction, not operation. No further clarification is needed.

- (2) The commenter expressed concern that the definition of a terminated plant might cause confusion because it requires a valid construction permit, whereas the only authorized activity is site restoration.

Commission Response. The reference to a valid construction permit in the definition for a terminated plant is not a requirement; it merely identifies the status of a plant that fits the definition. A plant is considered to be in terminated status only from the time the licensee has announced that construction has been permanently stopped until the construction permit is formally withdrawn by the NRC. The licensee of a deferred plant, on the other hand, retains the construction permit because construction has only been deferred, not terminated.

- (3) The commenter suggested that the Commission might wish to address circumstances of abandonment and cessation of operation, which the commenter had recently adopted in its rules.

Commission Response. These areas go beyond the intended scope and purpose of the subject policy statement. These matters are being addressed in the Commission's decommissioning rulemaking.

D. Marvin Lewis

Summary of Comment. The commenter suggested that deferral or cancellation often provides a cover for inadequate quality or other very dangerous conditions and that the NRC must handle resumption of construction "sternly" and with "extreme prejudice," requiring that all the latest safety requirements be met.

Commission Response. The proposed policy statement stresses clearly and repeatedly that deferral, termination, and reactivation will be subject to all applicable current regulations, standards, policies, and guidance. No further clarification is needed.

E. Atomic Industrial Forum

Summary of Comment. The commenter supported the proposed policy statement and did not suggest changes to its text.

Commission Response. None required.



### III. POLICY STATEMENT

This policy guidance outlines (1) the NRC's regulatory provisions for deferring and preserving a deferred nuclear power plant until such time as it may be reactivated and (2) the applicability of new regulatory staff positions to a deferred plant when it is reactivated. Moreover, because of the possibility that the plant and/or its equipment may be sold to another utility, some general guidance with regard to terminated plants is presented.

The following definitions apply to this policy guidance:

"Deferred plant" means a nuclear power plant at which the licensee has ceased construction or reduced activity to a maintenance level, maintains the construction permit (CP) in effect, and has not announced termination of the plant.

"Terminated plant" means a nuclear power plant at which the licensee has announced that construction has been permanently stopped, but which still has a valid CP.

#### A. Deferred Plant

The following areas should be addressed by the licensee and the NRC when a plant is deferred:

1. Notification of Plant Deferral

The licensee should inform the Director of Nuclear Reactor Regulation (NRR) when a plant is to be deferred within 30 days of the decision to defer. Information to be made available should include the reason for deferral, the expected plant reactivation date (if known), whether a CP extension request will be submitted, and the plans for fulfilling the requirements of the CP, including the maintenance, preservation, and documentation requirements as outlined in Section III.A.3 of this policy statement.

2. Extension of Construction Permit

The licensee must ensure that its CP does not expire. Title 10 of the Code of Federal Regulations, Section 2.109 (10 CFR 2.109), "Effect of Timely Renewal Application," provides that, if a request for renewal of a license is made 30 days before the expiration date, the license will not be deemed to have expired until the application has been finally processed. Extension of the completion date for a CP will be considered in accordance with 10 CFR 50.55(b).

3. Maintenance, Preservation, and Documentation of Equipment

The NRC requirements for verification of construction status, retention and protection of records, and maintenance and preservation of equipment and materials are applied through: 10 CFR 50.54(a), "Conditions of Licenses," and 10 CFR 50.55(f), "Conditions of Construction Permits," which require that a quality assurance program be implemented; 10 CFR Part 50, Appendix B, which requires that all activities performed to establish, maintain, and verify the quality of plant construction be

addressed in the licensee's quality assurance program; 10 CFR Part 50, Appendices A and B, which require that certain quality records be retained for the life of the plant; 10 CFR 50.55(e), which requires reporting of deficiencies in design, construction, quality assurance, etc.; 10 CFR 50.71, which applies to the maintenance of records; and 10 CFR Part 21, which applies to reporting of defects and noncompliance. Those NRC regulatory guides that endorse the ANSI N45.2 series of standards, "Quality Assurance Requirements for Nuclear Power Plants," also are applicable and include Regulatory Guides 1.28, 1.37, 1.38, 1.58, 1.88, and 1.116. Of particular importance is the guidance on packaging, shipping, receiving, storing, and handling of equipment as well as on collecting, storing, and maintaining quality control documentation. The maintenance, preservation, and documentation requirements outlined above apply to plants under construction.

The licensee may choose to modify existing commitments during extended construction delays by developing a quality assurance plan that is commensurate with the expected activities and expected (or potential) length of delay. The licensee should discuss with the NRC the expected construction delay period and the quality assurance program to be implemented during the deferral. The program should include a description of the planned activities; organizational responsibilities and procedural controls that apply to the verification of construction status, maintenance, and preservation of equipment and materials; and retention and protection of quality assurance records. The program will be reviewed and approved by the NRC in accordance with 10 CFR 50.54(a)(3), 10 CFR Part 50, Appendix B, and inspection procedures, as appropriate.

Implementation of the program will be examined periodically to determine licensee compliance with commitments and overall program effectiveness.

4. Conduct of Review During Deferral

When a plant is deferred, the staff will normally bring all ongoing post-CP and operating license (OL) reviews and associated documentation to an appropriate termination point. Normally, new reviews will not be initiated. If the review has progressed sufficiently, a safety evaluation report (SER) will be issued, which assembles and discusses the status of the completed work and lists all outstanding open items. Subject to availability of resources, the staff might perform specific technical reviews or complete SER supplements.

5. Applicability of New Regulatory Requirements During Deferral

Deferred plants of custom or standard design will be considered in the same manner as plants still under construction with respect to applicability of new regulations, guidance, and policies. Proposed plant-specific backfits of new regulatory staff positions promulgated while a plant is deferred will be considered in accordance with the Commission backfit criteria. Other modifications to previously accepted staff positions will be implemented either through rulemaking or generic issue resolution, which themselves are subject to the backfit rule. Regulations that have integral update provisions built into them will be applied to deferred plants, as they are to other plants under construction, without the use of the backfit rule.

Provisions in other policy statements that are applicable to plants under construction also will have to be implemented. Any resulting backfit recommendations will have to be supported in accordance with

10 CFR 50.109. Appeals procedures applicable to plant-specific backfits would be applicable to deferred plants. Appeals filed by a licensee during plant deferral will be considered and processed by the NRC while a plant is in a deferred status.

6. Information to be Submitted by Licensee When Reactivating

The licensee should submit a letter to the Director of NRR at least 120 days before plant construction is expected to resume. The letter should include the following information, to the extent that the information has not been submitted to the staff during the deferral period:

- a. The proposed date for resuming construction, a schedule for completion of the construction, and a schedule for submittal of an operating license application, including a final safety analysis report (FSAR), if one has not already been submitted.
- b. The current status of the plant site and equipment.
- c. A description of how any conditions established by the NRC during the deferral have been fulfilled.
- d. A list of licensing issues that were outstanding at the time of the deferral and a description of the resolution or proposed resolution of these issues.
- e. A listing of any new regulatory requirements applicable to the plant that have become effective since plant construction was deferred,

together with a description of the licensee's proposed plans for compliance with these requirements or a commitment to submit such plans by a specified date.

- f. A description of the management and organization responsible for construction of the plant.
- g. A description of all substantive changes made to the plant design or site since the CP was issued (for those plants for which an OL application has not been submitted).
- h. Identification of any additional required information that is not available at the time of reactivation and a commitment to submit this information at a specific later date.
- i. As necessary, an amendment to the OL application (revised FSAR) and a discussion of the bases for all substantive site and design changes that have been made since the last FSAR revision was submitted (for those plants which were already under OL review at the time of deferral).

#### 7. Staff Actions When Notified of Reactivation

The acceptability of structures, systems, and components important to safety (10 CFR Part 50, Appendix A, General Design Criterion 1) upon reactivation from deferred status will be determined by the NRC on the following bases:

- a. Reviews of the approved preservation and maintenance program, as implemented, in order to determine whether or not any structures,

systems, or components require special NRC attention during reactivation.

- b. Verification that design changes, modifications, and required corrective actions have been implemented and documented in accordance with established quality control requirements.
- c. The results of any licensee or NRC baseline inspections that indicate quality and performance requirements have not been significantly reduced below those originally specified in the FSAR. Structures, systems, and components that fail to meet the acceptability criteria or will not meet current NRC requirements will be dealt with on a case-by-case basis.

B. Terminated Plant

1. Plant Termination

A licensee should inform the Director of NRR when a plant is placed in a terminated status. In the event that withdrawal of a CP is sought, the permit holder should provide notice to the NRC staff sufficiently far in advance of the expiration of the CP to permit the staff to determine appropriate terms and conditions. If necessary, a brief extension of the CP may be ordered by the staff to accommodate these determinations. Until withdrawal of the CP is authorized, a permit holder must adhere to the Commission's regulations and the terms of the CP and should submit suitable plans for the termination of site activities, including redress, as provided for under 10 CFR 51.41, for staff approval. Moreover, if the plant has

been completed to a point that it can function as a utilization facility, the licensee must take all necessary actions to ensure that the facility is no longer a facility for which an NRC license is required.

2. Measures that Should be Considered for Reactivation or Transfer of Ownership of Terminated Plants

The licensee of a terminated nuclear plant, if planning to maintain the option of plant reactivation or transfer of ownership to others -- either totally or in part -- should consider the following actions:

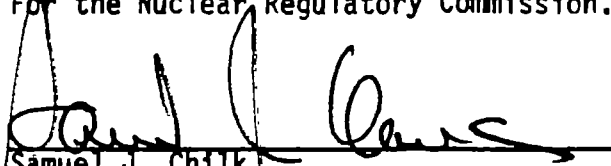
- a. For the removal and transfer of ownership of plant components and systems important to safety, make necessary provisions to maintain, collect, and transfer to the new owner appropriate performance and material documentation attesting to the quality of the components and systems that will be required of the new owner if intended for use in NRC-licensed facilities.
- b. Develop and implement a preservation and maintenance program for structures, systems, and components important to safety, as well as documentation substantially in accordance with Section III.A.3 of this policy statement. If these provisions are implemented throughout the period of termination, a terminated plant may be reactivated under the same provisions as a deferred plant.



These licensees also must assure that any necessary extensions of the CP are requested in a timely manner.

Dated at Washington, D.C. this 7<sup>th</sup> day of October 1987.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, appearing to read "Samuel J. Chalk", written over a horizontal line.

Samuel J. Chalk,  
Secretary of the Commission.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Commission Policy Statement on Deferred Plants

'87 MAR 12 P2:18

OFFICE OF SECRETARY  
DOCKETING AND SERVICE  
BRANCH

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Policy Statement.

SUMMARY: This Statement presents the proposed policy of the Nuclear Regulatory Commission (NRC) with regard to deferred nuclear power plants and the procedures that apply while in a deferred status and when reactivating these plants. The areas addressed include the regulations and guidance applicable to deferred and terminated plants, maintenance, preservation and documentation requirements, the applicability of new regulatory requirements and other general administrative considerations.

DATES: Submit comments by 4/15/87. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments, suggestions, or recommendations to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Services Branch. Copies of comments received may be examined in the NRC Public Document Room, 1717 H Street, N.W., Washington, D. C.

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FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Telephone (301) 492-8251.

#### SUPPLEMENTARY INFORMATION

##### I. BACKGROUND

In the last few years a number of nuclear power plants have been deferred or terminated. A deferred plant is one for which the licensee has ceased construction or reduced activity to a maintenance level, maintains the construction permit (CP) in effect and has not announced the termination of the plant. In most cases the licensee defers a plant with the expectation that its construction will be reactivated and it will be constructed and operated as a nuclear power plant. For purposes of this Policy Statement, a terminated plant is one for which the licensee has announced that construction has been terminated permanently but which still has a valid CP. At the present time there are four nuclear

power plants that are considered deferred. There are eight plants that are considered terminated.

The present regulations, guidance and procedures permit nuclear power plant deferral and reactivation and, indeed, such actions have occurred (e.g., Limerick 2 was a deferred plant that was recently reactivated).

In the interest of providing predictability and stability to this process, to clarify its position on the applicability of new regulatory requirements, and to develop and implement a regulatory process that can deal effectively with the variety of regulatory issues when construction of deferred plants is reactivated, the Commission is issuing policy guidance in this area.

## II. DISCUSSION

This proposed Policy Statement has been structured to address the significant regulatory aspects of nuclear power plant deferral, termination and reactivation of deferred facilities.<sup>1</sup>

Two items of primary interest in this Policy Statement are: (1) the quality assurance requirements for plants in a deferred status, and (2) the applicability of new regulatory requirements for deferred plants which are subsequently reactivated.

1. A NUREG report, which contains relevant information regarding deferred and terminated plants entitled "Reactivation of Nuclear Power Plant Construction Projects: Plant Status, Policy Issues, and Regulatory Options," NUREG-1205, (July 1986) has been published separately.

A. Quality Assurance Requirements for Plants in Deferred Status

When a plant is deferred, the licensee may continue to follow the approved construction phase quality assurance program or may modify the quality assurance program to reflect anticipated deferral activities. Modified quality assurance programs focus on the maintenance, preservation and documentation activities and a cost-effective reduction in licensee and NRC resources. The policy guidance addresses these requirements.

The major areas of concern for extended construction delays are: the (1) maintenance and preservation of equipment and materials, (2) verification of status of construction, and (3) retention and protection of records. Section III.A.3 of the policy guidance outlines the requirements in these areas for deferred plants.

B. Applicability of New Regulatory Requirements for Deferred Plants

Under the present regulations, new plant-specific staff positions would be applied to deferred plants upon reactivation, subject to the requirements of the backfit rule, 10 CFR 50.109. That is, if the plant falls within the time frame indicated in 10 CFR 50.109(a)(1), then the NRC staff would be required to justify any new plant-specific backfits in accordance with 10 CFR 50.109(a)(2), (a)(3), and (a)(4). The appeals procedures applicable for plant-specific backfits are applicable to deferred

plants. Generic issue backfits, which apply the same new NRC staff position to more than one licensee, are reviewed and approved in conjunction with resolution of the issue. If the deferred plant falls within the generic issue concern, as determined by NRC staff analysis for approval of the generic issue resolution, then the backfit would be applied to the plant upon reactivation.

Regulations that have integral update provisions built into them will be applied to deferred plants, as they are to other plants under construction, without the use of the backfit rule. For example, the update provisions of 10 CFR §50.55a, Codes and Standards, require that certain editions of the codes and standards be used depending on the CP or Operating License (OL) issuance date. Application of 10 CFR 50.55a to a deferred plant will be governed by the date specified in the regulation without the need for a backfitting justification.

The provisions of other policy statements, such as the Standardization and Severe Accident Policy Statements, that apply to plants under construction, will also have to be implemented. For example, the Severe Accident Policy Statement (NUREG-1070) refers to an integrated systematic approach to examine each nuclear power plant now operating or under construction for possible significant risk contributors that might be plant-specific and might be missed absent a systematic search. Deferred plants will have to perform this plant-specific

vulnerability analysis; however, the backfit rule will be used to decide which identified plant vulnerabilities require plant modifications.

Section III.A.5 of the Policy Statement identifies the need to apply the backfit rule for implementing new staff positions to deferred plants when they are reactivated.

The Commission published for comment in May 1984, and subsequently forwarded to Congress, a report entitled "Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants," NUREG-1055. This report contains a number of lessons learned concerning significant quality failures in commercial nuclear power plants under construction and makes recommendations concerning their avoidance in the future. These lessons learned are equally applicable to deferred or terminated plants for which construction may be resumed.

### III. POLICY GUIDANCE

This policy guidance outlines: (1) the NRC's regulatory provisions for deferring and preserving a deferred nuclear power plant until such time as it may be reactivated, and (2) the applicability of new regulatory staff positions to a reactivated deferred plant.

Also, because of the possibility that the plant and/or its equipment may be sold to another utility, some general guidance with regard to terminated plants is presented. The following definitions apply to this policy guidance:

Deferred Plant - A plant at which the licensee has ceased construction or reduced activity to a maintenance level, maintains the CP in effect and has not announced termination of the plant.

Terminated Plant - A plant for which the licensee has announced that construction has been permanently stopped, but which still has a valid CP.

A. Deferred Plants

Areas that should be addressed by a licensee and the NRC when a plant is deferred are as follows:

1. Notification of Plant Deferral

A licensee should inform the Director of Nuclear Reactor Regulation (NRR) when a plant is to be deferred, within 30 days of the decision to defer. Information to be made available should include the reason for deferral, the expected plant reactivation date (if known), whether a CP extension request will be submitted, and the plans for fulfilling the requirements of the CP, including the



maintenance, preservation and documentation requirements as outlined in Section III.A.3 of this Policy Statement.

2. Extension of Contruction Permit

Licensees must assure that their CPs do not expire. 10 CFR 2.109, "Effect of Timely Renewal Application," provides that if a request for renewal of a license is made 30 days prior to its expiration, the license will not be deemed to have expired until the application has been finally dispositioned. CP extensions will be considered in accordance with 10 CFR 50.55(b).

3. Maintenance, Preservation and Documentation of Equipment

The NRC requirements for verification of construction status, retention and protection of records, and maintenance and preservation of equipment and materials are applied through: 10 CFR 50.54(a), "Conditions of Licenses," and 10 CFR 50.55(f), "Conditions of Construction Permits," which require that a quality assurance program be implemented; 10 CFR Part 50, Appendix B, which requires that all activities performed to establish, maintain, and verify the quality of plant construction be addressed in the licensee's quality assurance program; 10 CFR Part 50, Appendices A and B, which require that certain quality records be retained for the life of the plant; 10 CFR 50.55(e), which requires reporting of

deficiencies in design, construction, quality assurance, etc.; 10 CFR 50.71, which applies to the maintenance of records; and 10 CFR Part 21, which applies to reporting of defects and non-compliance. The NRC Regulatory Guides which endorse the ANSI N45.2 series of standards, "Quality Assurance Requirements for Nuclear Power Plants," are also applicable. These include Regulatory Guides 1.28, 1.37, 1.38, 1.58, 1.88 and 1.116. Of particular importance is the guidance on packaging, shipping, receiving, storing and handling of equipment, as well as on collecting, storing and maintaining quality control documentation. The maintenance, preservation and documentation requirements outlined above apply to plants under construction.

The licensee may choose to modify existing commitments during extended construction delays by developing a quality assurance plan that is commensurate with the expected activities and expected (or potential) length of delay. The licensee should discuss with the NRC the expected construction delay period and the quality assurance program to be implemented during the deferral. The program should include a description of the planned activities, organizational responsibilities and procedural controls which apply to the verification of construction status, maintenance and preservation of equipment and materials, and retention and protection of quality assurance records. The program will be reviewed and approved by the NRC in accordance with 10 CFR 50.54(a)(3), 10 CFR Part 50, Appendix B and inspection procedures, as appropriate. Implementation of the program will be periodically examined

to determine licensee compliance with commitments and overall program effectiveness.

4. Conduct of Review During Deferral

When a plant is deferred, the staff will normally bring all ongoing post-CP and Operating License (OL) reviews and associated documentation to an appropriate termination point. Normally, new reviews will not be initiated. If the review has progressed sufficiently, a Safety Evaluation Report (SER) will be issued, which assembles and discusses the status of the completed work and lists all outstanding open items. Subject to availability of resources, the staff might perform specific technical reviews or complete SER supplements.

5. Applicability of New Regulatory Requirements During Deferral

With respect to applicability of new regulations, guidance and policies, deferred plants of custom or standard design will be considered in the same manner as plants still under construction. Proposed plant-specific backfits of new regulatory staff positions promulgated while a plant is deferred will be considered in accordance with the backfit rule, 10 CFR 50.109. Other modifications to previously accepted staff positions will be implemented either through rulemaking or generic issue resolution, which themselves are

subject to the backfit rule. Regulations that have integral update provisions built into them will be applied to deferred plants, as they are to other plants under construction, without the use of the backfit rule.

Provisions in other policy statements which are applicable to plants under construction will also have to be implemented. Any resulting backfit recommendations will have to be supported in accordance with 10 CFR 50.109. Appeals procedures applicable to plant-specific backfits would be applicable to deferred plants. Appeals filed by a licensee during deferral will be considered and processed by the NRC while a plant is in a deferred status.

6. Information to be Submitted by Licensee when Reactivating

The licensee should submit a letter to the Director of NRR at least 120 days before plant construction is expected to resume. The letter should include the following information, to the extent that such information has not been submitted to the staff during the deferral period:

- a. Proposed date for resuming construction, a schedule for completion of the construction, and a schedule for submittal of an operating license application, including a Final Safety Analysis Report (FSAR), if one has not already been submitted.

- b. The current status of the plant site and equipment.
- c. A description of how any conditions established by the NRC during the deferral have been fulfilled.
- d. A list of licensing issues that were outstanding at the time of the deferral and a description of the resolution or proposed resolution of these issues.
- e. A listing of any new regulatory requirements applicable to the plant that have become effective since plant construction was deferred, together with a description of the licensee's proposed plans for compliance with these requirements.
- f. A description of the management and organization responsible for construction of the plant.
- g. A description of all substantive changes made to the plant design or site since the CP was issued (for those plants for which an OL application has not been submitted).
- h. Identification of any additional required information which is not available at the time of reactivation and a commitment to submit such information at a specific later date.
- i. As necessary, an amendment to the OL application (revised FSAR) and a discussion of the bases for all substantive site and design changes that have been made since the last FSAR revision was submitted (for those plants which were already under OL review at the time of deferral).

7. Staff Actions When Notified of Reactivation

The acceptability of structures, systems and components important to safety (10 CFR Part 50, Appendix A, GDC 1) upon reactivation from deferred status will be determined by the NRC based on the following:

- a. Reviews of the approved preservation and maintenance program, as implemented, in order to determine whether or not any structures, systems or components require special NRC attention during reactivation.
- b. Verification that design changes, modifications, and required corrective actions have been implemented and documented in accordance with established quality control requirements.
- c. The results of any licensee or NRC baseline inspections which indicate that quality and performance requirements have not been significantly reduced below those originally specified in the FSAR. Structures, systems and components that fail to meet the acceptability criteria or will not meet current NRC requirements will be dealt with on a case-by-case basis.

B. Terminated Plants

1. Plant Terminations

A licensee should inform the Director of NRR when a plant is placed in a terminated status. In the event that withdrawal of a CP is sought, the permit holder should provide notice to the staff sufficiently far in advance of the expiration of the CP to permit the staff to determine appropriate terms and conditions. If necessary, a brief extension of the CP may be ordered by the staff to accommodate these determinations. Until withdrawal of the CP is authorized, a permit holder must adhere to the Commission's regulations and the terms of the CP, and should submit suitable plans for the termination of site activities, including redress, as provided for under 10 CFR 51.41, for staff approval. Also, if the plant has been completed to a point that it can function as a utilization facility, the licensee must take all necessary actions to ensure that the facility is no longer a facility for which an NRC license is required.

2. Measures that Should be Considered for Reactivation of Terminated Plants or Transfer of Ownership of Terminated Plants

Owners of terminated nuclear plants planning to maintain the option of plant reactivation or transfer of ownership to others - either totally or in part - should consider the following actions:

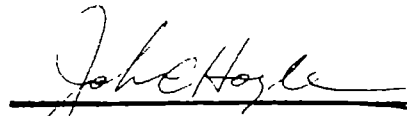
- a. For the removal and transfer of ownership of plant components and systems important to safety, make necessary provisions to maintain, collect and transfer to the new owner appropriate performance and material documentation attesting to the quality of the components and systems that will be required of the new owner if intended for use in NRC-licensed facilities.
- b. Develop and implement a preservation and maintenance program for structures, systems and components important to safety, as well as documentation, substantially in accordance with Section III.A.3 of this Policy Statment. If these provisions are implemented throughout the period of termination, a terminated plant may be reactivated under the same provisions as a deferred plant.



Such licensees must also assure that any necessary extensions of the CP are requested in a timely manner.

Dated at Washington, D.C. this 11<sup>th</sup> day of March, 1987.

For the Nuclear Regulatory Commission.

  
\_\_\_\_\_  
John C. Hoyle  
Acting Secretary of the Commission



DOCKET NUMBER  
PROPOSED RULE **PR-57**  
(52 FR 8075)

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USNRC

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⑥

'87 MAY 14 P7:13

**Kenneth W Berry**  
Director  
Nuclear Licensing

General Offices: 1945 West Parnall Road, Jackson, MI 49201 • (517) 788-1636

OFFICE OF SECRETARY  
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BRANCH

May 11, 1987

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington D C 20555

Attention: Docketing and Service Branch

CONSUMERS POWER COMPANY COMMENTS ON PROPOSED COMMISSION POLICY STATEMENT ON  
DEFERRED PLANTS

Consumers Power Company is pleased to offer its comments on the proposed Commission policy statement on deferred plants as published in the Federal Register on March 16, 1987 (52 FR 8075).

Based on a review of the proposed policy statement by knowledgeable individuals, Consumers Power Company believes that additional guidance regarding the maintenance of security and safeguards materials should be included in the policy statement. Specifically, Consumers Power Company recommends that the following statement be included in the final version of the Commission policy statement on deferred plants:

"For plants in a deferred status, the licensee shall take appropriate action to assure that the security and safeguard material remain secured to the requirements of 10 CFR 73.21. For plants for which a termination of the construction permit is sought, the licensee shall take appropriate action to assure that safeguards material which have relevancy to either the licensee's other licensed nuclear facilities, facilities of a similar type or are generic to the nuclear industry are either destroyed or are continued to be maintained in accordance with the requirements of 10 CFR 73.21."

This statement will provide licensees with plants in a deferred or terminated status flexibility in the maintenance and storage of safeguards material while ensuring that security and safeguards material remain protected.

Kenneth W Berry

CC Vice President, NOD

OC0587-0022S-NL01

Acknowledged by card.....

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DOCKET NUMBER **PR-50**  
**PROPOSED RULE**  
**(52 FR 8075)**

**5**

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

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**'87 APR 24 P3:40**

OFFICE OF SECRETARY  
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BRANCH

April 21, 1987

U. S. Nuclear Regulatory Commission  
Attention: Docketing & Services Branch  
Washington, D.C. 20555

Gentlemen:

Subject: COMMENTS ON COMMISSION POLICY STATEMENT  
ON DEFERRED PLANTS

On March 16, 1987, the Commission published in the Federal Register (52FR8075) its proposed policy statement on deferred plants. The Washington Public Power Supply System, as the owner of two deferred nuclear plants and two terminated nuclear power plants, has a keen interest in this policy statement.

In general, the Supply System finds the policy statement to be a very well thought out document. The policy statement places emphasis on those areas of greatest importance - namely maintenance, preservation, and documentation requirements. The Commission's application of the Backfit Rule (10CFR50.109) to deferred plants is a significant step and the Commission is to be commended for the establishment of this policy.

The following specific comments are provided for your consideration:

- o In most cases, a licensee would expect to be able to provide notification to the NRC at least 120 days in advance of construction resumption. However, there may be some construction type activities which could get underway earlier. It is recommended that this wording be revised to "at least 120 days before construction is expected to resume or as soon as possible after a reactivation decision has been reached."
- o Item 6.c requests a "listing of any new regulatory requirement ... together with a description of the licensee's proposed plans for compliance ..." The availability of such proposed plans presumes that the licensee is continuing a level of engineering activity during the deferral sufficient to develop such plans. The Supply System intends to maintain an awareness of new regulatory requirements applicable to its deferred plants, but will defer engineering activities necessary to determine how compliance will be achieved until after a reactivation decision has been made. It is recommended that this item be amended to add a commitment to submit such information at a specific later date.

**MAY 06 1987**

Acknowledged by card.

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U. S. NRC  
Docketing & Services Branch  
April 21, 1987  
Page Two

- o Item 6.i - An amendment to the FSAR, in the Supply System's situation, would not be available at the time of initial notification. However, since no "substantive site and design changes" will be made during the deferred period, an FSAR amendment would not be needed at this early date.

We appreciate this opportunity to comment on the policy statement on deferred plants, and again congratulate the Commission on this effort to provide some stability to the future for deferred plants.

Very truly yours,



G. C. Sorensen, Manager  
Regulatory Programs

sek

cc: T. S. Michaels, Nuclear Regulatory Commission  
A. E. Bivens, American Industrial Forum



DOCKET NUMBER  
PROPOSED RULE PR-2 (11)  
(52 FR 3442)

DOCKET NUMBER  
PROPOSED RULE PR-30,40,50 et al.  
(52 FR 7432) (23)

DOCKET NUMBER  
PETITION RULE PRM 50-46  
(51 FR 35518) (315)  
DOCKETED  
USNRC

DOCKET NUMBER  
PROPOSED RULE PR-50 (4)  
(52 FR 8075)

DOCKET NUMBER  
PROPOSED RULE PR-50  
(52 FR 6980) (1468)

'87 APR 20 A11:05

Marvin I. Lewis  
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OFFICE OF SECRETARY  
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BRANCH

Secretary  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKET NUMBER  
PETITION RULE PRM 50-46  
(51 FR 47025) (53)

Dear Mr. Secretary:

Please accept this letter as my comments on several rulemakings. I am commenting in one letter on several rulemakings because the rulemakings are related, and the separation of these rulemakings improperly hides their common, deleterious effect upon the health and safety of the public. The rulemakings and petitions upon which I am commenting in this letter include

1. 52 FR 23 3442 10 CFR Part 2 Issuance or Amendment: Power Reactor License or Permit Following Initial Decision.
2. 52 FR 47 7432 10 CFR Parts 30 etc. Completeness and Accuracy of Information.
3. 52 FR 52 8460 10 CFR Part 50 Kenneth G. Sexton and the State of ME; Petitions for Rulemaking; Extension of Comment Period.
4. 10 CFR Part 50 Commission Policy Statement on Deferred Plants.
5. 52 FR 44 6980 10 CFR Part 50 Licensing of Nuclear Power Plants Where State and/or Local Governments Decline to Cooperate in Offsite Emergency Planning.

First, I shall discuss each of the above separately.

Secondly, I shall discuss how the sum of these rule changes and other rule changes reduce the guarantee of health and safety for the public required in the Atomic Energy Act.

1.

The change in the Part 2 regulations embodied in 52 FR 23 3442 is another demonstration of how the NRC (also known as the agency) is cutting off any chance for intervenors or whistleblowers to affect the licensing process in an effective or timely manner. The agency states clearly how very poorly a substantive issue will fair in the licensing process, "... the appropriate subject of any judicial challenge to final agency action on a stay motion would be the agency's determination to issue or withhold a stay, not the merits for which the stay is sought."

APR 27 1987

Acknowledged by card

What the NRC (agency) is saying is that no matter how flawed a decision is on scientific grounds, the only appeal of that decision shall concern whether the NRC had the legal power to make that decision. This sort of intransigence on the NRC's part could easily lead to situations which endanger the health and safety of the public on a grand scale.

The following scenario is provided as an example and is not meant to be comprehensive, inclusive or exclusive. Dangerous conditions were discovered during the construction of Marble Hill, Zimmer and the cancelled WPPSS reactors. The construction continued even though whistleblowers provided information which showed that the reactor could experience a major accident. If these reactors had been completed and if an intransigent Hearing Board and Director granted an operating license anyway, intervenors and public could not appeal on the merits, but only on the legalities to make the decision. This could and would happen if this rule came into effect. This rule could and would endanger the health and safety of the public, and this rule would be an invitation for the licensee to cut all corners.

2.

The changes in 52 FR 47 7432 Completeness and Accuracy of Information invite ways and means to avoid any penalty for not meeting the regulation. Specifically, the new 10 CFR 55.6b states, "An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security."

This sentence makes the applicant or licensee the ultimate judge and jury for his actions. If the licensee or applicant fails to identify a "significant implication," he is in the clear and held harmless as far as this regulation is concerned. A simple plea of temporary incompetence or failure to manage adequately exempts any licensee or applicant from any violation as far as reporting information accurately and completely no matter how serious the lapse is.

The rule states that only the Applicant or Licensee is liable for violations of non-reporting of significant implications. Also, the licensee or applicant must have knowledge and identified the implication as significant. The loophole is that if management is not aware of the significant implication, they are not liable. This loophole allows the applicant and licensee to escape responsibility. As long as the licensee or applicant can put up barriers so that information about significant implication cannot get to them, they are held harmless by the rule. This rule ignores the responsibility of management to be informed. That's their job.



Incompetence must never be a defense to avoid proper regulation. This 10CFR55.6b makes incompetence a proper defense no matter how serious the danger to the health and safety of the public or the common defense and security. This rule would be an invitation to cut all corners since this rule promotes incompetence and deficient management as a defense.

3.

Denial of 52 FR 52 8460 would be a disaster. The nuclear power industry would have little incentive to prepare emergency plans. The public would take the denial to mean that the NRC does not have the public health and safety as a goal. These two petitions attempt to strengthen the emergency planning in case of a major accident by reassessing the Emergency Planning Zone. New data from Chernobyl strongly suggests that the methodologies and analytical techniques used to evaluate the size of the EPZ are highly questionable. An improperly small EPZ in the event of a major accident would endanger the health and safety of the public much more than an adequate EPZ.

The present inadequate EPZ does endanger the health and safety of the public. Reevaluating the present EPZ in light of the recent Chernobyl data would improve the safety of the public. The NRC has continues to attempt to reduce the size of the EPZ, which endangers the health and safety of the public. The NRC's attempts to reduce the size of the EPZ invites the licensee to cut all corners as far as emergency planning is concerned.

4.

The only policy that a deferred plant is entitled to is that any attempt at reinstituting construction must meet all the latest safety requirements. Too often deferment or cancellation provides a cover for inadequate quality or other very dangerous conditions. Not one iota of allowance for any past requirement may be forgiven. The reason that the strictest requirements must be invoked for these plants is that many deferred and cancelled reactors would use this route to bury their problems such as,

- A. South Texas project was rumored to have buried a supernumerary in concrete.
- B. WPPSS had innumerable construction difficulties.
- C. Zimmer admitted to many construction difficulties prior to cancellation.

The NRC must handle resumption of construction in deferred and cancelled plants sternly. Any but the sternest handling of these plants when they attempt to resume construction is an invitation by the NRC for the licensee or applicant to cut corners. Cutting corners on the construction of a nuclear power plant will endanger the health and safety of the public. A simple but effective policy for deferred and cancelled plants should include a statement that the NRC will view with extreme prejudice any restart of construction on a deferred or cancelled plant.

5.

Now I shall discuss the most problematic rule change, 52 FR 44 6980 Licensing of Nuclear Power Plants Where State and Local Governments Decline to Cooperate in Offsite Emergency Planning.

The Emergency Plan can be likened to lifeboats for passengers on a luxury liner. While ocean going vessels are generally safe, and while passenger vessels must meet very high standards, ships have sunk. The Unsinkable Titanic comes to mind.

The same can be said about major accident at nuclear power plants. Unlikely accidents have occurred. There have been few meltdowns: LS-1, Chernobyl, TMI#2, Fermi. Nonetheless, residents around a nuclear power plant have as much right to an adequate emergency plan as passengers have a right to a seat on a lifeboat. Commissioner Asselstine has pointed out several of the ways that the rule eliminates the public's right to an adequate emergency plan. The proposed rule also invites the licensee or applicant to cut corners and to endanger the health and safety of the public with an inadequate emergency plan. An inadequate emergency plan will endanger the health and safety of the public in the event of a meltdown and melt thru.

#### CONCLUSION

The actions of the NRC have been and continue to be an obvious invitation to licensees and applicants to cut corners. Cutting corners for the sake of profitability and convenience reduces or eliminates the protection the health and safety of the public required by the atomic energy Act.

*Respectfully submitted, Marvin I. Lewis*  
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*4/16/87*

Atomic Industrial Forum, Inc.

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TWX 7108249602 ATOMIC FOR DC

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USNRC

(52 FR 8075)



'87 APR 17 P12:43

April 15, 1987

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Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Commission Policy Statement on Deferred Plants

Dear Sir:

The NRC published in the March 16, 1987, Federal Register, the proposed policy statement on Deferred Plants (52 FR 8075) and solicited comments on same. The Atomic Industrial Forum's Ad Hoc Group on Reactivation of Construction Projects has reviewed the proposed policy statement and finds the policy appropriate in that it applies existing regulations to the issue of reactivation of deferred and terminated plants.

We believe the national resource these plants represent should be preserved and appreciate the opportunity to provide our input to this important issue.

Sincerely,

*H. K. Dyekman*

G. K. Dyekman  
Chairman  
AIF Ad Hoc Group on  
Reactivation of Construction  
Projects

GKD:bjr



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(52 FR 8075)

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KMC, Inc.  
801 18TH STREET, N.W.  
SUITE 300  
WASHINGTON, D.C. 20006  
(202) 293-4200

April 15, 1987

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

ATTN: Docketing and Services Branch

SUBJECT: Proposed NRC Policy Statement on Deferred Nuclear Power  
Plants

Dear Sir:

This letter is filed on behalf of the Utility Safety Classification Group (USCG) and KMC, Inc. in response to the March 16, 1987, Federal Register notice regarding the subject proposed policy statement. Because the charter of the USCG is limited to issues concerning safety classification, the comments contained herein are intentionally limited to consideration only of the phrase "important to safety" as it appears in the proposed policy statement. We offer no additional comments concerning any other aspect of the policy statement. For your information, a complete list of the USCG membership is enclosed.

The USCG was formed in July 1983 to interact with the NRC regarding the lack of a clear regulatory definition for and the inconsistent interpretation of the phrase "important to safety" which has been repeatedly used by the NRC staff and the Commission, but never authoritatively defined by either. In an attempt to achieve a resolution and to stabilize the meaning of that phrase, on October 30, 1984, the USCG filed a petition for rule-making which still remains before the NRC. NRC staff attempts to resolve this issue have been proposed in several staff papers to the Commission, the last of which, SECY 86-164, has sat before the Commissioners for almost a year now. Clearly this definitional issue has proven difficult to resolve, with the result that "important to safety" still lacks an agreed-upon regulatory definition.

In these circumstances, we believe that it is unwise to expand the use of this phrase in regulatory guidance documents and

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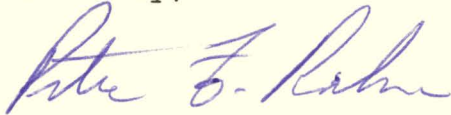
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that the NRC should refrain from doing so. In this instance, we believe that the Policy Guidance portion of the proposed policy statement should be modified at paragraphs 2.a and 2.b of Section B, Terminated Plants, to eliminate this phrase by substituting "safety related." This modification will facilitate the use of the policy statement by rendering it less prone to misinterpretation as the phrase "safety related" is well understood and is, in fact, defined in 10 CFR Part 100.

If you require further clarification of our comments, please call me at (202) 293-4200.

Sincerely,



Peter F. Riehm  
Associate

Encl.

UTILITY SAFETY CLASSIFICATION GROUP

Arkansas Power & Light Co. (representing also  
Mississippi Power & Light, and  
Louisiana Power & Light Co.)

Baltimore Gas & Electric Co.

Cleveland Electric Illuminating Co.

Commonwealth Edison Co.

Consolidated Edison Co. of New York

Detroit Edison Co.

Florida Power Corp.

Florida Power & Light Co.

Long Island Lighting Co.

Yankee Atomic Electric Co. (representing also  
New Hampshire Yankee, Maine Yankee Atomic  
Power Co., and Vermont Yankee Nuclear  
Power Corp.)

Northeast Utilities Service Co. (representing also  
Connecticut Light & Power, Northeast Nuclear  
Energy Co., and Western Massachusetts  
Electric Co.)

Northern States Power Co.

Omaha Public Power District

Pacific Gas & Electric Co.

Pennsylvania Power & Light Co.

Public Service Electric & Gas Co.

Rochester Gas & Electric Co.

Toledo Edison Co.

Wisconsin Electric Power Co.

Wisconsin Public Service Corp.



CURTIS ESCHELS  
Chairman



DOCKET NUMBER **PR-50**  
PROPOSED RULE  
(52 FR 8075)

①

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April 14, 1987

Mr. John C. Hoyle  
Acting Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attention: Docketing and Services Branch

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'87 APR 14 P2:42

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USNRC

Dear Acting Secretary Hoyle:

The Washington State Energy Facility Site Evaluation Council (Council) has reviewed the proposed Commission Policy Statement on Deferred Plants dated March 11, 1987, and offers the following comments.

The Council recognizes the usefulness of the Commission's desire to develop policy guidance on the deferral, reactivation and termination of regulated facilities. This guidance will provide the utilities and regulatory agencies of state and local government with a recognized set of definitions for the activities of the utility while the plant is in a deferred, terminated or reactivated status. It also clarifies the status of the four nuclear power plants considered deferred and the eight nuclear plants considered terminated. Two deferred nuclear plants with construction permits and two terminated plants without construction permits are located in the state of Washington and remain subject to our jurisdiction. It is suggested that the policy clearly states, early in the statement, that it applies only to facilities deferred or terminated during construction and prior to commercial operation.

The Council concurs with the proposed policy statement's applicability of: (1) new plant-specific staff positions, (2) new plant-specific backfits, (3) generic issue backfits, and (4) regulations with integral update provisions to deferred plants. These provisions help to ensure that plants in a deferred status will be required to plan for those safety related changes adopted during the period of deferral. We believe the Washington Public Power Supply System is effectively following this direction with regard to Washington Nuclear Projects Numbers 1 and 3 through their Readiness Review Program.

The Council is concerned that the proposed definition of terminated plant may lead to some confusion. The proposal to require a valid Construction Permit (CP) where construction has been permanently stopped should be clarified to assure that the only authorized activity is site restoration. There may be reason to retain the full CP for a short period to ensure an orderly ramp down, as the Commission proposes. Because the suggested definitions for deferred and terminated plants each contain provisions for

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Mr. John C. Hoyle  
April 14, 1987  
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cessation of construction and retention of the CP, there is no clear distinction in the proposal between deferral and termination. The remedy for this is to eliminate the requirement to retain the full CP for terminated projects. The policy would thereby require the licensee to phase through the deferred status before moving to the terminated status and would lend needed finality to a termination decision. The state needs assurance that a terminated project would never be reactivated, for purposes of its own regulatory and environmental planning.

On February 11, 1987 the Council adopted rules relating to preservation of suspended projects and site restoration of terminated projects in order to protect the environment and public health and safety. The Commission's definition of the term "deferred" is similar to the Council's use of the term "suspended". The Council also addresses circumstances of abandonment and cessation of operations which may extend beyond the Commission's definition of deferred or terminated. The Commission may wish to address these topics as well. A copy of our rules is enclosed for your reference. Of major concern to the Council is the licensee's ability to provide for the funding of site preservation and restoration required for public protection.

The Council appreciates this opportunity to offer comment and is available to discuss this matter in greater detail.

Sincerely,



Curtis Eschels  
Chairman

CE:BF:kc

Enclosure

cc: Don Mazur, WPPSS  
Jack Martin, Region V NRC

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL  
(Formerly: Thermal Power Plant Evaluation Council)

CHAPTERS

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 463-08

RULES OF PRACTICE

463-08-010	Uniform procedural rules. [Order 1-70, § 463-08-010, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
463-08-011	Effect of certification. [Order 2-72, § 463-08-011, filed 12/27/72.] Repealed by Order 104, filed 11/4/76.
463-08-015	Council organization. [Order 2-72, § 463-08-015, filed 12/27/72; Order 1-70, § 463-08-015, filed 5/7/70.] Repealed by Order 103, filed 11/4/76.
463-08-020	Official application. [Order 2-72, § 463-08-020, filed 12/27/72; Order 1-70, § 463-08-020, and Form A, filed 5/7/70.] Repealed by Order 113, filed 2/4/77.
463-08-021	Hearing examiners. [Order 2-72, § 463-08-021, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.
463-08-022	Proposed orders by examiners. [Order 2-72, § 463-08-022, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.

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- 463-08-023 Notice of intent. [Order 1-74, § 463-08-023, filed 5/29/74; Order 2-72, § 463-08-023, filed 12/27/72.] Repealed by Order 113, filed 2/4/77.
- 463-08-024 Compliance procedures for State Environmental Policy Act of 1971. [Order 2-72, § 463-08-024, filed 12/27/72.] Repealed by Order 112, filed 12/5/76.
- 463-08-025 Intervention. [Order 1-70, § 463-08-025, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-030 Participation by intervenor. [Order 1-70, § 463-08-030, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-035 Informational hearing. [Order 1-70, § 463-08-035, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-040 Formal public hearing. [Order 1-70, § 463-08-040, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-045 Additional public hearings. [Order 4-74, § 463-08-045, filed 12/13/74; Order 1-70, § 463-08-045, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-050 Disposition after formal hearing. [Order 1-70, § 463-08-050, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-055 Petition for rehearing. [Order 1-70, § 463-08-055, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.
- 463-08-060 Potential site study. [Order 1-74, § 463-08-060, filed 5/29/74.] Repealed by Order 106, filed 11/4/76. Later promulgation, see chapter 463-22 WAC.

## Chapter 463-12

### GUIDELINES FOR APPLICANTS SEEKING THERMAL POWER PLANT CERTIFICATION

- 463-12-010, 463-12-015, 463-12-020, 463-12-025, 463-12-030, 463-12-035, 463-12-040, 463-12-045 and 463-12-050. [Order 1-70, filed 5/7/70.] Repealed by Order 2-72, filed 12/27/72. Later promulgations, see WAC 463-12-100 through 463-12-150, and chapter 463-42 WAC.
- 463-12-100 Project description. [Order 2-72, § 463-12-100, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-105 Site characteristics. [Order 2-72, § 463-12-105, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-110 Transmission lines. [Order 2-72, § 463-12-110, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-115 Health and safety. [Order 2-72, § 463-12-115, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-120 Environmental impact--Land. [Order 2-72, § 463-12-120, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-125 Environmental impact--Water. [Order 2-72, § 463-12-125, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.



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- 463-12-130 Environmental impact--Air. [Order 2-72, § 463-12-130, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-135 Environmental impact--Vegetation, fish and animal life. [Order 2-72, § 463-12-135, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-140 Environmental impact--Aesthetics. [Order 2-72, § 463-12-140, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-145 Environmental impact--Recreation and heritage. [Order 2-72, § 463-12-145, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-150 Monitoring and future studies. [Order 2-72, § 463-12-150, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-155 Environmental impact--Social and economic. [Order 2-74, § 463-12-155, filed 6/12/74.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

Chapter 463-16

REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

- 463-16-010 Definitions. [Order 3-74, § 463-16-010, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-010.
- 463-16-020 Scope and purpose. [Order 3-74, § 463-16-020, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-020.
- 463-16-030 NPDES application and tentative determination. [Caption only] [Order 3-74, § 463-16-030, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-030.
- 463-16-031 Application filing with the council. [Order 3-74, § 463-16-031, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-031.
- 463-16-032 Signature form. [Order 3-74, § 463-16-032, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-032.
- 463-16-033 Tentative determination on NPDES permits. [Order 3-74, § 463-16-033, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-033.
- 463-16-034 Fact sheet. [Order 3-74, § 463-16-034, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-034.
- 463-16-040 Notice, hearings and information accessibility. [Caption only] [Order 3-74, § 463-16-040, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-040.

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- 463-16-041 Notice, provisions. [Order 3-74, § 463-16-041, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-041.
- 463-16-042 Public hearings. [Order 3-74, § 463-16-042, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-042.
- 463-16-043 Public access to information. [Order 3-74, § 463-16-043, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-043.
- 463-16-050 NPDES permit contents. [Order 3-74, § 463-16-050, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-050.
- 463-16-051 General conditions. [Order 3-74, § 463-16-051, filed 8/27/74.] Repealed by order 114, filed 2/4/77. Later promulgation, see WAC 463-38-051.
- 463-16-052 Prohibited discharges. [Order 3-74, § 463-16-052, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-052.
- 463-16-053 Effluent limitations, water quality standards and other requirements for NPDES permits. [Order 3-74, § 463-16-053, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-053.
- 463-16-054 Schedules of compliance. [Order 3-74, § 463-16-054, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-054.
- 463-16-055 Other terms and conditions. [Order 1-75, § 463-16-055, filed 4/7/75; Order 3-74, § 463-16-055, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-055.
- 463-16-060 NPDES permits review and appeal. [Order 3-74, § 463-16-060, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-060.
- 463-16-061 Reissuance of NPDES permits. [Order 3-74, § 463-16-061, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-061.
- 463-16-062 Modifications of NPDES permits. [Order 3-74, § 463-16-062, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-062.
- 463-16-063 Appeal. [Order 3-74, § 463-16-063, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-063.
- 463-16-064 Transmission to regional administrator of proposed NPDES permit. [Order 3-74, § 463-16-064, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-064.
- 463-16-065 Monitoring and enforcement. [Order 1-75, § 463-16-065, filed 4/7/75; Order 3-74, § 463-16-065, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-060.
- 463-16-080 Transmittal of data to regional administrator. [Order 3-74, § 463-16-080, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-080.
- 463-16-090 Conflict of interest. [Order 3-74, § 463-16-090, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-090.

## Chapter 463-20

## PUBLIC DISCLOSURE

- 463-20-010 Purpose. [Order 1-74, § 463-20-010, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-020 Definitions. [Order 1-74, § 463-20-020, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-030 Operations and procedures. [Order 1-74, § 463-20-030, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-040 Public records available. [Order 1-74, § 463-20-040, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-060.
- 463-20-050 Public records officer. [Order 1-74, § 463-20-050, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-070.
- 463-20-060 Office hours. [Order 1-74, § 463-20-060, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-030.
- 463-20-070 Requests for public records. [Order 1-74, § 463-20-070, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-080.
- 463-20-080 Copying. [Order 1-74, § 463-20-080, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-110.
- 463-20-090 Exemptions. [Order 1-74, § 463-20-090, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.
- 463-20-100 Review of denials of public records requests. [Order 1-74, § 463-20-100, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.
- 463-20-110 Protection of public records. [Order 1-74, § 463-20-110, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-111 Records index. [Order 1-74, § 463-20-111, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-170.
- 463-20-120 Address for communications. [Order 1-74, § 463-20-120, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-130 Adoption of form--Appendix A--"Request for public record." [Order 1-74, § 463-20-130, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

## Chapter 463-46

GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL  
POLICY ACT

- 463-46-010 Authority. [Order 112, § 463-46-010, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1). Later promulgation, see chapter 463-47 WAC.



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- 463-46-020 Purpose. [Order 112, § 463-46-020, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-025 Scope and coverage of this chapter. [Order 112, § 463-46-025, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-040 Definitions. [Order 112, § 463-46-040, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-050 Use of the environmental checklist form. [Order 112, § 463-46-050, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-055 Timing of the EIS process. [Statutory Authority: RCW 80.50.040(1). 81-07-019 (Order 81-1), § 463-46-055, filed 3/11/81; Order 112, § 463-46-055, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. [Order 112, § 463-46-060, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-100 Summary of information which may be required of a private applicant. [Order 112, § 463-46-100, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-150 Exemptions exclusive--DOE approval of changes in exemptions. [Order 112, § 463-46-150, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-160 No presumption of significance for nonexempt actions. [Order 112, § 463-46-160, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-170 Categorical exemptions. [Order 112, § 463-46-170, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-175 Exemptions and nonexemptions applicable to specific state agencies. [Order 112, § 463-46-175, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-177 Environmentally sensitive areas. [Order 112, § 463-46-177, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-180 Exemption for emergency actions. [Order 112, § 463-46-180, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-190 Use and effect of categorical exemptions. [Order 112, § 463-46-190, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

- 463-46-200 Lead agency--Responsibilities. [Order 112, § 463-46-200, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-203 Determination of lead agency--Procedures. [Order 112, § 463-46-203, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-205 Lead agency designation--Governmental proposals. [Order 112, § 463-46-205, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-210 Lead agency designation--Proposals involving both private and public construction activity. [Order 112, § 463-46-210, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-215 Lead agency designation--Private projects for which there is only one agency with jurisdiction. [Order 112, § 463-46-215, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-220 Lead agency designation--Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. [Order 112, § 463-46-220, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-225 Lead agency designation--Private projects requiring licenses from more than one state agency. [Order 112, § 463-46-225, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-230 Lead agency designation--Specific proposals. [Order 112, § 463-46-230, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-240 Agreements as to lead agency status. [Order 112, § 463-46-240, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-245 Agreements between agencies as to division of lead agency duties. [Order 112, § 463-46-245, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-260 Dispute as to lead agency determination--Resolution by DOE. [Order 112, § 463-46-260, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-270 Assumption of lead agency status by another agency with jurisdiction. [Order 112, § 463-46-270, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-300 Threshold determination requirement. [Order 112, § 463-46-300, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

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- 463-46-305 Recommended timing for threshold determination. [Order 112, § 463-46-305, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-310 Threshold determination procedures--Environmental checklist. [Order 112, § 463-46-310, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-320 Threshold determination procedures--Initial review of environmental checklist. [Order 112, § 463-46-320, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-330 Threshold determination procedures--Information in addition to checklist. [Order 112, § 463-46-330, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-340 Threshold determination procedures--Negative declarations. [Order 112, § 463-46-340, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-345 Assumption of lead agency status by another agency with jurisdiction over a proposal--Prerequisites, effect and form of notice. [Order 112, § 463-46-345, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-350 Affirmative threshold determination. [Order 112, § 463-46-350, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-355 Form of declaration of significance/nonsignificance. [Order 112, § 463-46-355, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-360 Threshold determination criteria--Application of environmental checklist. [Order 112, § 463-46-360, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-365 Environmental checklist. [Order 112, § 463-46-365, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-370 Withdrawal of affirmative threshold determination. [Order 112, § 463-46-370, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-375 Withdrawal of negative threshold determination. [Order 112, § 463-46-375, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-390 Effect of threshold determination by lead agency. [Order 112, § 463-46-390, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-400 Duty to begin preparation of a draft EIS. [Order 112, § 463-46-400, filed 12/15/76.] Repealed by 84-19-031

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- (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-405 Purpose and function of a draft EIS. [Order 112, § 463-46-405, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-410 Predraft consultation procedures. [Order 112, § 463-46-410, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-420 Preparation of EIS by persons outside the lead agency. [Order 112, § 463-46-420, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-425 Organization and style of a draft EIS. [Order 112, § 463-46-425, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-440 Contents of a draft EIS. [Order 112, § 463-46-440, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-442 Special considerations regarding contents of an EIS on a nonproject action. [Order 112, § 463-46-442, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-444 List of elements of the environment. [Order 112, § 463-46-444, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-450 Public awareness of availability of draft EIS. [Order 112, § 463-46-450, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-455 Circulation of the draft EIS--Review period. [Order 112, § 463-46-455, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-460 Specific agencies to which draft EIS shall be sent. [Order 112, § 463-46-460, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-465 Agencies possessing environmental expertise. [Order 112, § 463-46-465, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-470 Cost to the public for reproduction of environmental documents. [Order 112, § 463-46-470, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-480 Public hearing on a proposal--When required. [Order 112, § 463-46-480, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-485 Notice of public hearing on environmental impact of the proposal. [Order 112, § 463-46-485, filed 12/15/76.]

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- Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-490 Public hearing on the proposal--Use of environmental documents. [Order 112, § 463-46-490, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-495 Preparation of amended or new draft EIS. [Order 112, § 463-46-495, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-500 Responsibilities of consulted agencies--Local agencies. [Order 112, § 463-46-500, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-510 Responsibilities of consulted agencies--State agencies with jurisdiction. [Order 112, § 463-46-510, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-520 Responsibilities of consulted agencies--State agencies with environmental expertise. [Order 112, § 463-46-520, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-530 Responsibilities of consulted agencies--When predraft consultation has occurred. [Order 112, § 463-46-530, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-535 Cost of performance of consulted agency responsibilities. [Order 112, § 463-46-535, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-540 Limitations on responses to consultation. [Order 112, § 463-46-540, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-545 Effect of no written comment. [Order 112, § 463-46-545, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-550 Preparation of the final EIS--Time period allowed. [Order 112, § 463-46-550, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-570 Preparation of the final EIS--Contents--When no critical comments received on the draft EIS. [Order 112, § 463-46-570, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-580 Preparation of the final EIS--Contents--When critical comments received on the draft EIS. [Order 112, § 463-46-580, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-600 Circulation of the final EIS. [Order 112, § 463-46-600, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).

- 463-46-650 Effect of an adequate final EIS prepared pursuant to NEPA. [Order 112, § 463-46-650, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-652 Supplementation by a lead agency of an inadequate final NEPA EIS. [Order 112, § 463-46-652, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-660 Use of previously prepared EIS for a different proposed action. [Order 112, § 463-46-660, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-690 Use of lead agency's EIS by other acting agencies for the same proposal. [Order 112, § 463-46-690, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-695 Draft and final supplements to a revised EIS. [Order 112, § 463-46-695, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-700 No action for seven days after publication of the final EIS. [Order 112, § 463-46-700, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-830 Responsibility of agencies--SEPA public information center. [Order 112, § 463-46-830, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-840 Application of agency guidelines to ongoing actions. [Order 112, § 463-46-840, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
- 463-46-910 Severability. [Order 112, § 463-46-910, filed 12/15/76.] Repealed by 84-19-031 (Order 84-2), filed 9/14/84. Statutory Authority: RCW 80.50.040(1).
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## Chapter 463-06 WAC

## GENERAL--ORGANIZATION--PUBLIC RECORDS

WAC

463-06-010 Organization of this title.  
463-06-020 Description of organization.  
463-06-030 Council office--Business hours.  
463-06-040 Semimonthly meetings.  
463-06-050 General method by which operations are conducted.  
463-06-060 Public records available.  
463-06-070 Public records officer.  
463-06-080 Contents of requests for public records.  
463-06-090 Staff assistance.  
463-06-100 Record of requests maintained.  
463-06-110 Fees for copying.  
463-06-120 Determination of exempt status.  
463-06-130 Deletion of identifying details.  
463-06-140 Written denials.  
463-06-150 Review of denials.  
463-06-160 Time for completion of review.  
463-06-170 Records index.

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WAC 463-06-010 ORGANIZATION OF THIS TITLE. This title (Title 463 WAC) contains the regulations by which the energy facility site evaluation council (hereafter, the council) functions under state and federal law.

Chapter 463-06 WAC contains general informational provisions relating to agency operation and public records handling which are required by the state Administrative Procedure Act and state laws relating to public records.

Chapter 463-10 WAC contains definitions of terms used throughout this title.

Chapter 463-14 WAC sets forth a number of significant policy and interpretive provisions relating to the scope and application of chapter 80.50 RCW and these rules.

Chapter 463-18 WAC deals with procedures for the conduct of business at regular and special council meetings.

Chapter 463-22 WAC sets forth procedures to be followed when a request for a potential site study is submitted under RCW 80.50.175.

Chapter 463-26 WAC sets forth procedures governing the public hearings referred to in RCW 80.50.090 (1), (2), and (4).

Chapter 463-30 WAC contains procedural provisions governing contested case hearings held pursuant to RCW 80.50.090(3).

Chapter 463-34 WAC outlines procedures for rule making and for obtaining declaratory rulings from the council.

Chapter 463-38 WAC contains procedure and guidelines relating to issuance of permits to discharge pollutants into Washington waters pursuant to federal law.

Chapter 463-42 WAC embodies council procedures and guidelines governing preparation of applications for energy facility site certification.

Chapter 463-46 WAC contains guidelines relating to information which may have to be included in an application for site certification pursuant to the State Environmental Policy Act.

Chapter 463-50 WAC defines guidelines for the use of independent consultants pursuant to RCW 80.50.070 and 80.50.175.

Chapter 463-54 WAC sets forth procedures and guidelines for performance of surveillance monitoring by the council pursuant to RCW 80.50.040(11). [Order 103, § 463-06-010, filed 11/4/76.]

WAC 463-06-020 DESCRIPTION OF ORGANIZATION. (1) The voting membership of the council consists of the authorized representatives of the member agencies listed in RCW 80.50.030. In addition, a voting county representative, a voting city representative, and a nonvoting port district representative may sit with the council under the circumstances described in RCW 80.50.030.

(2) The chairman of the council is the person appointed by the governor with the advice and consent of the senate to a term coextensive with that of the governor pursuant to RCW 80.50.030. The chairman serves full time, has a vote on all matters before the council and is officed at the council office. The chairman may appoint a confidential secretary to the chairman.

(3) The council has an executive secretary who is appointed by and serves at the pleasure of the council. The executive secretary is responsible for the appointment and supervision of council staff. All members of the council staff are officed at the council office. [Statutory Authority: RCW 80.50.040(1). 78-09-077 (Order 78-4), § 463-06-020, filed 8/28/78; Order 103, § 463-06-020, filed 11/4/76.]

WAC 463-06-030 COUNCIL OFFICE--BUSINESS HOURS. The council office is located at Rowsix, 4224 - 6th Avenue S.E., Olympia, Washington. It is open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. Notices, applications, business correspondence, or other communication should be sent to the council office. [Statutory Authority: RCW 80.50.040(1). 81-20-028 (Order 81-4), § 463-06-030, filed 9/30/81; Order 103, § 463-06-030, filed 11/4/76. Formerly WAC 463-20-060.]

WAC 463-06-040 SEMIMONTHLY MEETINGS. Regular meetings of the council are held on the second and fourth Mondays of each month. Regular meetings may be canceled or rescheduled by approved council motion either by oral notice given at the preceding meeting or by the noticing procedure provided for special meetings pursuant to WAC 463-18-050. [Statutory Authority: RCW 80.50.040(1). 84-07-042 (Order 84-1), § 463-06-040, filed 3/21/84; Order 103, § 463-06-040, filed 11/4/76.]



WAC 463-06-050 GENERAL METHOD BY WHICH OPERATIONS ARE CONDUCTED.

In general, the council reaches major policy and operational decisions through formal council action at regular and special meetings. In some circumstances, the chairman may perform duties which are specifically authorized by the council. Day-to-day administration is handled by the executive secretary and staff. [Order 103, § 463-06-050, filed 11/4/76.]

WAC 463-06-060 PUBLIC RECORDS AVAILABLE.

All public records of the council are available for public inspection and copying at the council office pursuant to chapter 42.17 RCW and these rules, except as otherwise provided by RCW 42.17.310 or any superseding law. [Order 103, § 463-06-060, filed 11/4/76. Formerly WAC 463-20-040.]

WAC 463-06-070 PUBLIC RECORDS OFFICER.

The council's public records officer is the executive secretary. He is responsible for implementation of these and other applicable regulations regarding public records. Correspondence regarding public records is to be addressed to the public records officer. [Order 103, § 463-06-070, filed 11/4/76. Formerly WAC 463-20-050.]

WAC 463-06-080 CONTENTS OF REQUESTS FOR PUBLIC RECORDS.

Public records may be inspected and copied by members of the public when a request is made in writing which reflects the following information:

- (1) Name of the person requesting the records; and
- (2) The day on which the written request was prepared or submitted; and
- (3) The nature of the request (to the extent that this may expedite compliance); and
- (4) If the matter requested is indexed, an appropriate index reference; or
- (5) If the requested matter is not identifiable by reference to the current index, an adequate description of the record requested; and
- (6) A prominent statement that the request is being made pursuant to chapter 42.17 RCW and these regulations. [Order 103, § 463-06-080, filed 11/4/76. Formerly WAC 463-20-070.]

WAC 463-06-090 STAFF ASSISTANCE.

It is the obligation of the staff to assist requestors in identifying the public record requested. Staff members who are dealing with requests will make a sincere effort to respond to each initial request within two working days of first receipt. [Order 103, § 463-06-090, filed 11/4/76.]

WAC 463-06-100 RECORD OF REQUESTS MAINTAINED.

A record of requests for public records shall be maintained at the council office which shall reflect the date received and whether or not the request was granted, in addition to other information deemed relevant by the council. [Order 103, § 463-06-100, filed 11/4/76.]

WAC 463-06-110 FEES FOR COPYING. No fees are charged for inspection of public records. Requestors will be charged a fee not to exceed 25 cents per page of copy for use of the council's copy equipment in cases where no significant staff time is taken up with the request. In cases where significant staff time is taken up with the request, copying costs shall include the cost of said staff time. Charges for costs of providing records shall be submitted and paid prior to delivery of documents; provided that this advance payment requirement shall not be required of other government agencies or parties or intervenors in proceedings before this council. [Order 103, § 463-06-110, filed 11/4/76. Formerly WAC 463-20-080.]

WAC 463-06-120 DETERMINATION OF EXEMPT STATUS. Determination whether a requested record is exempt under the provisions of RCW 42.17.310 will be made in each instance. [Order 103, § 463-06-120, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-130 DELETION OF IDENTIFYING DETAILS. Identifying details will be deleted by the council in cases where disclosure of such details would be an invasion of privacy under the laws of the state of Washington. Written justification by the council for deletions will always accompany furnished records where deletions have been made. [Order 103, § 463-06-130, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-140 WRITTEN DENIALS. All denials of requests are by written statement specifying the reasons for denial, including, where appropriate, a reference to the specific exemption and a brief explanation as to how the exemption applies to the record withheld. [Order 103, § 463-06-140, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-150 REVIEW OF DENIALS. Any person is entitled to review of a public record request denial if written request for review is promptly made. The request should specifically refer to the written statement constituting the denial. Any such written request is to be promptly referred to the executive secretary of the council who shall either affirm or reverse the denial. The executive secretary may, in his discretion, request a special meeting of the council to review the denial if such action is requested in writing and is otherwise warranted. [Order 103, § 463-06-150, filed 11/4/76. Formerly WAC 463-20-100 (part).]

WAC 463-06-160 TIME FOR COMPLETION OF REVIEW. When a written request for review of a denied public record request is made, a final decision will be made and written response will be given to the requestor within two business days. If the written request for review is submitted at the council office substantially simultaneous with initial denial, then review shall be completed within two business days thereafter. If the initial request and denial are made through the mail, then review shall be completed within two business days

after receipt of the written request for review. The review period cited above may be extended only as necessary and for good cause. Where a request for council review at a regular or special meeting is granted, review shall be complete on council action. [Order 103, § 463-06-160, filed 11/4/76. Formerly WAC 463-20-100 (part).]

WAC 463-06-170 RECORDS INDEX. The council maintains an index of those classes of records described in RCW 42.17.260 which is available for public inspection and copying. [Order 103, § 463-06-170, filed 11/4/76. Formerly WAC 463-20-111.]

## Chapter 463-10 WAC

## DEFINITIONS

WAC

463-10-010 Definitions.

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WAC 463-10-010 DEFINITIONS. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" refers to the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means the person or entity making application for a certification or permit covered by this title.

(3) "Contested case" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act. [Order 104, § 463-10-010, filed 11/4/76.]

POLICY AND INTERPRETATION

463-14-030

Chapter 463-14 WAC

POLICY AND INTERPRETATION

WAC

- 463-14-010 Purpose of this chapter.
  - 463-14-020 Need for energy--Legislative intent binding.
  - 463-14-030 Public hearings policy.
  - 463-14-040 County, city and port district representatives--Segmentation of hearings and issues.
  - 463-14-050 Preemption.
  - 463-14-060 Open meetings with full discussion.
  - 463-14-070 Integration of council activities with federal agency activities.
  - 463-14-080 EFSEC deliberative process.
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WAC 463-14-010 PURPOSE OF THIS CHAPTER. The purpose of this chapter is to publicize significant policy determinations and interpretations by which the council is guided in implementing chapter 80.50 RCW and this title. [Order 104, § 463-14-010, filed 11/4/76.]

WAC 463-14-020 NEED FOR ENERGY--LEGISLATIVE INTENT BINDING. RCW 80.50.010 requires the council "to recognize the pressing need for increased energy facilities." In acting upon any application for certification, the council action will be based on the policies and premises set forth in RCW 80.50.010(1), (2), and (3). [Order 104, § 463-14-020, filed 11/4/76.]

WAC 463-14-030 PUBLIC HEARINGS POLICY. RCW 80.50.090 requires a minimum of two public hearings concerning each site for which certification is sought. The first of these is the local public hearing described in RCW 80.50.090(1) and (2) where the council is obligated to determine whether or not the proposed use of the site is consistent and in compliance with county or regional land use plans or zoning ordinances at the time of application. However, in order to foster general public comment on the proposed site, the council will allow general public comment at such local public hearings, wherever possible. The council must also conduct a second public hearing as a contested case proceeding under chapter 34.04 RCW. Although all persons desirous of participating may not be accorded "party" status in this proceeding, upon compliance with reasonable procedures, any person desiring to be heard shall be allowed to speak in favor of or in opposition to the proposed facility after the close of the evidentiary hearing but prior to preparation of any recommendation to the governor. The council views the provisions of RCW 80.50.090(4) as authorizing it to conduct additional public hearings of either the "local

public hearing" or "contested case proceeding" variety. [Order 104, § 463-14-030, filed 11/4/76.]

WAC 463-14-040 COUNTY, CITY AND PORT DISTRICT REPRESENTATIVES--SEGMENTATION OF HEARINGS AND ISSUES. RCW 80.50.030(4), (5) and (6) necessitate segmentation of hearings and issues in instances where proposed energy facilities would extend beyond the boundaries of a single county, city and/or port district. [Statutory Authority: RCW 80.50.040(1). 78-09-078 (Order 78-5), § 463-14-040, filed 8/28/78; Order 104, § 463-14-040, filed 11/4/76.]

WAC 463-14-050 PREEMPTION. Chapter 80.50 RCW operates as a state preemption of all matters relating to energy facility sites. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document which might otherwise be required. [Order 104, § 463-14-050, filed 11/4/76.]

WAC 463-14-060 OPEN MEETINGS WITH FULL DISCUSSION. All council proceedings are to be conducted in a manner consistent with the spirit of the state Open Meetings Act, and not merely according to the letter of that law. To this same end, full and open discussion between council members themselves, as well as between council members, members of the staff and persons appearing before the council, shall be fostered and encouraged at all regular and special meetings. [Order 104, § 463-14-060, filed 11/4/76.]

WAC 463-14-070 INTEGRATION OF COUNCIL ACTIVITIES WITH FEDERAL AGENCY ACTIVITIES. In consonance with RCW 80.50.040(12), the council hereby adopts a policy of holding joint hearings, whenever practical and desirable, with federal agencies having jurisdiction over matters affecting certification under chapter 80.50 RCW. [Order 104, § 463-14-070, filed 11/4/76.]

WAC 463-14-080 EFSEC DELIBERATIVE PROCESS. RCW 80.50.100 requires the council to report to the governor its recommendation as to the approval or rejection of an application for certification. In order for the council to develop such a recommendation it shall utilize a deliberative process for analysis and evaluation of an application to determine compliance with the intent and purpose of chapter 463-42 WAC. The council will contract for an independent consultant study of the application. An environmental impact statement also will be adopted.

The council during the deliberative process will conduct an extensive public hearing as a contested case for the presentation of evidence on the application. The council will conduct sessions for the taking of public testimony concerning the proposed project. The council will evaluate public comments received as part of the environmental review. The council throughout all of the deliberative process will consider any laws or ordinances, rules or regulations which may be preempted by certification. The council in open session, when

fully satisfied that all issues have been adequately discussed will consider and by majority decision will act on the question of approval or rejection of an application. [Statutory Authority: RCW 80.50.040(1). 81-20-028 (Order 81-4), § 463-14-080, filed 9/30/81.]

## Chapter 463-18 WAC

## PROCEDURE--REGULAR AND SPECIAL COUNCIL MEETINGS

WAC

463-18-010 Purpose of this chapter.  
463-18-020 Governing procedure.  
463-18-030 Quorum.  
463-18-040 Delegation of duties.  
463-18-050 Special meetings.  
463-18-060 Procedure in the absence of the chairman.  
463-18-070 Council duties of acting chairman.  
463-18-080 County, city and port district representatives--  
Participation.

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WAC 463-18-010 PURPOSE OF THIS CHAPTER. This chapter delineates procedures to be followed in the conduct of council business at regular and special meetings. [Order 105, § 463-18-010, filed 11/4/76.]

WAC 463-18-020 GOVERNING PROCEDURE. council business at regular and special meetings is conducted according to Roberts Rules of Order except as suspended by majority vote. To the extent that any contested case proceeding is dealt with at regular or special meeting of the council, it is to be governed by the procedures set forth in chapters 463-30 and 463-38 WAC. [Order 105, § 463-18-020, filed 11/4/76.]

WAC 463-18-030 QUORUM. A majority of the voting council members constitutes a quorum for the conduct of council business. [Order 105, § 463-18-030, filed 11/4/76.]

WAC 463-18-040 DELEGATION OF DUTIES. The chairman or any member of the council may perform such duties as are specifically authorized and directed by the council. [Order 105, § 463-18-040, filed 11/4/76.]

WAC 463-18-050 SPECIAL MEETINGS. A special meeting may be called at any time by the chairman or by a majority of the members of the council by delivering personally or by mail written notice to each member; and to each local newspaper of general circulation and to each local radio or television station which has on file a written request to be notified of such special meetings of or all special meetings. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall



not be taken on any other matter at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the executive secretary a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. [Order 105, § 463-18-050, filed 11/4/76.]

WAC 463-18-060 PROCEDURE IN THE ABSENCE OF THE CHAIRMAN. Pursuant to RCW 80.50.030 the chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-060, filed 8/28/78; Order 105, § 463-18-060, filed 11/4/76.]

WAC 463-18-070 COUNCIL DUTIES OF ACTING CHAIRMAN. Any council member designated by the council chairman as acting chairman shall remain entitled to vote on any proposed council action and shall continue to fulfill his responsibilities to the agency which he represents. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-070, filed 8/28/78; Order 105, § 463-18-070, filed 11/4/76.]

WAC 463-18-080 COUNTY, CITY AND PORT DISTRICT REPRESENTATIVES--PARTICIPATION. To the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port representatives to participate in discussion; however, voting on issues shall be as permitted by WAC 463-06-020. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-080, filed 8/28/78; Order 105, § 463-18-080, filed 11/4/76.]

## Chapter 463-22 WAC

## PROCEDURE AND GUIDELINES--POTENTIAL SITE STUDIES

WAC

463-22-010 Purpose of this chapter.  
463-22-020 Potential site study--Where submitted.  
463-22-030 Potential site study--Fee.  
463-22-040 Potential site study--Contents.  
463-22-050 Retention of consultant.  
463-22-060 Notification of local authorities.  
463-22-070 Independent consultant study--No preliminary approval.  
463-22-080 Procedure where application precedes conclusion of study.  
463-22-090 Additional costs procedure.

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WAC 463-22-010 PURPOSE OF THIS CHAPTER. This chapter sets forth procedure and guidelines for processing potential sites studies pursuant to RCW 80.50.170 and 80.50.175. [Order 106, § 463-22-010, filed 11/4/76.]

WAC 463-22-020 POTENTIAL SITE STUDY--WHERE SUBMITTED. Requests shall be submitted to the energy facility site evaluation council at the council office in writing. [Order 106, § 463-22-020, filed 11/4/76.]

WAC 463-22-030 POTENTIAL SITE STUDY--FEE. A fee of \$10,000 shall accompany the study request and shall be a condition precedent to any action by the council. Payment shall be made by a cashier's check payable to the state treasurer. [Order 106, § 463-22-030, filed 11/4/76.]

WAC 463-22-040 POTENTIAL SITE STUDY--CONTENTS. A request for potential site study is to include a legal description of the proposed site, a general description of the area in which the proposed energy facility is to be located, and a description of the type, size, and significant features of the proposed facility itself. The council may require further information which it deems necessary to complete the request. [Order 106, § 463-22-040, filed 11/4/76.]

WAC 463-22-050 RETENTION OF CONSULTANT. Upon determining that the request is complete, the council will commission an independent consultant of its choice to study and report in writing to the council on the potential site. The report of study will set forth analysis of the potential environmental impact of the proposed energy facility and will identify significant areas of environmental concern. The study

may also encompass whatever other matters the council and potential applicant deem essential for an adequate appraisal of the potential site. [Order 106, § 463-22-050, filed 11/4/76.]

WAC 463-22-060 NOTIFICATION OF LOCAL AUTHORITIES. Upon receipt of a request for study of a potential site, the council will give notice to the legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located. [Statutory Authority: RCW 80.50.040(1). 78-09-080 (Order 78-7), § 463-22-060, filed 8/28/78; Order 106, § 463-22-060, filed 11/4/76.]

WAC 463-22-070 INDEPENDENT CONSULTANT STUDY--NO PRELIMINARY APPROVAL. Nothing stated or recommended by the consultant, either during the study stage or in its report, shall be interpreted as preliminary approval or disapproval of the potential site by the council. [Order 106, § 463-22-070, filed 11/4/76.]

WAC 463-22-080 PROCEDURE WHERE APPLICATION PRECEDES CONCLUSION OF STUDY. In the event an application for certification is made prior to completion of the study, the council may terminate the study prior to completion. [Order 106, § 463-22-080, filed 11/4/76.]

WAC 463-22-090 ADDITIONAL COSTS PROCEDURE. In the event that the council determines that the initial fee of \$10,000 is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof. [Order 106, § 463-22-090, filed 11/4/76.]

## Chapter 463-26 WAC

## PROCEDURE--INITIAL PUBLIC HEARING AND PUBLIC INFORMATION MEETING

WAC

463-26-010	Purpose of this chapter.
463-26-020	Notification of local authorities.
463-26-030	News releases.
463-26-040	Adversary nature of hearings.
463-26-050	Purpose for hearing.
463-26-060	Public announcement--Testimony.
463-26-070	Introduction of counsel for the environment.
463-26-080	Explanation of entire certification process.
463-26-090	Procedure where certificates affirming compliance with zoning ordinances or land use plans are presented.
463-26-100	Procedure where no certificates relating to zoning ordinances or land use plans are presented.
463-26-110	Determination regarding zoning or land use.
463-26-120	Initial determination subject to review.
463-26-130	Public information meeting.

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WAC 463-26-010 PURPOSE OF THIS CHAPTER. This chapter sets forth the procedures to be followed in the conduct of the initial public hearing held pursuant to RCW 80.50.090(1) and the public informational meeting described in WAC 463-26-130. [Order 109, § 463-26-010, filed 11/16/76.]

WAC 463-26-020 NOTIFICATION OF LOCAL AUTHORITIES. Before scheduling the initial public hearing, the council will notify the legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located. [Statutory Authority: RCW 80.50.040(1). 78-09-081 (Order 78-8), § 463-26-020, filed 8/28/78; Order 109, § 463-26-020, filed 11/16/76.]

WAC 463-26-030 NEWS RELEASES. It shall be the responsibility of the executive secretary to furnish appropriate news releases to local media outlets at least 10 days in advance of the initial public hearing and informational meetings conducted pursuant to this chapter. [Order 109, § 463-26-030, filed 11/16/76.]

WAC 463-26-040 ADVERSARY NATURE OF HEARINGS. The initial public hearing conducted pursuant to this chapter shall be conducted as adversary proceeding. [Order 109, § 463-26-040, filed 11/16/76.]

WAC 463-26-050 PURPOSE FOR HEARING. At the commencement of the initial public hearing, the council shall explain that the purpose of the initial hearing under RCW 80.50.090(1) is to determine whether the proposed facility is consistent and in compliance with county or regional land use plans or zoning ordinances and that this matter shall have priority. Pursuant to RCW 80.50.020(15) "land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government under chapters 35.63, 35A.63, or 36.70 RCW. Pursuant to RCW 80.50.020(16) "zoning ordinance" means an ordinance of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state constitution. [Statutory Authority: RCW 80.50.040(1). 78-09-081 (Order 78-8), § 463-26-050, filed 8/28/78; Order 109, § 463-26-050, filed 11/16/76.]

WAC 463-26-060 PUBLIC ANNOUNCEMENT--TESTIMONY. At the outset of the initial public hearing, the council shall publicly announce that opportunity for testimony by anyone shall be allowed relative to the consistency and compliance with county or regional land use plans or zoning ordinances. [Order 109, § 463-26-060, filed 11/16/76.]

WAC 463-26-070 INTRODUCTION OF COUNSEL FOR THE ENVIRONMENT. The council shall invite the counsel for the environment to be present at the initial public hearing. Counsel for the environment shall be introduced and afforded an opportunity to explain his or her statutory duties under chapter 80.50 RCW. [Order 109, § 463-26-070, filed 11/16/76.]

WAC 463-26-080 EXPLANATION OF ENTIRE CERTIFICATION PROCESS. At the commencement of the hearing, the council shall generally explain the entire hearing process as set forth in RCW 80.50.090 and these regulations. [Order 109, § 463-26-080, filed 11/16/76.]

WAC 463-26-090 PROCEDURE WHERE CERTIFICATES AFFIRMING COMPLIANCE WITH ZONING ORDINANCES OR LAND USE PLANS ARE PRESENTED. This rule contemplates that applicants will enter as exhibits, at the hearing, certificates from local authorities attesting to the fact that the proposal is consistent and in compliance with county or regional land use plans or zoning ordinances. In cases where this is done, such certificates will be regarded as prima facie proof of consistency and compliance with such zoning ordinances or land use plans absent contrary demonstration by anyone present at the hearing. [Order 109, § 463-26-090, filed 11/16/76.]

WAC 463-26-100 PROCEDURE WHERE NO CERTIFICATES RELATING TO ZONING ORDINANCES OR LAND USE PLANS ARE PRESENTED. In cases where no certificates relating to zoning or land use are presented to the council, then the applicant will be required to demonstrate compliance with local zoning or land use plans as part of its presentation. Local

authorities shall then be requested to testify on the question of consistency and compliance with county or regional land use plans or zoning ordinances. [Order 109, § 463-26-100, filed 11/16/76.]

WAC 463-26-110 DETERMINATION REGARDING ZONING OR LAND USE. Prior to the conclusion of the hearing, the council shall make a determination as to whether the proposed site is consistent and in compliance with land use plans or zoning ordinances pursuant to RCW 80.50.090(2). [Order 109, § 463-26-110, filed 11/16/76.]

WAC 463-26-120 INITIAL DETERMINATION SUBJECT TO REVIEW. At the time that the determination on zoning or land use planning is made, the council shall explain that this determination may be reopened later during the course of a contested case hearing by the parties to that proceeding when good cause is shown. [Order 109, § 463-26-120, filed 11/16/76.]

WAC 463-26-130 PUBLIC INFORMATION MEETING. The council shall conduct at least one public information meeting concerning each application. At this meeting, the council will present the general procedure to be followed in processing the application including a tentative sequence of council actions, the rights and methods of participation by local government in the process, and the means and opportunities for the general public to participate.

The applicant shall make a presentation of the proposed project utilizing appropriate exhibits. The presentation shall include: A general description of the project and the proposed site; reasons why the proposed site or location was selected; and a summary of anticipated environmental, social, and economic impacts.

The general public will be afforded an opportunity to present written or oral comments relating to the proposed project. The comments will not be part of the contested case record.

The informational meeting will be held in the general proximity of the proposed project. Whenever feasible it will be held in conjunction with the land use or zoning hearing as a separate and independent order of business. [Order 109, § 463-26-130, filed 11/16/76.]

## PROCEDURE--STATE PREEMPTION

463-28-030

## Chapter 463-28 WAC

## PROCEDURE--STATE PREEMPTION

WAC

463-28-010 Purpose and scope.  
 463-28-020 Authority of council--Preemption by state.  
 463-28-030 Determination of noncompliance--Procedures.  
 463-28-040 Inability to resolve noncompliance.  
 463-28-050 Failure to request preemption.  
 463-28-060 Request for preemption--Contested case.  
 463-28-070 Certification--Conditions--State/local interests.  
 463-28-080 Preemption--Failure to justify.  
 463-28-090 Governing rules.

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WAC 463-28-010 PURPOSE AND SCOPE. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt local land use plans or zoning ordinances for a site or portions of a site for an energy facility. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

WAC 463-28-020 AUTHORITY OF COUNCIL--PREEMPTION BY STATE. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of energy facilities. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-020, filed 6/23/78.]

WAC 463-28-030 DETERMINATION OF NONCOMPLIANCE--PROCEDURES. If the council determines during the hearing required by RCW 80.50.090 that the site of a proposed energy facility or any portion of a site is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, the following procedures shall be observed:

(1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.

(2) All council proceedings on the application for certification may be stayed at the request of the applicant during the period when the plea for resolution of noncompliance is being processed by local authorities.

(3) The applicant shall submit regular reports to the council regarding the status of negotiations with local authorities on noncompliance issues. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.]

WAC 463-28-040 INABILITY TO RESOLVE NONCOMPLIANCE. Should the applicant report that efforts to resolve noncompliance issues with local authorities have not been successful, then, if applicant elects to continue processing the application, the applicant shall file a written request for state preemption as authorized in WAC 463-28-020 within ninety days after completion of the public hearing required by RCW 80.50.090, or later if mutually agreed by the applicant and the council. The request shall address the following:

(1) That the applicant has demonstrated a good faith effort to resolve the noncompliance issues.

(2) That the applicant and the local authorities are unable to reach an agreement which will resolve the issues.

(3) That alternate locations which are within the same county and city have been reviewed and have been found unacceptable.

(4) Interests of the state as delineated in RCW 80.50.010. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.]

WAC 463-28-050 FAILURE TO REQUEST PREEMPTION. Where noncompliance is at issue, failure of the applicant to file the written request as required in WAC 463-28-040 within the time permitted shall be sufficient grounds for the council to recommend to the governor denial of certification. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.]

WAC 463-28-060 REQUEST FOR PREEMPTION--CONTESTED CASE. Should applicant elect to continue processing the application and file a request with the council for state preemption, the council will schedule a contested case hearing on the application as specified under chapter 463-30 WAC. The council shall determine during the contested case proceeding whether to recommend to the governor that the state should preempt the local land use plans or zoning ordinances for a site or portions of a site for the energy facility proposed by the applicant. The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100. [Statutory Authority: RCW 80.50.040(1). 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]

WAC 463-28-070 CERTIFICATION--CONDITIONS--STATE/LOCAL INTERESTS. If the council approves the request for preemption it shall include conditions in the draft certification agreement which give due consideration to state or local governmental or community interests affected by the construction or operation of the energy facility and the purposes of laws or ordinances, or rules or regulations promulgated



PROCEDURE--STATE PREEMPTION

463-28-090

thereunder that are preempted or superseded pursuant to RCW 80.50.110(2). [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

WAC 463-28-080 PREEMPTION--FAILURE TO JUSTIFY. During the contested case hearing, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]

WAC 463-28-090 GOVERNING RULES. Applications for certification of the energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable rules in effect on the day immediately preceding July 15, 1977. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-090, filed 6/23/78.]

Chapter 463-30 WAC

PROCEDURE--CONTESTED CASE HEARINGS

WAC

463-30-010	Purpose and scope of this chapter.
463-30-020	Council conducted hearings and administrative law judges.
463-30-030	Use of the term "council."
463-30-050	Status of agencies and agency members in contested cases.
463-30-060	Definitions--Persons and parties.
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463-30-090	Publicity--Commencement of contested case proceedings.
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463-30-110	Notice and opportunity to be heard--Time.
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463-30-150	Service--Method of service.
463-30-160	Service--When service complete.
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463-30-180	Proof of service--Method.
463-30-190	Limited discovery practice.
463-30-200	Subpoenas--Practice.
463-30-210	Depositions and interrogatories--Practice.
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463-30-230	Official notice--Matters of law.
463-30-240	Official notice--Material facts.
463-30-250	Stipulations and admissions of record.
463-30-260	Definition of issues before hearing.
463-30-270	Prehearing conferences prior to hearing.
463-30-280	Attendance by council members at prehearing conferences.
463-30-290	Prehearing conference record of action.
463-30-295	Orders regarding procedure, scheduling and substantive issues.
463-30-300	Hearing schedule guidelines.
463-30-310	Rules of evidence.
463-30-320	Proposed council order or recommendation.
463-30-330	Proposed order--Exceptions.
463-30-340	Proposed order--Contents of exceptions.
463-30-350	Replies to exceptions.
463-30-360	Replies to exceptions--Contents.
463-30-370	Exceptions and replies to exceptions--Briefs and arguments.
463-30-380	Adoption of proposed order.
463-30-390	Recommendation--Transmittal to governor.
463-30-400	Intervention.
463-30-410	Participation by intervenor.
463-30-420	Participation by county, city and port district representatives.

Ch. 463-30 Digest PROCEDURE--CONTESTED CASE HEARINGS

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-30-040 Hearing examiner designation. [Order 109, § 463-30-040, filed 11/16/76.] Repealed by 82-10-027 (Order 82-2), filed 4/30/82. Statutory Authority: RCW 80.50.040(1).

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WAC 463-30-010 PURPOSE AND SCOPE OF THIS CHAPTER. The purpose of this chapter is to set forth procedures by which contested case hearings are to be conducted before the council. Except as indicated herein, the uniform procedural rules set forth in chapter 1-08 WAC shall not apply to contested case hearings before the council. [Order 109, § 463-30-010, filed 11/16/76.]

WAC 463-30-020 COUNCIL CONDUCTED HEARINGS AND ADMINISTRATIVE LAW JUDGES. The council may conduct contested case hearings pursuant to chapter 80.50 RCW or it may utilize an administrative law judge provided by the office of administrative hearings pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, the hearing shall be governed by the regulations and procedures contained in this chapter as applicable. [Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-020, filed 4/30/82; Order 109, § 463-30-020, filed 11/16/76.]

WAC 463-30-030 USE OF THE TERM "COUNCIL." The term "council," for purpose of this chapter, shall refer to the members of the energy facility site evaluation council as constituted by law, or a panel of such members. [Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-030, filed 4/30/82; Order 109, § 463-30-030, filed 11/16/76.]

WAC 463-30-050 STATUS OF AGENCIES AND AGENCY MEMBERS IN CONTESTED CASES. All state agencies having members on the council are deemed to be parties to any contested case before the council. For purpose of any contested case hearing, however, the agency representative on the council shall be deemed to be a member of the council and not a member of the agency. It shall be proper for the agency representative on the council to maintain liaison with the represented agency, excepting those agency employees actively involved in the contested case proceedings. [Order 109, § 463-30-050, filed 11/16/76.]

WAC 463-30-060 DEFINITIONS--PERSONS AND PARTIES. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(1).

(2) Each "member agency" as defined in RCW 80.50.020(16).

(3) The "counsel for the environment" as defined in RCW 80.50.020(13).

(4) Each person admitted to a contested case proceeding as an "intervenor," provided that the council order granting intervention specifically provides that such person shall be a party to the proceeding, and provided further that such person shall be a party only for such purposes and subject to such limitations and conditions as may be specified in the council order granting intervention. [Order 109, § 463-30-060, filed 11/16/76.]

WAC 463-30-070 PLEADINGS--LEGIBILITY. All pleadings shall be typewritten, mimeographed, or printed except for good cause shown. [Order 109, § 463-30-070, filed 11/16/76.]

WAC 463-30-080 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS. Contested case proceedings pursuant to RCW 80.50.090(3) shall be commenced upon issuance of a formal notice of hearing by the council. [Statutory Authority: RCW 80.50.040(1). 81-07-019 (Order 81-1), § 463-30-080, filed 3/11/81; Order 109, § 463-30-080, filed 11/16/76.]

WAC 463-30-090 PUBLICITY--COMMENCEMENT OF CONTESTED CASE PROCEEDINGS. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance written notice within a reasonable time shall be required of persons who desire to argue orally. [Order 109, § 463-30-090, filed 11/16/76.]

WAC 463-30-100 APPEARANCE AND PRACTICE BEFORE THE COUNCIL. In determining who shall be entitled to appear and practice before the council, the council will be guided by the provisions of WAC 1-08-040 through 1-08-060. [Order 109, § 463-30-100, filed 11/16/76.]

WAC 463-30-110 NOTICE AND OPPORTUNITY TO BE HEARD--TIME. In all cases where a hearing is requested by a party or directed by the council, parties shall be served with notice within the time required by any governing statute. In the absence of a statutory requirement, then notice shall be given not less than 20 days prior to the date set for hearing. The notice shall state the time, place, and issues involved. These notice provisions may be waived by the council for good cause shown after assurance that waiver would not substantially affect the rights of any other party. [Order 109, § 463-30-110, filed 11/16/76.]

WAC 463-30-120 SERVICE--BY WHOM SERVED. The council shall cause to be served all orders, notices, and other papers issued by it,

together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it. [Order 109, § 463-30-120, filed 11/16/76.]

WAC 463-30-130 SERVICE--UPON WHOM SERVED. All papers served in connection with an application shall be served upon all members of the council and upon parties, their counsel of record, or upon agents designated to receive service, subject to the exceptions set forth in the following section. [Order 109, § 463-30-130, filed 11/16/76.]

WAC 463-30-140 WAIVER OF SERVICE--FILING. Any party may file a waiver of service with the council in any contested case proceeding. In the event of such filing, there shall be no further requirement to effect service upon such party. It is the intent and purpose of this section to enable parties to effect a sizable reduction in required service upon parties who are and wish to remain inactive in the contested case proceeding. [Order 109, § 463-30-140, filed 11/16/76.]

WAC 463-30-150 SERVICE--METHOD OF SERVICE. Service of papers may be made personally or by first-class, registered or certified mail, or by telegraph. [Order 109, § 463-30-150, filed 11/16/76.]

WAC 463-30-160 SERVICE--WHEN SERVICE COMPLETE. Service by mail shall be deemed complete upon deposit in the U.S. mail, properly stamped and addressed. Service by telegraph shall be deemed complete when deposited with a telegraph company, properly addressed with charges prepaid. [Order 109, § 463-30-160, filed 11/16/76.]

WAC 463-30-170 PROOF OF SERVICE--FILING WITH COUNCIL. Papers required to [be] filed with the council shall be deemed filed upon actual receipt by the council at its office accompanied by proof of service upon parties required to be served. [Order 109, § 463-30-170, filed 11/16/76.]

WAC 463-30-180 PROOF OF SERVICE--METHOD. Proof of service should be made in the same manner as in the superior court of the state of Washington. [Order 109, § 463-30-180, filed 11/16/76.]

WAC 463-30-190 LIMITED DISCOVERY PRACTICE. Formal discovery devices in contested case proceedings shall consist of subpoenas, depositions, interrogatories, and requests for production. [Order 109, § 463-30-190, filed 11/16/76.]

WAC 463-30-200 SUBPOENAS--PRACTICE. The council practice regarding subpoenas shall substantially conform to the provisions of WAC 1-08-150 through 1-08-220. [Order 109, § 463-30-200, filed 11/16/76.]

WAC 463-30-210 DEPOSITIONS AND INTERROGATORIES--PRACTICE. Council practice regarding depositions and interrogatories shall be governed by the provisions of WAC 1-08-230 through 1-08-360. [Order 109, § 463-30-210, filed 11/16/76.]

WAC 463-30-220 REQUEST FOR PRODUCTION. Any party may request of any other party the production of original records, documents or other written material, or copies thereof, wherever the request materials are not reasonably available to the requesting party through other sources. Where the cost to produce becomes significant the council may, upon motion, determine which party shall bear the burden of cost. The scope of requests for production shall be limited to the matters specified in WAC 1-08-240 and protection shall be afforded comparable to that available under WAC 1-08-270. [Order 109, § 463-30-220, filed 11/16/76.]

WAC 463-30-230 OFFICIAL NOTICE--MATTERS OF LAW. Upon written or oral motion, the council may officially notice any matter of law. The council will be guided by WAC 1-08-370. [Order 109, § 463-30-230, filed 11/16/76.]

WAC 463-30-240 OFFICIAL NOTICE--MATERIAL FACTS. Upon written or oral motion, the council may officially notice relevant facts in the absence of controverting evidence. In implementing this rule, the council will be guided by WAC 1-08-380. [Order 109, § 463-30-240, filed 11/16/76.]

WAC 463-30-250 STIPULATIONS AND ADMISSIONS OF RECORD. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party. Any party bound by a stipulation or admission of record may withdraw the same by showing that it was made inadvertently or under a bona fide mistake of fact and that withdrawal will not unjustly prejudice the rights of other parties to the proceeding. [Order 109, § 463-30-250, filed 11/16/76.]

WAC 463-30-260 DEFINITION OF ISSUES BEFORE HEARING. In all contested case proceedings the issues to be heard shall be made as precise as possible so that the council may expeditiously conduct the hearing on relevant material and contested matters. It is the intent of this section and a purpose of prehearing conferences to foster agreement by the parties regarding issues to be heard. The council may define specific issues to be heard based upon its own expertise and issues raised by parties in a proposed prehearing order. The proposed prehearing order shall be noted for hearing at which time parties objecting to the limitations of issues shall set forth additional issues and the facts upon which they are based. After a hearing on the prehearing order the council shall issue an order defining the

issues for hearing and shall limit the scope of the hearing to those issues. Such order may be modified only by the council on its own initiative or upon motion by a party with good cause shown. [Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-260, filed 12/22/82; Order 109, § 463-30-260, filed 11/16/76.]

WAC 463-30-270 PREHEARING CONFERENCES PRIOR TO HEARING. On its own motion or at the request of a party the council may direct the parties to appear at a specified time and place for prehearing conferences regarding any scheduled hearing. Primary emphasis shall be on the simplification of issues prior to hearing. In the discretion of the council, the following matters may also be taken up:

- (1) The necessity of amendments to the pleadings;
- (2) The possibility of obtaining stipulations, admissions of facts, or documents;
- (3) The limitation of the number of expert witnesses;
- (4) Other matters which may aid in disposition of the proceeding, including scheduling of the hearing and determination of sequence of the subject matter. [Order 109, § 463-30-270, filed 11/16/76.]

WAC 463-30-280 ATTENDANCE BY COUNCIL MEMBERS AT PREHEARING CONFERENCES. Individual council members may be present and participate in prehearing conferences. [Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-280, filed 12/22/82; Order 109, § 463-30-280, filed 11/16/76.]

WAC 463-30-290 PREHEARING CONFERENCE RECORD OF ACTION. The council shall make an order reciting actions taken during any informal consultation. As appropriate, the order shall also recite amendments to pleadings or stipulations. The order shall control the subsequent course of the proceedings unless modified by subsequent council action. [Order 109, § 463-30-290, filed 11/16/76.]

WAC 463-30-295 ORDERS REGARDING PROCEDURE, SCHEDULING AND SUBSTANTIVE ISSUES. The council may enter prehearing orders regarding procedure, scheduling and substantive issues which shall control the subsequent course of the proceedings unless modified by subsequent council action on its own motion or motion by a party upon good cause shown. [Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-295, filed 12/22/82.]

WAC 463-30-300 HEARING SCHEDULE GUIDELINES. In any contested case proceeding on certification the council shall, after consultation with the parties schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

- (1) The description of the particular energy facility and the proposed site.
- (2) Consistency of the proposal with zoning and land use regulations.

- (3) Physical site suitability and related safety considerations.
- (4) NPDES permit or permits.
- (5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
- (6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.
- (7) Peripheral area impacts (all categories).
- (8) Adverse impacts minimization and consideration of conditions of certification.

The council may alter the sequence in which the foregoing matters are to be considered in any given case. At the commencement of the contested case hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. It is the intent and purpose of this section to accomplish two equally important objectives. First, interested persons may avail themselves of the opportunity to attend and hear only those segments of the whole hearing process which are of keen personal interest. Second, applicants and other parties may determine the specific nature of council concern regarding critical issues without the necessity of proceeding through the entire hearing process. [Order 109, § 463-30-300, filed 11/16/76.]

WAC 463-30-310 RULES OF EVIDENCE. In ruling upon evidentiary matters, the council shall be guided by the provisions of WAC 1-08-450 through 1-08-530. [Order 109, § 463-30-310, filed 11/16/76.]

WAC 463-30-320 PROPOSED COUNCIL ORDER OR RECOMMENDATION. In any case where a contested case proceeding is conducted by an administrative law judge or a panel of council members less than a majority, there shall be prepared a proposed council order, supported by written findings of fact and conclusions of law, copies of which shall be served upon all parties. The proposed order, findings and conclusions shall be transmitted to the council. In a site certification proceeding, the proposed council order shall be designated a proposed council recommendation and shall be styled accordingly. [Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-320, filed 4/30/82; Order 109, § 463-30-320, filed 11/16/76.]

WAC 463-30-330 PROPOSED ORDER--EXCEPTIONS. Any party of record may file exceptions to a proposed council order. Exceptions must be filed with the council and one copy must be served upon all parties of record within 10 days of the date of service of the proposed council order. [Order 109, § 463-30-330, filed 11/16/76.]

WAC 463-30-340 PROPOSED ORDER--CONTENTS OF EXCEPTIONS. Exceptions to proposed council orders shall be specific and shall be stated and numbered separately. Exceptions to findings of fact must be supported by reference to the portion of the record or the evidence relied upon and shall be accompanied by a recommended findings of fact. Exceptions to conclusions of law must be supported by specific



reference to the appropriate legal authority and accompanied by a suggested corrected conclusion of law. When exceptions are taken to statements in the proposed council order itself, there shall be included a full written justification for such exceptions. [Order 109, § 463-30-340, filed 11/16/76.]

WAC 463-30-350 REPLIES TO EXCEPTIONS. Any party of record may file replies to exceptions with the council. One copy shall be served on all parties within 10 days of the date of service of the exception. [Order 109, § 463-30-350, filed 11/16/76.]

WAC 463-30-360 REPLIES TO EXCEPTIONS--CONTENTS. Replies to exceptions shall be specific, shall be stated and numbered separately and shall be supported by reference to that page or part of the record or evidence or legal authority relied upon to support the reply. [Order 109, § 463-30-360, filed 11/16/76.]

WAC 463-30-370 EXCEPTIONS AND REPLIES TO EXCEPTIONS--BRIEFS AND ARGUMENTS. Briefs or written arguments shall accompany exceptions and replies to exceptions. The council may, by order, direct oral argument on exceptions at a time and place to be designated by it. [Order 109, § 463-30-370, filed 11/16/76.]

WAC 463-30-380 ADOPTION OF PROPOSED ORDER. After fully considering all objections to the proposed council order, the council may approve it in its proposed form or modify it as appropriate. [Order 109, § 463-30-380, filed 11/16/76.]

WAC 463-30-390 RECOMMENDATION--TRANSMITTAL TO GOVERNOR. Upon the adoption by the council of its recommendations as to the approval or disapproval of an application for certification, the council shall forward such recommendations to the governor. [Order 109, § 463-30-390, filed 11/16/76.]

WAC 463-30-400 INTERVENTION. On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When

such a date has been established, the council will assure that adequate public notice is given. [Statutory Authority: RCW 80.50.040(1). 81-20-028 (Order 81-4), § 463-30-400, filed 9/30/81; Order 109, § 463-30-400, filed 11/16/76.]

WAC 463-30-410 PARTICIPATION BY INTERVENOR. In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allowing the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate. It is the intent and purpose of this section to prevent unwarranted proliferation of issues leading, in turn, to delay and prejudice to existing parties. [Order 109, § 463-30-410, filed 11/16/76.]

WAC 463-30-420 PARTICIPATION BY COUNTY, CITY AND PORT DISTRICT REPRESENTATIVES. In any contested case to the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port district representatives to participate in discussion and county and city representatives shall vote only with regard to matters specifically affecting the concerned county or city. Port districts are nonvoting members of the council. [Statutory Authority: RCW 80.50.040(1). 78-09-082 (Order 78-9), § 463-30-420, filed 8/28/78; Order 109, § 463-30-420, filed 11/16/76.]

## Chapter 463-34 WAC

## PROCEDURE--RULE MAKING AND DECLARATORY RULINGS

WAC

463-34-010 Purpose and scope of this chapter.  
463-34-020 Scope of petitions for rule making.  
463-34-030 Petitions for rule making--Contents.  
463-34-040 Rule-making petitions--Request for specific time.  
463-34-050 Consideration of petition--Further hearing.  
463-34-060 Disposition time.  
463-34-070 Petitions for declaratory rulings--Possible disposition.  
463-34-080 Oral hearing.  
463-34-090 Declaratory ruling--Contents.  
463-34-100 Form of petitions.

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WAC 463-34-010 PURPOSE AND SCOPE OF THIS CHAPTER. This chapter sets forth procedures to be followed in rule-making proceedings before the council and further specifies the manner in which declaratory rulings may be sought pursuant to chapter 34.04 RCW. [Order 107, § 463-34-010, filed 11/4/76.]

WAC 463-34-020 SCOPE OF PETITIONS FOR RULE MAKING. Any interested person may petition the council for the promulgation, amendment, or repeal of any rule. [Order 107, § 463-34-020, filed 11/4/76.]

WAC 463-34-030 PETITIONS FOR RULE MAKING--CONTENTS. Where the petition requests amendment to or promulgation of a rule, the amended or proposed rule must be set out in full. The petition must also include the reasons for the request. Where the petition requests repeal of an existing and identified rule, the reasons for the proposed repeal must be set out in the petition. [Order 107, § 463-34-030, filed 11/4/76.]

WAC 463-34-040 RULE-MAKING PETITIONS--REQUEST FOR SPECIFIC TIME. Rule-making petitions are to [be] filed at the council office in time to allow review prior to council action. The person submitting the petition should also submit a written request for council consideration of the petition at a specified regular or special meeting. [Order 107, § 463-34-040, filed 11/4/76.]

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WAC 463-34-050 CONSIDERATION OF PETITION--FURTHER HEARING. All petitions shall be considered by the council, which may order a hearing for the further consideration and discussion of the requested promulgation, amendment, or repeal of the rule. [Order 107, § 463-34-050, filed 11/4/76.]

WAC 463-34-060 DISPOSITION TIME. The council shall notify the petitioning party within 30 days of the disposition, if any, of the petition. [Order 107, § 463-34-060, filed 11/4/76.]

WAC 463-34-070 PETITIONS FOR DECLARATORY RULINGS--POSSIBLE DISPOSITION. Any interested person may petition the council for a declaratory ruling. The council shall consider the petition and, within a reasonable time:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for oral hearing or submission of written evidence upon the matter. [Order 107, § 463-34-070, filed 11/4/76.]

WAC 463-34-080 ORAL HEARING. If an oral hearing is conducted on a petition for declaratory ruling, the council shall, within a reasonable time thereafter:

- (1) Issue a binding declaratory ruling; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued. [Order 107, § 463-34-080, filed 11/4/76.]

WAC 463-34-090 DECLARATORY RULING--CONTENTS. Any person petitioning for declaratory ruling shall state all legal rules or statutes which may bear upon the petition and shall also state all facts relied upon. If a binding declaratory ruling is sought, then the petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior court of this state. [Order 107, § 463-34-090, filed 11/4/76.]

WAC 463-34-100 FORM OF PETITIONS. Petitions contemplated by the provisions of this chapter may be in any legible form so long as they are adequately identified as such and contain the requisite contents. The name, address, and telephone number of the petitioning person are to be set forth in the petition. [Order 107, § 463-34-100, filed 11/4/76.]

Chapter 463-38 WAC

REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

WAC

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463-38-065	Monitoring and enforcement.
463-38-080	Transmittal of data to regional administrator.
463-38-090	Conflict of interest.

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WAC 463-38-010 DEFINITIONS. As used in this chapter, the following terms shall have the meanings indicated below:

(1) The term "act" means the Federal Water Pollution Control Act as amended, Public Law 92-500 (33 U.S.C. 1314, et seq.).

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

(3) The term "applicable effluent standards and limitations" means all state of Washington and federal effluent standards and limitations to which a discharge is subject under the act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(4) The term "applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under the act and which have been:

(a) Approved or permitted to remain in effect by the administrator pursuant to section 303(a) or section 303(c) of the act, or,

(b) Promulgated by the administrator pursuant to section 303(b) or section 303(c) of the act.

(5) The term "applicant" shall mean any person who has applied for an NPDES permit pursuant to the act and section 402(b) thereof.

(6) The term "certification agreement" means that binding agreement executed between an applicant under chapter 80.50 RCW and the state which embodies compliance with the siting guidelines adopted in RCW 80.50.050, and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(7) The term "chairman" means the chairman of the energy facility site evaluation council.

(8) The term "council" means the Washington state energy facility site evaluation council.

(9) The term "discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant to navigable waters from any point source,

(b) Any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(10) The term "DOE" means the Washington state department of ecology.

(11) The term "effluent limitations" means any restriction established pursuant to the act by the state of Washington or the administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone or the ocean, including schedules of compliance.

(12) The term "EPA" means the United States Environmental Protection Agency.

(13) The term "executive secretary" means the individual holding the position of executive secretary of the council.

(14) The term "governor" shall mean the governor of the state of Washington.

(15) The term "minor discharge" means any discharge which:

(a) Has a total volume of less than 50,000 gallons on every day of the year,

(b) Does not affect the waters of any state other than Washington, and,

(c) Is not identified by the council, the regional administrator or by the administrator in regulations issued pursuant to section 307(a) of the act as a discharge which is not a minor discharge.

If there is more than one discharge from a facility and the sum of the volumes of all discharges exceeds 50,000 gallons on any one day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

(16) The term "national data bank" means a facility or system established or to be established by the administrator for the purpose of assembling, organizing and analyzing data pertaining to water quality and the discharge of pollutants.

(17) The term "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system

which has been approved by the administrator in whole pursuant to section 402 of the act.

(18) The term "new source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the act, which will be applicable to such source if such standard is thereafter promulgated in accordance with section 306 of the act.

(19) The term "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) as adopted by the council for use in the Washington state NPDES program.

(20) The term "NPDES form" means any issued NPDES permit, refuse action application, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(21) The term "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

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

(23) The term "NPDES reporting form" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(24) The term "permittee" means any person who has been issued a complete Refuse Act or an NPDES permit.

(25) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

(26) The term "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899.

(27) The term "Refuse Act application" means the application for a permit under the Refuse Act.

(28) The term "Refuse Act permit" means any permit issued under the Refuse Act.

(29) The term "regional administrator" means the EPA's region X administrator.

(30) The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, prohibition or standard.

(31) The term "sewage" means human body waste and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(32) The term "sewage sludge" means the solids and precipitates separated from waste water by unit processes.

(33) The term "energy facility" means any energy facility, as defined in RCW 80.50.020(11).

(34) "Trade secrets" as used in these regulations means information having an alleged commercial importance which, under relevant state law, is protected by reason of a confidential relationship,

exclusive, however, of any data or information required by Federal law or regulation to be made publicly available.

(35) The definitions of the following terms contained in section 502 of the act shall be applicable to such terms as used in these regulations unless the context otherwise requires:

(a) The term "interstate agency" means an agency of two or more states established by or pursuant to an agreement or compact approved by the congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator.

(b) The term "state" means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of this act.

(d) The term "person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(e) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(i) Sewage from vessels within the meaning of section 312 of this act; or,

(ii) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(f) The term "navigable waters" means the waters of the United States, including the territorial seas.

(g) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(h) The term "contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(i) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(j) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after the discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the administrator, cause death, disease, behavioral



abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(k) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(l) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants

(i) By techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and

(ii) At appropriate frequencies and locations.

(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants. [Order 114, § 463-38-010, filed 2/4/77. Formerly WAC 463-16-020.]

WAC 463-38-020 SCOPE AND PURPOSE. (1) This chapter established regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 816, 33 U.S.C. 1314 et seq.

(2) The purpose of these regulations is to establish an orderly procedure which not only complies with the requirements of EPA and the administrator for portions of the Washington state NPDES program, but also is to integrate the NPDES permit program into the existing council procedures for processing applications pursuant to chapter 80.50 RCW and the rules and regulations made pursuant thereto.

(3) These regulations apply to:

(a) Any energy facility for which a certification agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application may be made to or is pending before the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 155, Laws of 1973, and the act. [Order 114, § 463-38-020, filed 2/4/77. Formerly WAC 463-16-020.]

WAC 463-38-030 NPDES APPLICATION AND TENTATIVE DETERMINATION. [Order 114, § 463-38-030, filed 2/4/77. Formerly WAC 463-16-030.]

WAC 463-38-031 APPLICATION FILING WITH THE COUNCIL. (1) For each energy facility described in WAC 463-38-020(3), there shall be filed with the council:

(a) A complete Refuse Act application as previously submitted to the U.S. Corps of Engineers unless such application has been transmitted to the council by the regional administrator; or,

(b) A complete NPDES application no later than 60 days following receipt by the person identified in WAC 463-38-032 for such energy

facility of notice from the council that the previously filed Refuse Act application is so deficient as not to have satisfied the filing requirements; or

(c) A complete NPDES application at the time of submitting an application to the council pursuant to RCW 80.50.070. Any subsequent determination of such an NPDES application's adequacy shall not affect the council's finding that a complete application pursuant to RCW 80.50.070 has been received.

(d) A complete NPDES application for any energy facility described in WAC 463-38-020(3) and not covered in paragraph 1(a), (b) or (c) above. Such NPDES application shall be filed either:

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

(ii) In sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the act, or with any applicable zoning or siting requirements established pursuant to section 208(b)2(c) of the act and other applicable water quality standards and applicable effluent standards and limitations.

(2) Each person requesting an NPDES permit from the council shall be required to submit additional information as determined necessary by the council after a Refuse Act or an NPDES application has been filed.

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

(4) The council shall not consider any NPDES application for a energy facility included within WAC 463-38-020 (3)(b) until and unless an application for certification is filed with the council pursuant to RCW 80.50.070.

(5) Each NPDES application will be submitted on such form as specified by the council. [Order 114, § 463-38-031, filed 2/4/77. Formerly WAC 463-16-031.]

WAC 463-38-032 SIGNATURE FORM. Any NPDES form submitted to the council shall be signed as follows:

(1) In the case of private corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal corporation, state or other public organization, by either a principal executive officer, the ranking elected official or a duly authorized employee. [Order 114, § 463-38-032, filed 2/4/77. Formerly WAC 463-16-032.]

WAC 463-38-033 TENTATIVE DETERMINATION ON NPDES PERMITS. (1) The council shall formulate and prepare tentative determinations with respect to an NPDES application in advance of public notice as to the

proposed issuance or denial of the NPDES permit. Such tentative determination shall be made no later than six months after receipt of a complete NPDES application, or such later time as determined by the council. Such tentative determination shall include at least the following:

(a) A proposed determination to issue or deny an NPDES permit for the discharge described in the Refuse Act or NPDES application; and

(b) If the proposed determination in paragraph 1 of this section is to issue the NPDES permit, the following additional tentative determinations shall be made by the council:

(i) Proposed effluent limitations, identified pursuant to WAC 463-38-053 (1), (2);

(ii) A proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations identified pursuant to WAC 463-38-054; and

(iii) A brief description of any other proposed special conditions (other than those required pursuant to WAC 463-38-055) which will have a significant impact upon the discharges described in the NPDES application.

(2) The council shall organize the tentative determination prepared pursuant to paragraph 1 of this section into a draft NPDES permit. [Order 114, § 463-38-033, filed 2/4/77. Formerly WAC 463-16-033.]

WAC 463-38-034 FACT SHEETS. (1) For every discharge in excess of 500,000 gallons on any one day of the year, the council shall prepare and include in any public notice given pursuant to WAC 463-38-041 a fact sheet with respect to the Refuse Act or NPDES application described in the public notice. Such fact sheet shall include at least the following:

(a) A sketch or detailed description of the location of the discharge described in the NPDES application;

(b) A quantitative description of the discharge described in the NPDES application which includes at least the following:

(i) The rate and frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(ii) For thermal discharges subject to limitation under the act, the estimated maximum, minimum and average summer and winter temperatures in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306 or 307 of the act and regulations published thereunder;

(c) The tentative determinations required under WAC 463-38-033.

(d) A brief citation, including a brief identification of the uses for which the waters receiving said discharges have been classified by DOE, of the water quality standards and of the effluent standards and limitations applied to the proposed discharge; and

(e) A fuller description than that given in the public notice of the procedures to be used by the council in formulating final determinations for an NPDES permit, which shall include, but not be limited to:

(i) Thirty day comment period required by WAC 463-38-041(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate, either directly or through counsel for the environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental impact and any public hearings which may be held by the council prior to the final determination on the Refuse Act or NPDES application.

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to each person or group on such mailing list. [Order 114, § 463-38-034, filed 2/4/77. Formerly WAC 463-16-034.]

WAC 463-38-040 NOTICE, HEARINGS AND INFORMATION ACCESSIBILITY.  
[Order 114, § 463-38-040, filed 2/4/77. Formerly WAC 463-16-040.]

WAC 463-38-041 NOTICE, PROVISIONS. (1) Notices shall be circulated within the geographical areas of the proposed discharge, and shall be published in a local or daily newspaper of general circulation; such circulation may include any or all of the following:

(a) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting at or near the entrance of the applicant's principal place of business and in nearby places.

(2) Any persons may, within thirty days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the 30 day comment period shall be retained by the council and considered in their final determination with respect to the NPDES applications. The period for comments may be extended at the discretion of the council.

(3) The contents of public notice of application for NPDES permits shall include at least the following:

(a) Name, address and telephone number of agency issuing the public notice;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;

(f) A brief description of the procedures for the formulation of final determinations, including the 30 day comment period required by paragraph 2 of this section and any other means set forth in WAC 463-38-034 (1)(e).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information,

request a copy of the draft permit prepared pursuant to WAC 463-38-033(2), request a copy of the fact sheet described in WAC 463-38-034 and inspect and copy NPDES forms and related documents at a reasonable charge.

(4) Public and agency notice will be given as set forth below:

(a) Notice shall be mailed to any person or group carried on the mailing list identified in WAC 463-38-034(2). The name of any person or group shall be added upon written request to a mailing list for distributing copies of notices for all NPDES applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to WAC 463-38-041 a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such state and interstate agencies with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to WAC 463-38-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the council and to the regional administrator, which shall be duly considered by the council in accordance with the policies, provisions and regulations of the act, chapter 80.50 RCW et seq., and chapter 34.04 RCW et seq.

(ii) The district engineer of the Army Corps of Engineers for NPDES applications for discharges (other than minor discharges) into navigable waters.

(iii) Any other federal, state or local agency or any affected county upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-38-042. Such agencies shall include at least the following:

(a) The agency responsible for the preparation of an approved plan pursuant to section 208(b) of the act;

(b) DOE; and

(c) Appropriate public health agencies, including those represented on the council. [Order 114, § 463-38-041, filed 2/4/77. Formerly WAC 463-16-041.]

WAC 463-38-042 PUBLIC HEARINGS. (1) Any applicant affected state, affected interstate agency, affected county, any interested agency, person or group of persons, or the regional administrator may request of or petition the council for a public hearing to be held with respect to an NPDES application. Any such request or petition for public hearing shall be filed within thirty days after the giving of public notice pursuant to WAC 463-38-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing. Instances of doubt should be resolved by the council in favor of holding the hearing.

(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.04 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC 463-38-042 (1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least [thirty] days in advance of the hearing. The council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-38-041.

(6) The contents of public notice of any hearing held pursuant to WAC 463-38-042 (1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address and phone number of the council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC 463-38-033(2) above, request a copy of each fact sheet prepared pursuant to WAC 463-38-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed. [Order 114, § 463-38-042, filed 2/4/77. Formerly WAC 463-16-042.]

WAC 463-38-043 PUBLIC ACCESS TO INFORMATION. (1) All NPDES forms (including the draft NPDES permit prepared pursuant to WAC 463-38-033(2) or any public comment upon those forms pursuant to WAC 463-38-041(2)) shall be available to the public for inspection and copying at a nominal charge. Any other records, reports, plans or information received by the council or the state pursuant to its participation in the NPDES program shall be available at a reasonable charge to the public in accordance with existing law.

(2) Any information (other than effluent data) received by the council and contained in any NPDES forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If,

however, the information being considered for confidential treatment is contained in an NPDES form, the council shall forward such information to the regional administrator for his concurrence in any determination of confidentiality. If the regional administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the office of general counsel stating the reasons for his disagreement with the determination of the council. The regional administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional information submitted to the office of the general counsel within 30 days of receipt of the request from the regional administrator. If the general counsel determines that the information being considered does not contain trade secrets he shall so advise the regional administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the regional administrator shall communicate to the council his decision not to concur in the withholding of such information and the council and the regional administrator shall then make available to the public upon request that information determined not to constitute trade secrets.

(3) Any information afforded confidential status whether or not contained in an NPDES form shall be disclosed upon request to the regional administrator or his authorized representative who shall maintain the disclosed information as confidential.

(4) The council shall provide facilities for the inspection of information relating to NPDES forms during normal business hours of the council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with council business. The executive secretary shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the council. [Order 114, § 463-38-043, filed 2/4/77. Formerly WAC 463-16-043.]

WAC 463-38-050 NPDES PERMIT CONTENTS. The terms, conditions and content of any NPDES permit issued by the council shall be in accordance with the following subsections. [Order 114, § 463-38-050, filed 2/4/77. Formerly WAC 463-16-050.]

WAC 463-38-051 GENERAL CONDITIONS. (1) Any NPDES permit shall be issued for a period of five years, which period shall start on the date of issuance of said permit. The permittee shall inform the council at least 180 days prior to any initiation of such a discharge.

(2) The decision to approve or reject, and on what conditions an NPDES permit shall be issued, shall be in conformance with the requirements of this section. A majority vote of council members listed in RCW 80.58.030(3) shall resolve any dispute and shall determine the approval or rejection of a Refuse Act or NPDES application. [Order 114, § 463-38-051, filed 2/4/77. Formerly WAC 463-16-051.]

WAC 463-38-052 PROHIBITED DISCHARGES. (1) No discharge shall be made by energy facilities subject to the jurisdiction of the council unless authorized by an NPDES permit issued pursuant to these regulations.

(2) No NPDES permit issued by the council shall authorize any person to:

(a) Discharge any radiological, chemical or biological warfare agent or high-level radioactive waste into navigable waters;

(b) Discharge any pollutants which the secretary of the Army acting through the chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(c) Discharge any pollutant to which the regional administrator has objected in writing pursuant to any right to object provided the administrator in section 402(d) of the act;

(d) Discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act. [Order 114, § 463-38-052, filed 2/4/77. Formerly WAC 463-16-052.]

WAC 463-38-053 EFFLUENT LIMITATIONS, WATER QUALITY STANDARDS AND OTHER REQUIREMENTS FOR NPDES PERMITS. (1) Any NPDES permit issued by the council shall apply and insure compliance with all of the following, whenever applicable:

(a) Effluent limitations under sections 301 and 302 of the act;

(b) Standards of performance for new sources under section 306 of the act;

(c) Effluent standards, effluent prohibitions and pretreatment standards under section 307 of the act;

(d) Any more stringent limitation, including those:

(i) Necessary to meet water quality standards, treatment standards or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the act; or

(ii) Necessary to meet any applicable federal law or regulation other than the act or regulations thereunder; or

(iii) Required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the act and any regulations and guidelines issued pursuant thereto;

(e) Any more stringent legal applicable requirements necessary to comply with a plan approved pursuant to section 208(d) of the act; and

(f) Prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the act, such conditions as the council determines are necessary to carry out the provisions of the act.

(2) In any case where an issued NPDES permit applies the effluent standards and limitations described in paragraph 1 of this section, the council shall make a finding that any discharge authorized by the permit will not violate applicable water quality standards and will have prepared some explicit verification of that fact. In any case



where an issued NPDES permit applies any more stringent effluent limitation, based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to paragraphs 1 and 2 hereof, each issued NPDES permit shall specify average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate. [Order 114, § 463-38-053, filed 2/4/77. Formerly WAC 463-16-053.]

WAC 463-38-054 SCHEDULES OF COMPLIANCE. (1) In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, all pursuant to WAC 463-38-053 (1), (2), the council shall establish schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

With respect to any discharge which is found by the council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC 463-38-053 (1)(d)(e), the permittee shall be required to take specific steps to achieve compliance with the following:

(a) Any legally applicable schedule of compliance contained in:  
(i) Applicable effluent standards and limitations;  
(ii) If more stringent, water quality standards; or  
(iii) If more stringent, legally applicable requirements listed in WAC 463-38-053 (1)(d)(e); or

(b) In the absence of any legally applicable schedule of compliance, in a reasonable period of time, such period to be consistent with the guidelines and requirements of the act.

(2) In any case where the period of time for compliance specified in paragraph 1(a) of this section exceed nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than nine months and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date of compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(3) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement. [Order 114, § 463-38-054, filed 2/4/77. Formerly WAC 463-16-054.]

WAC 463-38-055 OTHER TERMS AND CONDITIONS. In addition to the requirements of WAC 463-38-051, 463-38-052 and 463-38-053, each issued NPDES permit shall require that:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants must be reported to the council by submission of a new NPDES application or supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(2) The permit may be modified, suspended or revoked in whole or in part during its terms for cause including, but not limited to, the following:

(a) Violation of any term or condition of the NPDES permit;

(b) Obtaining an NPDES permit by misrepresentation or failure to disclose fully all relevant facts; and

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(3) The permittee shall allow the council or its authorized representative upon the presentation of credentials and at reasonable times:

(a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the NPDES permit;

(b) To have access to and copy at reasonable cost any records required to be kept under terms and conditions of the NPDES permit;

(c) To inspect any monitoring equipment or method required in the NPDES permit; or

(d) To sample any discharge of pollutants.

(4) The permittee shall at all times maintain a good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit.

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the council shall revise or modify the NPDES permit in accordance with the toxic effluent standard of prohibition and so notify the permittee. [Order 114, § 463-38-055, filed 2/4/77. Formerly WAC 463-16-055.]

WAC 463-38-060 NPDES PERMITS REVIEW AND APPEAL. This section governs the procedures for reissuance, modification, suspension and revocation of NPDES permits. In addition, the appeal procedure for an applicant or permittee is set out. [Order 114, § 463-38-060, filed 2/4/77. Formerly WAC 463-16-060.]

WAC 463-38-061 REISSUANCE OF NPDES PERMITS. (1) Any permittee shall make application for reissuance of NPDES permits or continuation of discharges after the expiration date of his NPDES permit by filing with the council an application for reissuance of his permit at least 180 days prior to its expiration. The filing requirement for reissuance shall be satisfied in the first instance by a simply written request for reissuance by the permittee to the council, except that the council in its discretion may require any and/or all permittees to request a reissuance by submitting to the council all then applicable NPDES forms.

(2) The scope and manner of any review of an application for reissuance of an NPDES permit by the council shall be sufficiently detailed as to insure the following:

(a) That the permittee is in compliance with or has substantially complied with all of the terms, conditions, requirements and schedules of compliance of the expired NPDES permit;

(b) That the council has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, content and frequencies of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports resubmitted to the council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC 463-38-053 (1)(2), including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC 463-38-041 and 463-38-042 are applicable to each request for reissuance of an NPDES permit.

(4) Notwithstanding any other provision any point source of a discharge having a thermal component the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first. [Order 114, § 463-38-061, filed 2/4/77. Formerly WAC 463-16-061.]

WAC 463-38-062 MODIFICATION OF NPDES PERMIT. (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended or revoked for cause, in whole or in part during its term.

(2) The council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES permit if the council determines good and valid cause exists for such revision and if within 30 days following receipt of notice from the council, the regional administrator does not object in writing.

(3) Any such modifications shall be executed by the council and the permittee in the same manner as the NPDES permit was executed,

including full compliance with the requirements of WAC 463-38-041, 463-38-042 and 463-38-043. [Order 114, § 463-38-062, filed 2/4/77. Formerly WAC 463-16-062.]

WAC 463-38-063 APPEAL. (1) The approval, rejection, or modification of an NPDES permit shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

(2) No appeal shall be taken under paragraph 1 until such time as the council makes its recommendations to the governor pursuant to RCW 80.50.100(2). [Order 114, § 463-38-063, filed 2/4/77. Formerly WAC 463-16-063.]

WAC 463-38-064 TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMIT. (1) Each proposed NPDES permit will be transmitted to the regional administrator in accordance with the following procedures:

(a) A copy of the proposed NPDES permit, including any and all terms, conditions, requirements or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants except as to classes, types or sizes within any category of point sources waived in writing by the regional administrator.

(b) The regional administrator shall be provided a ninety day period in which to comment upon, make recommendations with respect to, or object in writing to the issuance of the proposed permit pursuant to any right to object provided the administrator in section 402(d)(2) of the act. No permit shall be issued if the regional administrator objects in writing to the issuance of such permit pursuant to any such right within said period, unless such objection is waived or withdrawn by the regional administrator in writing. Should no such objection be received within said period, it shall be presumed that the administrator has no objection to the issuance of the proposed permit.

(2) A copy of every issued NPDES permit immediately following execution by the applicant and the state, along with any and all terms, conditions, requirements or documents which are a part of such NPDES permit or which will affect the authorization of the discharge of pollutants will be sent to the regional administrator. [Order 114, § 463-38-064, filed 2/4/77. Formerly WAC 463-16-064.]

WAC 463-38-065 MONITORING AND ENFORCEMENT. The council hereby delegates to the DOE the monitoring activities of water discharges under a certification agreement which incorporates the NPDES permit. As a result of said monitoring activities, DOE shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The council shall then take or initiate action to enforce the terms of any certification agreement and the incorporated NPDES permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it is delegated the enforcement authority and responsibility to

carry out such immediate action as it deems necessary and shall report such actions to the council. Such action shall remain in effect until confirmed or modified by the council. [Order 114, § 463-38-065, filed 2/4/77. Formerly WAC 463-16-065.]

WAC 463-38-080 TRANSMITTAL OF DATA TO REGIONAL ADMINISTRATOR.

(1) Copies of NPDES forms received by the council as outlined below shall be transmitted to the regional administrator:

(a) Upon receipt by the council;

(b) A complete copy, or relevant portions thereof, of any appropriate NPDES form received by the council;

(2) The regional administrator may object in writing to deficiencies in any NPDES application or reporting form received by him and to have such deficiency corrected so long as he acts to inform by written letter the council within twenty days after his receipt of the NPDES application or reporting form. If the regional administrator's objection relates to an NPDES application, the regional administrator will be sent any information necessary to correct the deficiency. If the regional administrator so requests, the council will not issue the NPDES permit until they receive notice from the regional administrator that the deficiency has been corrected, which notice shall not be withheld for more than 30 days.

(3) For all minor discharges, the council may require the operator of such a discharge to submit NPDES application forms or such other information as may be requested by the regional administrator. [Order 114, § 463-38-080, filed 2/4/77. Formerly WAC 463-16-080.]

WAC 463-38-090 CONFLICT OF INTEREST. No member of the council shall have received, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for an NPDES permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his 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 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

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

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income. [Order 114, § 463-38-090, filed 2/4/77. Formerly WAC 463-16-090.]

## GENERAL REGULATIONS FOR AIR POLLUTION SOURCES 463-39-030

## Chapter 463-39 WAC

## GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC

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WAC 463-39-010 PURPOSE. The energy facility site evaluation council, under the authority vested in it by chapter 80.50 RCW is charged with responsibilities for the conduct of a state-wide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-010, filed 8/6/79.]

WAC 463-39-020 APPLICABILITY. The provisions of this chapter shall apply state-wide for those sources under the jurisdiction of the energy facility site evaluation council. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-020, filed 8/6/79.]

WAC 463-39-030 DEFINITIONS. Unless a different meaning is plainly required by context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Abnormal operation" means a process operation other than a normal operation which may result in emissions that exceed the standards. An abnormal operation can be anticipated and planned.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(4) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

(a) Applicable standards as set forth in 40 CFR Part 60 and Part 61,

(b) The applicable state implementation plan emission limitation, or

(c) The emission rate specified as a permit condition.

(5) "Ambient air" means the surrounding outside air.

(6) "Ambient air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the air which shall not be exceeded.

(7) "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to this regulation which would be emitted from any proposed stationary source or major modification which the council on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of the best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the council determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The requirement of RCW 70.94.152 that a new source should provide "all known available and reasonable methods of emission control" is assumed to mean the same as best available control technology.

(8) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(9) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

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(10) "Commenced construction" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(11) "Compliance schedule" means a schedule of steps to be taken to comply with emission requirements including a description of the specific steps and the date when each step will be completed.

(12) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharge.

(13) "Council" means the energy facility site evaluation council.

(14) "Chairman" means the chairman of the energy facility site evaluation council or his duly authorized representative.

(15) "Emission" means a release of contaminants into the ambient air.

(16) "Emission standard" means a regulation (or portion thereof) setting forth an allowable rate of emissions, level of opacity, or prescribing equipment or fuel specifications that result in control of air pollution emission.

(17) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(18) "Facility" means an identifiable process or activity that emits contaminants to the ambient air.

(19) "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(20) "Fugitive dust" means a type of particulate emission made airborne by forces of wind, man's activity, or both, such as unpaved roads, construction sites, or tilled land. Two major categories are anthropogenic sources (those which result directly from and during human activities) and wind erosion sources (those resulting from erosion of soil by wind). Fugitive dust is distinguished from fugitive emissions.

(21) "Fugitive emissions" means contaminants which are generated by industrial or other activities not covered by the fugitive dust definition and which are released to the atmosphere through openings such as windows, vents, doors, or ill-fitting oven closures rather than through primary exhaust systems or are reentrained from unclosed material handling operations. Aggregate storage operations and active tailing piles are included in this category of sources.

(22) "General process sources" means sources using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means excluding combustion.

(23) "Incinerator" means a furnace used for primarily the destruction of waste.

(24) "Lowest achievable emission rate" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.



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In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(25) "Major source" means any stationary source which is subject to the jurisdiction of the energy facility site evaluation council under chapter 80.50 RCW and which is included in section 169(a)(i) of the Federal Clean Air Act.

(26) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor, usually to a less offensive odor.

(27) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant alteration of the chemical or physical properties of the material.

(28) "New source" means a source constructed, installed or established after the effective date of this chapter. Addition to or enlargement or replacement of a source or any major alteration or any change in a source which has the potential to increase emissions shall be construed as construction or installation or establishment of a new source.

(29) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

(30) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a National Ambient Air Quality Standard for one or more of the criteria pollutants.

(31) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

(32) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion.

(33) "Particulate matter" means small discrete masses of liquid or solid, exclusive of uncombined water.

(34) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

(35) "Potential emissions" means the emissions of a pollutant from a source operated at maximum capacity in the absence of air pollution control equipment. Air pollution control equipment includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation. Annual potential shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of materials combusted or processed may be used in determining the potential emission rate of a source.

(36) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category, taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on

air quality and the capital and operating costs of the additional controls. RACT requirements for any source or source category may be adopted as an order or regulation after public hearing.

(37) "Source" means one or more processes or operations which emit or may emit any contaminants to the ambient air. A stationary source is composed of one or more pollutant emitting facilities.

(38) "Source category" means all sources of the same type or classification.

(39) "Standard conditions" means a temperature of 60°F (15.6°C) and a pressure of 29.92 inches (760mm) of mercury.

(40) "Upset" means an unexpected sudden occurrence which may result in emissions in excess of the emission requirements. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-030, filed 8/6/79.]

WAC 463-39-040 GENERAL STANDARDS FOR MAXIMUM PERMISSIBLE EMISSIONS. All sources are required to use reasonably available control technology to control emissions from point sources. In cases where current controls are determined to be less than reasonably available control technology (RACT), the council shall, on a case-by-case basis, define RACT for each source and issue a regulatory order to the source for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date. All sources in nonattainment areas shall be in compliance by December 31, 1982 with RACT requirements for nonattainment pollutants which have been defined by July 1, 1981. For RACT requirements defined after July 1, 1981 sources will be placed on a compliance schedule which will be completed as soon as practicable.

(1) Visible emissions. No person shall cause or permit the emissions for more than three minutes, in any one hour, of an air contaminant from any source which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except as follows:

When the owner or operator of a source supplies valid data to show that the opacity is in excess of twenty percent as the result of the presence of condensed water droplets.

(2) Preventing particulate matter from being deposited. No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) Fugitive emissions. The owner or operator of any source involving materials handling, construction, demolition or any other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the source has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonably available control technology to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets on file with the council.

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(4) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedure to reduce these odors to a reasonable minimum.

(5) Emission of air contaminants detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any source, including any air contaminant whose emission is not otherwise prohibited by this regulation, if the air contaminant causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

(6) Sulfur dioxide.

(a) No person shall cause or permit the emission of a gas containing sulfur dioxide from any source in excess of 1,000 parts per million (ppm) of sulfur dioxide.

(b) All concentrations of sulfur dioxide referred to above are by volume, dry, and, for combustion emissions the exhaust gas volume shall be corrected to seven percent oxygen.

(7) Concealment and masking. No person shall cause or permit the installation or use of any means which, conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) Fugitive dust sources.

(a) The owner or operator of a source shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to properly minimize emissions.

(b) The council may issue a regulatory order to the person responsible for a fugitive dust source and require measures to be used for control.

(9) The owner or operator of any existing fugitive dust source that has been identified as a significant contributor to the nonattainment status of a designated nonattainment area shall be required to use reasonably available control technology to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets on file with the council.

(10) All sources of fugitive dust required to use reasonably available control technology shall be in compliance by July 1, 1981 or on a compliance schedule which will be completed by December 31, 1982. Sources required to use RACT after July 1, 1981 shall be placed on a compliance schedule which will be completed as soon as practicable.

(11) The development of specific requirements for a nonattainment area shall include consultation with local government in the area and an opportunity shall be provided for public comment on the measures.

(12) Whenever reasonably available control technology has been defined for a source or category of sources in any area, the council shall issue a regulatory order to the source or sources requiring that the defined measures be implemented and establishing a date when the implementation will be completed. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-040, filed 8/6/79.]

WAC 463-39-050 MINIMUM EMISSION STANDARDS FOR COMBUSTION AND INCINERATION SOURCES. (1) Combustion and incineration sources must meet all requirements of WAC 463-39-040 and, in addition, no person

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shall cause or permit emissions of particulate matter in excess of 0.10 grain per standard dry cubic foot.

(2) For all incinerator sources, no person shall cause or permit emissions in excess of 100 ppm of total carbonyls as measured by procedures on file at the department of ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the council.

(3) Measured concentrations for combustion and incineration sources shall be adjusted for volumes corrected to seven percent oxygen.

If other sources are added to the effluent from the combustion source, the seven percent correction shall be made for the combined effluent unless the volume and concentration of the combustion effluent can be determined separately.

(4) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 463-39-040.

(b) Such wood waste burners shall utilize equipment, facilities and practices which represent practical current state of technology. All facilities shall be operated and maintained to minimize emissions.

(c) The council may establish additional requirements for such wood waste burners located in or proposed for location in sensitive areas. These requirements may include but shall not be limited to a requirement to eliminate all visible emissions. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-050, filed 8/6/79.]

WAC 463-39-060 MINIMUM EMISSION STANDARDS FOR GENERAL PROCESS SOURCES. General process sources shall be required to meet all applicable provisions of WAC 463-39-040 and, in addition, no person shall cause or permit the emission of particulate material from any general process operation in excess of one-tenth grain per standard cubic foot of dry exhaust gas. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-060, filed 8/6/79.]

WAC 463-39-080 COMPLIANCE SCHEDULES. (1) Whenever a source is found to be in violation of the provisions of this chapter, the council may issue a regulatory order which will include a schedule of compliance to bring the source into compliance with this chapter. Opportunity for a public hearing on each proposed compliance schedule shall be provided by prominent advertisement of a notice identifying the proposal and announcing its availability for public inspection in at least one location in the county in which the source is located. No public hearing on a proposed compliance schedule shall be held before thirty days after the publication of the above notice.

(2) A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included within a regulatory order issued hereunder are being met. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-080, filed 8/6/79.]

463-39-100 GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC 463-39-100 REGISTRATION. The owner or operator of each stationary source subject to chapter 80.50 RCW shall register the source with the council.

Registration shall be on forms to be supplied by the council within the time specified thereon.

A report of closure shall be filed with the council whenever operations producing emissions are permanently ceased at any source within the above categories. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-100, filed 8/6/79.]

WAC 463-39-110 NEW SOURCE REVIEW. Whenever the construction of a new stationary source subject to chapter 80.50 RCW is contemplated the owner or operator thereof is required to file a notice of construction with the council including a description of the source, the control equipment to be used and the estimated emissions from the proposed source. For purposes of simplicity and elimination of duplication, the "notice of construction" may be incorporated into the application required to be filed pursuant to chapter 80.50 RCW.

(1) (a) The addition to or enlargement or replacement of or alteration in any energy facility source already existing which is undertaken pursuant to any approved variance which includes a compliance schedule for the reduction of emissions therefrom shall be exempt from the requirements of this section provided the specific variance is an approved part of the SIP.

(b) The enlargement, modification, replacement, or alteration of any process or source which will increase potential emissions or ambient concentrations of any contaminant for which a federal or state standard has been set, will require the filing of a notice of construction.

(c) The replacement or modification of air pollution control equipment which will not increase emissions or ambient concentrations will not require the filing of a notice of construction.

(2) Following the initial review of a notice of construction the council may require plans, specifications and such other information as deemed necessary for the review of the proposed project shall be submitted for review and approval prior to construction.

(3) The council shall review notices of construction and plans, specifications and other information associated therewith in order to determine that:

(a) The proposed project will be in accord with applicable rules and regulations in force pursuant to chapter 70.94 RCW, including a determination that the operation of the new stationary source at the location proposed will not result in any applicable federal or state ambient air quality standard being exceeded.

(b) The proposed project will utilize best available control technology (BACT) for emission control. If the source is a major source and is located in a nonattainment area it will comply with the lowest achievable emission rate (LAER) for emissions of the contaminants for which nonattainment has been designated. Compliance with department of ecology emission standards for hazardous air pollutants, sources of volatile organic compounds in nonattainment areas, and new source performance standards (NSPS) when applicable to the source will be required.

(c) The proposed project meets all requirements of prevention of significant deterioration regulations if applicable.

(d) The proposed project will not violate the requirements for reasonable further progress established by the implementation plan. If the new source is a major source and is located in a nonattainment area, the total allowable emissions from existing sources and the new source, of the contaminants for which nonattainment has been designated, must be less than allowable emissions from existing sources at the time the application for approval was filed.

(e) The emissions from the proposed source will not delay the attainment date for any nonattainment area.

(4) After receipt of all information required by it, the council shall:

(a) Make preliminary determinations on the matters set forth in WAC 463-39-110(3);

(b) Make available in at least one location in the county or counties in which the proposed project is located, a copy of the preliminary determination and copies of or a summary of the information considered in making such preliminary determinations; and

(c) Publish notice to the public of the opportunity for written comment on the preliminary determinations. The period for taking public comments shall be thirty days from the date such notice is made.

(5) If, after review of all information received including public comment with respect to any proposed project, the council makes the determination of subdivisions (3)(a), (b), (c), (d) or (e) in the negative, an order approving the construction, installation or establishment of the new stationary source shall not be issued.

(6) If, after review of all information received, including public comment with respect to any proposed project, the council makes the determinations of subdivisions (3)(a), (b), and where applicable, (c), (d) and (e) in the affirmative, it shall issue an order of approval of the construction, installation or establishment of the new stationary source. The order of approval may provide such conditions of operation as are reasonably necessary to assure the continuous compliance with chapter 70.94 RCW and the applicable rules and regulations in force pursuant thereto.

(7) For sources which locate temporarily (one year or less) at particular sites, the owner or operator shall be permitted to operate at a temporary location without filing a notice of construction, providing that the owner or operator notifies the council of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable the council to determine that the operation will comply with the emission standards for a new source and with the applicable ambient air standards. The permission to operate shall be for a limited period of time and the council may set specific conditions for operation during said period. A temporary source shall be required to comply with all applicable emission standards.

(8) The owner or operator of a proposed new source shall not construct, install, establish or commence operations until written permission to proceed has been granted by the council and a valid energy facility site certification agreement is extant. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-110, filed 8/6/79.]

## 463-39-115 GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC 463-39-115 STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES. Subparts A, D, Da, GG, J, K and Y of Title 40, code of federal regulations, part 60 (standards of performance for new stationary sources), as promulgated prior to May 1, 1982 are by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council.

Sections 60.5 and 60.6 of Title 40, code of federal regulations, are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC 463-39-110, such review under the state program is mandatory and an order of approval is required before the construction, installation or establishment of a new stationary source may commence. [Statutory Authority: RCW 80.50.040(1). 82-14-051 (Order 82-3), § 463-39-115, filed 6/30/82; 79-09-006 (Order 79-1), § 463-39-115, filed 8/6/79.]

WAC 463-39-120 MONITORING AND SPECIAL REPORT. (1) Monitoring. The department of ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants.

As a part of this program, the director of the department of ecology or his authorized representative may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

(2) Investigation of conditions. For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the council, or its authorized representative, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families. No person shall refuse entry or access to the council, or its authorized representative when entry is requested for the purpose of inspection, and when appropriate credentials are presented; nor shall any person obstruct, hamper, or interfere with any such inspection.

(3) Source testing. In order to demonstrate compliance with this regulation the council may require that a test be made of the source using a method on file with the department of ecology. The operator of a source may be required by the council to provide the necessary platform and sampling ports for the department of ecology personnel to perform a test of the source. The department of ecology shall be allowed to obtain a sample from any source. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(4) Abnormal operations or upset conditions.

(a) Upset conditions which may result in emissions in excess of the standards set by this chapter must be reported to the council within one working day. Abnormal operations can be anticipated and must be reported in advance of the occurrence of the abnormal operation if it may result in emissions in excess of standards.

(b) Any period of excess emissions is presumed to be a violation unless and until the owner or operator demonstrates and the council finds that:

- (i) The incident was reported as required, and
- (ii) Complete details were furnished the council, and
- (iii) Appropriate remedial steps have been taken, and
- (iv) The incident was unavoidable.

(c) If the conditions of subdivision (b) of this subsection are met, the incident is excusable and a notice of violation will not be issued.

(d) If any of the conditions of subdivision (b) of this subsection are not met, the incident is not excusable and a notice of violation will be issued and a penalty may be assessed.

(e) For the council to find that an incident of excess emissions is unavoidable, the following conditions must be met:

(i) The process equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with minimizing emissions.

(ii) Repairs or corrections were made in an expeditious manner when the operator knew or should have known that emission limitations were being or would be exceeded. Expeditious repairs or corrections require off-shift or overtime labor if such utilization will reduce the extent of excess emission.

(iii) The incident is not one in a recurring pattern which is indicative of inadequate design, operation or maintenance.

(iv) The amount and duration of the excess emissions as well as the impact of the emissions on ambient air quality were minimized by taking all reasonable steps.

(5) Continuous monitoring and recording. Owners and operators of the following categories of stationary sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than 250 million BTU per hour heat input, or

(B) Only gaseous fuel is burned, or

(C) Only oil or a mixture of oil and gas is burned and opacity and particulate regulations can be met without using particulate collection equipment; and, the source has never, through any administrative or judicial procedure, been found in violation of any visible emission standard.

(ii) Sulfur dioxide, except where:

(A) Steam generator capacity is less than 250 million BTU per hour heat input; or

(B) Sulfur dioxide control equipment has not been installed.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the council by the owner or operator.



(b) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than 20,000 barrels per day.

(c) Owners and operators of those sources required to install continuous monitoring equipment under this regulation shall demonstrate to the council compliance with the equipment and performance specifications, and observe the reporting requirements, contained in Title 40, code of federal regulations, part 51, appendix P, sections 3, 4 and 5, promulgated on October 6, 1975, which is by this reference adopted and incorporated herein.

(d) All sources subject to this regulation shall procure and install equipment and commence monitoring and recording activities no later than eighteen months after adoption of this regulation by the council. Any extension to this time requirement shall be negotiated through the variance procedure of WAC 463-39-150.

(e) Special considerations. If for reason of physical plant limitations or extreme economic situations, the council determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(f) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard.

(ii) Not subject to an applicable emission standard.

(iii) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this regulation during periods of monitoring system malfunctions provided that the source owner or operator shows to the satisfaction of the council that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Emission inventory. The owner or operator of any air contaminant source shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the council. The inventory shall include stack and fugitive emissions of particulates, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, volatile organic compounds, and other contaminants, and shall be submitted when required no later than forty-five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the maximum design emission rate for a one hour period and a twenty-four hour period during the year. The report shall include the average sulfur content of any fuel or raw material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.

(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of fifty tons per year or more over that stated in the initial inventory required by WAC 463-39-120(6) shall require the submittal of sufficient information to the council to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The council may require controls to

reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average sulfur content over the initial inventory shall not require such notice. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-120, filed 8/6/79.]

WAC 463-39-130 REGULATORY ACTIONS. The council may take any of the following regulatory actions to enforce this chapter:

(1) Notice of violation. Whenever the council has reason to believe that any provision of this chapter has been violated, it may cause written notice to be served on the alleged violator or violators. The notice shall specify the provision of this chapter 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.

(2) Civil penalty. Whenever any person violates any of the provisions of this chapter, he shall be subject to a penalty in the form of a fine in an amount not to exceed two hundred fifty dollars per day for each violation. Each such violation shall be separate and distinct and, in case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty shall be imposed by a notice in writing from the chairman, or his authorized representative, describing the violation with reasonable particularity.

(3) Assurance of discontinuance. The chairman, or his 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 makes 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 is forecast. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-130, filed 8/6/79.]

WAC 463-39-135 CRIMINAL PENALTIES. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-135, filed 8/6/79.]

WAC 463-39-150 VARIANCE. (1) Any person who owns or is in control of a plant, building, structure, establishment, process, or

equipment may apply to the council for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the council may require. The council may grant such variance, but only after public hearing or due notice if it finds that:

(a) The emissions occurring or proposed do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the council has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available to the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the council may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the council is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivisions (a) and (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the council on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the council shall give public notice of such application in accordance with its rules and regulations.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the council. However, any applicant adversely affected by the denial or terms and conditions of the granting of an application for a variance or renewal of a variance by the council may obtain judicial review thereof under the provisions of chapter 34.04 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.415 to any person or his property.

(7) An application for a variance, or for the renewal thereof, submitted to the council pursuant to this section shall be approved or disapproved by the council within sixty-five days of receipt unless the applicant and the council agree to a continuance.

(8) No variance or renewal shall be construed to set aside or delay any requirements of the federal clean air act except with the approval and written concurrence of the federal environmental protection agency. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-150, filed 8/6/79.]

WAC 463-39-170 CONFLICT OF INTEREST. No member of the council shall have received, or has during the previous two years received, a significant portion of his 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. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-170, filed 8/6/79.]

## Chapter 463-40 WAC

## DANGEROUS WASTES

WAC

463-40-010 Purpose.  
463-40-020 Coverage.  
463-40-030 Regulations.  
463-40-040 Monitoring and enforcement.

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WAC 463-40-010 PURPOSE. The energy facility site evaluation council, under authority invested in it by chapter 80.50 RCW is charged with the responsibility of adopting rules sufficient to the protection of the public and the environment from the effects of dangerous wastes generated at energy facilities subject to chapter 80.50 RCW. [Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-010, filed 12/22/82.]

WAC 463-40-020 COVERAGE. The provisions of this chapter shall apply state-wide for those generators of dangerous wastes under the jurisdiction of the energy facility site evaluation council. [Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-020, filed 12/22/82.]

WAC 463-40-030 REGULATIONS. Notwithstanding the provisions of WAC 173-303-801, to the extent of their applicability and appropriateness, the provisions of chapter 173-303 WAC shall apply to the on-site activities, at energy facilities subject to this chapter, which involve the generation, storage, transportation, treatment or disposal of dangerous wastes. [Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-030, filed 12/22/82.]

WAC 463-40-040 MONITORING AND ENFORCEMENT. The council will contract with the department of ecology (DOE) for the monitoring activities for dangerous wastes regulated by this chapter under a certification agreement. As a result of said monitoring activities, DOE shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council. The council shall then take or initiate action to enforce the terms of any certification agreement. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it shall report immediately to the chairman who shall initiate such immediate enforcement action as may be necessary. Such action shall

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remain in effect until confirmed or modified by the council. [Statutory Authority: RCW 80.50.040(1). 83-01-127 (Order 82-5), § 463-40-040, filed 12/22/82.]

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## Chapter 463-42 WAC

## PROCEDURE--GUIDELINES--APPLICATIONS FOR SITE CERTIFICATION

WAC

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- 463-42-585 Human environment--Energy consumption.
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- 463-42-605 Human environment--Radiation levels.
- 463-42-615 Human environment--Aesthetics.
- 463-42-625 Human environment--Criteria, standards, and factors utilized to develop transmission route.
- 463-42-635 Human environment--Historical, archaeological, and recreational site preservation/creation.
- 463-42-645 Analysis of alternatives.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 463-42-020 Basic requirement--Full disclosure by applicants. [Order 113, § 463-42-020, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-065.
- 463-42-030 Application--Where filed. [Order 113, § 463-42-030, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-045.
- 463-42-040 Application--Form and number of copies. [Order 113, § 463-42-040, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-055.
- 463-42-050 Application--Organization--Index. [Order 113, § 463-42-050, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-012.



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- filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-015.
- 463-42-180 Content--Site description. [Order 113, § 463-42-180, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-125.
- 463-42-190 Content--Legal descriptions and ownership interests. [Order 113, § 463-42-190, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-135.
- 463-42-200 Content--Land use plans and zoning ordinances. [Order 113, § 463-42-200, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-485.
- 463-42-210 Content--Construction on site. [Order 113, § 463-42-210, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-145.
- 463-42-220 Content--Contour maps. [Order 113, § 463-42-220, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-305.
- 463-42-230 Content--Access. [Order 113, § 463-42-230, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-545.
- 463-42-240 Content--Energy transmission systems. [Order 113, § 463-42-240, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-155.
- 463-42-250 Content--Criteria, standards, and factors utilized to develop transmission route. [Order 113, § 463-42-250, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-625.
- 463-42-260 Content--Multipurpose use of transmission routes. [Order 113, § 463-42-260, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-495.
- 463-42-270 Content--Safety where public access allowed. [Order 113, § 463-42-270, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-515.

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- 463-42-060 Application--Specific contents and applicability. [Order 113, § 463-42-060, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-115.
- 463-42-070 Application--Optional application form and content. [Order 113, § 463-42-070, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW.
- 463-42-080 Application--Option (2) procedural schedule. [Order 113, § 463-42-080, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW.
- 463-42-090 Application--Designation of agent. [Order 113, § 463-42-090, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-025.
- 463-42-100 Application--Fee. [Order 113, § 463-42-100, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-035.
- 463-42-110 Content--Graphic material. [Order 113, § 463-42-110, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-105.
- 463-42-120 Content--Sources of information. [Order 113, § 463-42-120, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-095.
- 463-42-130 Content--Construction and study schedules. [Order 113, § 463-42-130, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-285.
- 463-42-140 Content--Potential for future activities at site. [Order 113, § 463-42-140, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-295.
- 463-42-150 Content--Analysis of alternatives. [Order 113, § 463-42-150, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-645.
- 463-42-160 Content--Safety standards compliance. [Order 113, § 463-42-160, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-505.
- 463-42-170 Content--Description of applicant. [Order 113, § 463-42-170, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5),

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- 463-42-280 Content--Radiation levels. [Order 113, § 463-42-280, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-605.
- 463-42-290 Content--Protection from natural hazards. [Order 113, § 463-42-290, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-265.
- 463-42-300 Content--Security concerns. [Order 113, § 463-42-300, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-275.
- 463-42-310 Content--Emergency plans. [Order 113, § 463-42-310, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-525.
- 463-42-320 Content--Earth removal. [Order 113, § 463-42-320, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-315.
- 463-42-330 Content--Surface-water runoff. [Order 113, § 463-42-330, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-215.
- 463-42-340 Content--Landscape restoration. [Order 113, § 463-42-340, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-325.
- 463-42-350 Content--Transportation impact. [Order 113, § 463-42-350, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-555.
- 463-42-360 Content--Transportation facility construction. [Order 113, § 463-42-360, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-565.
- 463-42-370 Content--Transportation of fuels and waste products. [Order 113, § 463-42-370, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-575.
- 463-42-380 Content--Environmental safeguards--Geologic and hydrologic survey. [Order 113, § 463-42-380, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-335.

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- 463-42-390 Content--Water source and usage. [Order 113, § 463-42-390, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-395.
- 463-42-400 Content--Water supply. [Order 113, § 463-42-400, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-165.
- 463-42-410 Content--Compatibility with water quality standards. [Order 113, § 463-42-410, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-405.
- 463-42-420 Content--Spillage prevention and control. [Order 113, § 463-42-420, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-205.
- 463-42-430 Content--System of heat dissipation. [Order 113, § 463-42-430, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-175.
- 463-42-440 Content--Characteristics of aquatic discharge systems. [Order 113, § 463-42-440, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-185.
- 463-42-450 Content--Hydrographic study of waters. [Order 113, § 463-42-450, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-415.
- 463-42-460 Content--Ground-water activity. [Order 113, § 463-42-460, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-425.
- 463-42-470 Content--Wastewater treatment. [Order 113, § 463-42-470, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-195.
- 463-42-480 Content--NPDES application. [Order 113, § 463-42-480, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-435.
- 463-42-490 Content--Solid wastes disposal. [Order 113, § 463-42-490, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-595.

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- 463-42-500 Content--Air pollution control. [Order 113, § 463-42-500, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-345.
- 463-42-510 Content--Air pollution impact. [Order 113, § 463-42-510, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-355.
- 463-42-520 Content--Emission control. [Order 113, § 463-42-520, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-225.
- 463-42-530 Content--Dust control. [Order 113, § 463-42-530, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-365.
- 463-42-540 Content--Odor control. [Order 113, § 463-42-540, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-375.
- 463-42-550 Content--Inventory of potentially affected vegetation, animal life, and aquatic life described. [Order 113, § 463-42-550, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-445.
- 463-42-560 Content--Impact of construction and operation on vegetation, animal life, and aquatic life. [Order 113, § 463-42-560, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-455.
- 463-42-570 Content--Description of measures taken to protect vegetation, animal life, and aquatic life. [Order 113, § 463-42-570, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-465.
- 463-42-580 Content--Aesthetics. [Order 113, § 463-42-580, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-615.
- 463-42-590 Content--Noise and glare. [Order 113, § 463-42-590, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-475.
- 463-42-600 Content--Energy consumption. [Order 113, § 463-42-600, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed

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- 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-585.
- 463-42-610 Content--Historical, archaeological, and recreational site preservation/creation. [Order 113, § 463-42-610, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-635.
- 463-42-620 Content--Socioeconomic impact. [Order 113, § 463-42-620, filed 2/4/77.] Repealed by 81-21-006 (Order 81-5), filed 10/8/81. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. Later promulgation, see WAC 463-42-535.

WAC 463-42-010 PURPOSE AND SCOPE. This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80.50 RCW. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-010, filed 10/8/81; Order 113, § 463-42-010, filed 2/4/77. Formerly chapter 463-12 WAC.]

WAC 463-42-012 GENERAL--ORGANIZATION--INDEX. Except as may be otherwise approved by the council and except as otherwise provided below with respect to applications covering nuclear power plants, the contents of the application shall be organized in the same order as these guidelines. In the case of an application covering a nuclear power plant, the environmental report prepared for the nuclear regulatory commission may be substituted for the comparable sections of the site certification application, provided that the environmental report is supplemented as necessary to comply with this chapter and that an index is included listing these guidelines in order and identifying where each applicable guideline is addressed. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-012, filed 10/8/81. Formerly WAC 463-42-050.]

WAC 463-42-015 GENERAL--DESCRIPTION OF APPLICANT. The applicant shall provide an appropriate description of the applicant's organization and affiliations for this proposal. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-015, filed 10/8/81. Formerly WAC 463-42-170]

WAC 463-42-025 GENERAL--DESIGNATION OF AGENT. The applicant shall designate an agent to receive communications on behalf of the applicant. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-025, filed 10/8/81. Formerly WAC 463-42-090.]

WAC 463-42-035 GENERAL--FEE. The statutory fee shall accompany an application and shall be a condition precedent to any action by the council. Payment shall be by a cashier's check payable to the state treasurer. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-035, filed 10/8/81. Formerly WAC 463-42-100.]

WAC 463-42-045 GENERAL--WHERE FILED. Applications for site certification shall be filed with the council at the council office. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-045, filed 10/8/81. Formerly WAC 463-42-030.]

WAC 463-42-055 GENERAL--FORM AND NUMBER OF COPIES. Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. Thirty-five copies of the application shall be supplied to the council, and two copies to each county, and one copy to each port district in which the site is located at the time that the original is filed. In addition, one copy shall be supplied to each intervenor on admission to the proceedings. Information later submitted shall be by page-for-page substitutions suitable for insertion in the application binder. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-055, filed 10/8/81. Formerly WAC 463-42-040.]

WAC 463-42-065 GENERAL--FULL DISCLOSURE BY APPLICANTS. It is recognized that these guidelines can only be comprehensive in a relative sense. Therefore, and in addition to the other guidelines contained herein, the council adopts the basic guideline that an applicant for site certification must identify in the application all information known to the applicant which has a bearing on site certification. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-065, filed 10/8/81. Formerly WAC 463-42-020.]

WAC 463-42-075 GENERAL--ASSURANCES. The application shall set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction or operation. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-075, filed 10/8/81.]

WAC 463-42-085 GENERAL--MITIGATION MEASURES. The application shall describe the means to be utilized to minimize or mitigate possible adverse impacts on the physical or human environments. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-085, filed 10/8/81.]

WAC 463-42-095 GENERAL--SOURCES OF INFORMATION. The applicant shall disclose sources of all information and data and shall identify all preapplication studies bearing on the site and other sources of information. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-095, filed 10/8/81. Formerly WAC 463-42-120.]

WAC 463-42-105 GENERAL--GRAPHIC MATERIAL. It is the intent that material submitted pursuant to these guidelines shall be descriptive and shall include illustrative graphics in addition to narration. This requirement shall particularly apply to subject matter that deals with systems, processes, and spacial relationship. The material so submitted shall be prepared in a professional manner and in such form and scale as to be understood by those who may review it. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-105, filed 10/8/81. Formerly WAC 463-42-110.]

WAC 463-42-115 GENERAL--SPECIFIC CONTENTS AND APPLICABILITY. It is recognized that not all sections of these guidelines apply equally to all proposed energy facilities. If the applicant deems a particular section to be totally inapplicable the applicant must justify such conclusion in response to said section. The applicant must address all sections of this chapter and must substantially comply with each section, show it does not apply or secure a waiver from the council. Information submitted by the applicant shall be accompanied by a certification by applicant that all EFSEC application requirements have been reviewed, the data have been prepared by qualified professional personnel, and the application is substantially complete. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-115, filed 10/8/81. Formerly WAC 463-42-060.]

WAC 463-42-125 PROPOSAL--SITE DESCRIPTION. The application shall contain a description of the proposed site indicating its location, prominent geographic features, typical geological and climatological characteristics, and other information necessary to provide a general understanding of all sites involved, including county or regional land use plans and zoning ordinances. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-125, filed 10/8/81. Formerly WAC 463-42-180.]

WAC 463-42-135 PROPOSAL--LEGAL DESCRIPTIONS AND OWNERSHIP INTERESTS. (1) Principal facility: The application shall contain a legal description of the site to be certified and shall identify the applicants and all nonprivate ownership interests in such land.

(2) Ancillary facilities: For those facilities described in RCW 80.50.020 (6) and (7) the application shall contain the legal metes and bounds description of the preferred centerline of the corridor necessary to construct and operate the facility contained therein, the width of the corridor, or variations in width between survey stations if appropriate, and shall identify the applicant's and others ownership interests in lands over which the preferred centerline is



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described and of those lands lying equidistant for 1/4 mile either side of such center line. [Statutory Authority: RCW 80.50.040(1). 83-01-128 (Order 82-6), § 463-42-135, filed 12/22/82. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-135, filed 10/8/81. Formerly WAC 463-42-190.]

WAC 463-42-145 PROPOSAL--CONSTRUCTION ON SITE. The applicant shall describe the characteristics of the construction to occur at the proposed site including the type, size, and cost of the facility; description of major components and such information as will acquaint the council with the significant features of the proposed project. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-145, filed 10/8/81. Formerly WAC 463-42-210.]

WAC 463-42-155 PROPOSAL--ENERGY TRANSMISSION SYSTEMS. The applicant shall discuss the criteria utilized as well as describe the routing, the conceptual design, and the construction schedule for all facilities identified in RCW 80.50.020(6) and (7) which are proposed to be constructed. [Statutory Authority: RCW 80.50.040(1). 83-01-128 (Order 82-6), § 463-42-155, filed 12/22/82. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-155, filed 10/8/81. Formerly WAC 463-42-240.]

WAC 463-42-165 PROPOSAL--WATER SUPPLY. The applicant shall describe the location and type of water intakes and associated facilities. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-165, filed 10/8/81. Formerly WAC 463-42-400.]

WAC 463-42-175 PROPOSAL--SYSTEM OF HEAT DISSIPATION. The applicant shall describe both the proposed and alternative systems for heat dissipation from the proposed facilities. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-175, filed 10/8/81. Formerly WAC 463-42-430.]

WAC 463-42-185 PROPOSAL--CHARACTERISTICS OF AQUATIC DISCHARGE SYSTEMS. Where discharges into a watercourse are involved, the applicant shall identify outfall configurations and show proposed locations. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-185, filed 10/8/81. Formerly WAC 463-42-440.]

WAC 463-42-195 PROPOSAL--WASTEWATER TREATMENT. The applicant shall describe each wastewater source associated with the facility and for each source, the applicability of all known, available, and reasonable methods of wastewater control and treatment. Where wastewater control involves collection and retention for recycling and/or resource recovery, the applicant shall show in detail the methods

selected, including at least the following information: Waste source(s), average and maximum daily amounts and composition of wastes, storage capacity and duration, and any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters. Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including appropriate flow diagrams and tables showing the sources of all tributary waste streams, their average and maximum daily amounts and composition, individual treatment units and their design criteria, major piping (including all bypasses), and average and maximum daily amounts and composition of effluent(s). [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-195, filed 10/8/81. Formerly WAC 463-42-470.]

WAC 463-42-205 PROPOSAL--SPILLAGE PREVENTION AND CONTROL. The applicant shall describe all spillage prevention and control measures to be employed regarding accidental and/or unauthorized discharges or emissions, relating such information to specific facilities, including but not limited to locations, amounts, storage duration, mode of handling, and transport. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-205, filed 10/8/81. Formerly WAC 463-42-420.]

WAC 463-42-215 PROPOSAL--SURFACE-WATER RUNOFF. The applicant shall describe how surface-water runoff and erosion are to be controlled during construction and operation to assure compliance with state water quality standards. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-215, filed 10/8/81. Formerly WAC 463-42-330.]

WAC 463-42-225 PROPOSAL--EMISSION CONTROL. The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation. In the case of fossil fuel power plants and petroleum refineries, the applicant should deal with products containing sulphur and particulates. In the case of a nuclear-fueled plant, the applicant should deal with optional plant designs as these may relate to gaseous emissions. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-225, filed 10/8/81. Formerly WAC 463-42-520.]

WAC 463-42-235 PROPOSAL--CONSTRUCTION AND OPERATION ACTIVITIES. The applicant shall: Provide the proposed construction schedule, identify the major milestones, and describe activity levels versus time in terms of craft and noncraft employment; and describe the proposed operational employment levels. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-235, filed 10/8/81.]

WAC 463-42-245 PROPOSAL--CONSTRUCTION MANAGEMENT. The applicant shall describe the organizational structure including the management of project quality and environmental functions. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-245, filed 10/8/81.]

WAC 463-42-255 PROPOSAL--CONSTRUCTION METHODOLOGY. The applicant shall describe in detail the construction procedures, including major equipment, proposed for any construction activity within watercourses, wetlands and other sensitive areas. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-255, filed 10/8/81.]

WAC 463-42-265 PROPOSAL--PROTECTION FROM NATURAL HAZARDS. The applicant shall describe the means employed for protection of the facility from earthquakes, flood, tsunami, storms, avalanche or landslides, and other major natural disruptive occurrences. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-265, filed 10/8/81. Formerly WAC 463-42-290.]

WAC 463-42-275 PROPOSAL--SECURITY CONCERNS. The applicant shall describe the means employed for protection of the facility from sabotage, vandalism and other security threats. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-275, filed 10/8/81. Formerly WAC 463-42-300.]

WAC 463-42-285 PROPOSAL--STUDY SCHEDULES. The applicant shall furnish a brief description of all present or projected schedules for additional environmental studies. The studies descriptions should outline their scope and indicate projected completion dates. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-285, filed 10/8/81. Formerly WAC 463-42-130.]

WAC 463-42-295 PROPOSAL--POTENTIAL FOR FUTURE ACTIVITIES AT SITE. The applicant shall describe the potential for any future additions, expansions, or further activities which might be undertaken by the applicant on or contiguous to the proposed site. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-295, filed 10/8/81. Formerly WAC 463-42-140.]

WAC 463-42-305 PHYSICAL ENVIRONMENT--CONTOUR MAPS. The applicant shall include contour maps showing the original topography and any changes likely to occur as a result of energy facility construction and related activities. Contour maps showing proposed shoreline or channel changes shall also be furnished. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-305, filed 10/8/81. Formerly WAC 463-42-220.]

WAC 463-42-315 PHYSICAL ENVIRONMENT--EARTH REMOVAL. The applicant shall describe all procedures to be utilized to minimize erosion and other adverse consequences during the removal of vegetation, excavation of borrow pits, foundations and trenches, disposal of surplus materials, and construction of earth fills. The location of such activities shall be described and the quantities of material shall be indicated. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-315, filed 10/8/81. Formerly WAC 463-42-320.]

WAC 463-42-325 PHYSICAL ENVIRONMENT--LANDSCAPE RESTORATION. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads). [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-325, filed 10/8/81. Formerly WAC 463-42-340.]

WAC 463-42-335 PHYSICAL ENVIRONMENT--ENVIRONMENTAL SAFEGUARDS--GEOLOGIC AND HYDROLOGIC SURVEY. The applicant shall include the results of a comprehensive hydrologic and geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-335, filed 10/8/81. Formerly WAC 463-42-380.]

WAC 463-42-345 PHYSICAL ENVIRONMENT--AIR POLLUTION CONTROL. The applicant shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least, adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and temperature. The applicant shall describe the means to be utilized to assure compliance with air quality and emission standards. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-345, filed 10/8/81. Formerly WAC 463-42-500.]

WAC 463-42-355 PHYSICAL ENVIRONMENT--AIR POLLUTION IMPACT. The applicant shall describe the extent to which facility operations may cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-355, filed 10/8/81. Formerly WAC 463-42-510.]

WAC 463-42-365 PHYSICAL ENVIRONMENT--DUST CONTROL. The applicant shall describe for any area affected, all dust sources created by construction or operation of the facility and shall describe how these are to be minimized or eliminated. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-365, filed 10/8/81. Formerly WAC 463-42-530.]

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WAC 463-42-375 PHYSICAL ENVIRONMENT--ODOR CONTROL. The applicant shall describe for the area affected, all odors caused by construction or operation of the facility and shall describe how these are to be minimized or eliminated. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-375, filed 10/8/81. Formerly WAC 463-42-540.]

WAC 463-42-385 PSD APPLICATION. The applicant shall include a completed prevention of significant deterioration permit application. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-385, filed 10/8/81.]

WAC 463-42-395 PHYSICAL ENVIRONMENT--WATER SOURCE AND USAGE. The applicant shall indicate the source and the amount of water required during construction and operation of the plant and show that it is available for this use and describe all existing water rights, withdrawal authorizations or restrictions which relate to the proposed source. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-395, filed 10/8/81. Formerly WAC 463-42-390.]

WAC 463-42-405 PHYSICAL ENVIRONMENT--COMPATIBILITY WITH WATER QUALITY STANDARDS. The applicant shall demonstrate that facility construction and/or operational discharges will be compatible with and meet state water quality standards. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-405, filed 10/8/81. Formerly WAC 463-42-410.]

WAC 463-42-415 PHYSICAL ENVIRONMENT--HYDROGRAPHIC STUDY OF WATERS. The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within one-half mile of any proposed discharge location with regard to: Bottom configuration; minimum, average and maximum water depths and velocities; water temperature and salinity profiles; anticipated effluent distribution and dilution, and plume characteristics under all discharge conditions; and other relevant characteristics which could influence the impact of any wastes discharged thereto. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-415, filed 10/8/81. Formerly WAC 463-42-450.]

WAC 463-42-425 PHYSICAL ENVIRONMENT--GROUND-WATER ACTIVITY. The applicant shall describe any changes in ground-water activity or quality which might result from project construction or operation. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-425, filed 10/8/81. Formerly WAC 463-42-460.]

WAC 463-42-435 PHYSICAL ENVIRONMENT--NPDES APPLICATION. The applicant shall include a completed National Pollutant Discharge Elimination System permit application. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-435, filed 10/8/81. Formerly WAC 463-42-480.]

WAC 463-42-445 PHYSICAL ENVIRONMENT--INVENTORY OF POTENTIALLY AFFECTED VEGETATION, ANIMAL LIFE, AND AQUATIC LIFE DESCRIBED. The applicant shall describe all vegetation, animal life, and aquatic life which might reasonably be affected by construction and/or operation of the energy facility and any associated facilities. Any endangered species or noteworthy species or habitat shall receive special attention. Assessment of these factors shall include density and distribution information. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-445, filed 10/8/81. Formerly WAC 463-42-550.]

WAC 463-42-455 PHYSICAL ENVIRONMENT--IMPACT OF CONSTRUCTION AND OPERATION ON VEGETATION, ANIMAL LIFE, AND AQUATIC LIFE. The applicant shall describe the projected effect of facility construction and/or operation upon vegetation, animal life, and aquatic life. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-455, filed 10/8/81. Formerly WAC 463-42-560.]

WAC 463-42-465 PHYSICAL ENVIRONMENT--DESCRIPTION OF MEASURES TAKEN TO PROTECT VEGETATION, ANIMAL LIFE, AND AQUATIC LIFE. The application shall contain a full description of each measure to be taken by the applicant to protect vegetation, animal life, and aquatic life from the effects of facility operation and construction. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-465, filed 10/8/81. Formerly WAC 463-42-570.]

WAC 463-42-475 PHYSICAL ENVIRONMENT--NOISE AND GLARE. The applicant shall describe the impact of lights, noise, and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-475, filed 10/8/81. Formerly WAC 463-42-590.]

WAC 463-42-485 PHYSICAL ENVIRONMENT--LOCAL LAND USE PLANS AND ZONING ORDINANCES. As part of the application, the applicant shall furnish copies of adopted land use plans and zoning ordinances, including the latest land use regulation and a survey of present land uses within the following distances of the immediate site area:

- (1) In the case of thermal power plants, 25 miles radius;
- (2) In the case of petroleum refineries 10 miles radius;
- (3) In the case of petroleum or LNG storage areas or underground natural gas storage, 10 miles radius from center of storage area or well heads;

(4) In the case of pipe lines and electrical transmission routes, 1 mile either side of center line. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-485, filed 10/8/81. Formerly WAC 463-42-200.]

WAC 463-42-495 PHYSICAL ENVIRONMENT--MULTIPURPOSE USE OF TRANSMISSION ROUTES. The applicant shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-495, filed 10/8/81. Formerly WAC 463-42-260.]

WAC 463-42-505 PHYSICAL ENVIRONMENT--SAFETY STANDARDS COMPLIANCE. The applicant shall identify all federal, state, and local health and safety standards which would normally be applicable to the construction and operation of a project of this nature and shall describe methods of compliance therewith. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-505, filed 10/8/81. Formerly WAC 463-42-160.]

WAC 463-42-515 PHYSICAL ENVIRONMENT--SAFETY WHERE PUBLIC ACCESS ALLOWED. The applicant shall describe the means proposed to insure safe utilization of those areas under applicant's control to which public access will be granted. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-515, filed 10/8/81. Formerly WAC 463-42-270.]

WAC 463-42-525 PHYSICAL ENVIRONMENT--EMERGENCY PLANS. The applicant shall describe emergency plans which will be required to assure the public safety and environmental protection on and off the site in the event of a natural disaster or other major incident relating to or affecting the project and further, will identify the specific responsibilities which will be assumed by the applicant. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-525, filed 10/8/81. Formerly WAC 463-42-310.]

WAC 463-42-535 HUMAN ENVIRONMENT--SOCIOECONOMIC IMPACT. The applicant shall submit a detailed socioeconomic impact study which identifies primary and secondary and positive as well as negative impacts on the socioeconomic environment with particular attention and analysis of impact on population, work forces, property values, housing, traffic, health and safety facilities and services, education facilities and services, and local economy. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-535, filed 10/8/81. Formerly WAC 463-42-620.]

WAC 463-42-545 HUMAN ENVIRONMENT--ACCESS. The applicant shall describe existing roads, railroads, and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-545, filed 10/8/81. Formerly WAC 463-42-230.]

WAC 463-42-555 HUMAN ENVIRONMENT--TRANSPORTATION IMPACT. The applicant shall identify all permanent transportation facilities impacted by the construction and operation of the energy facilities, the nature of the impacts and the methods to mitigate impacts. Such impact identification, description and mitigation shall, at least, take into account:

- (1) Expected traffic volumes during construction, based on where the work force is expected to reside;
  - (2) Access routes for moving heavy loads, construction materials or equipment;
  - (3) Expected traffic volumes during normal operation of the facility;
  - (4) For transmission facilities, anticipated maintenance access; and
  - (5) Consistency with local comprehensive transportation plans.
- [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-555, filed 10/8/81. Formerly WAC 463-42-350.]

WAC 463-42-565 HUMAN ENVIRONMENT--TRANSPORTATION FACILITY CONSTRUCTION. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-565, filed 10/8/81. Formerly WAC 463-42-360.]

WAC 463-42-575 HUMAN ENVIRONMENT--TRANSPORTATION OF FUELS AND WASTE PRODUCTS. Except where security restrictions are imposed by the federal government, the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-575, filed 10/8/81. Formerly WAC 463-42-370.]

WAC 463-42-585 HUMAN ENVIRONMENT--ENERGY CONSUMPTION. The applicant shall generally describe the energy consumption during both construction and operation of the proposed facilities as to sources of supply, locations of use, types, amounts, and new delivery facilities. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-585, filed 10/8/81. Formerly WAC 463-42-600.]



WAC 463-42-595 HUMAN ENVIRONMENT--SOLID WASTES DISPOSAL. The applicant shall describe the disposition of all solid or semisolid construction and operation wastes including spent fuel, ash, sludge, and bottoms, and show compliance with applicable state and local comprehensive solid waste disposal plans. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-595, filed 10/8/81. Formerly WAC 463-42-490.]

WAC 463-42-605 HUMAN ENVIRONMENT--RADIATION LEVELS. For facilities which propose to release any radioactive materials, the applicant shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The applicant shall also describe the proposed radioactive waste treatment process, the anticipated release of radionuclides, their expected distribution and retention in the environment, the pathways which may become sources of radiation exposure, and projected resulting radiation doses to human populations. Other sources of radiation which may be associated with the project shall be described in all applications. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-605, filed 10/8/81. Formerly WAC 463-42-280.]

WAC 463-42-615 HUMAN ENVIRONMENT--AESTHETICS. The applicant shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-615, filed 10/8/81. Formerly WAC 463-42-580.]

WAC 463-42-625 HUMAN ENVIRONMENT--CRITERIA, STANDARDS, AND FACTORS UTILIZED TO DEVELOP TRANSMISSION ROUTE. The applicant shall indicate the federal, state, and industry criteria used in the energy transmission route selection and construction factors considered in developing the proposed design and shall indicate how such criteria are satisfied. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-625, filed 10/8/81. Formerly WAC 463-42-250.]

WAC 463-42-635 HUMAN ENVIRONMENT--HISTORICAL, ARCHAEOLOGICAL, AND RECREATIONAL SITE PRESERVATION/CREATION. The applicant shall list all historical, archaeological, and recreational sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-635, filed 10/8/81. Formerly WAC 463-42-610.]

463-42-645

## APPLICATIONS FOR SITE CERTIFICATION

WAC 463-42-645 ANALYSIS OF ALTERNATIVES. The applicant shall provide an analysis of alternatives for site, route, and other major elements of the proposal. [Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-645, filed 10/8/81. Formerly WAC 463-42-150.]

## Chapter 463-43 WAC

## PROCEDURE--APPLICATIONS FOR EXPEDITED PROCESSING

WAC

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WAC 463-43-010 PURPOSE AND SCOPE. This chapter sets forth requirements for preparation of applications for energy facility site certification which qualify for expedited processing and delineates certain abbreviated procedures for processing eligible applications pursuant to RCW 80.50.075. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-010, filed 4/26/78.]

WAC 463-43-020 STANDARD APPLICATION REQUIRED. An applicant seeking expedited processing shall:

(1) Make application pursuant to chapter 463-42 WAC. The application must address all sections of chapter 463-42 WAC in sufficient detail so the council can determine the impacts under WAC 463-43-030,

(2) Submit those fees for independent consultant review and application processing pursuant to RCW 80.50.071 (1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing, and

(3) Submit a request for expedited processing to the council at the time of application which shall be accompanied by a completed environmental checklist as delineated in WAC 463-46-365. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-020, filed 4/26/78.]

WAC 463-43-030 ELIGIBLE PROPOSALS. An application may be expedited when the council finds that the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

- (1) The environmental impact of the proposed energy facility,
- (2) The area potentially affected,
- (3) The cost and magnitude of the proposed energy facility, and

(4) The degree to which the proposed energy facility represents a change in use of the proposed site. [Statutory Authority: RCW 80.50-.071. 78-05-054 (Order 78-2), § 463-43-030, filed 4/26/78.]

WAC 463-43-040 PRIOR TO MAKING A DETERMINATION OF ELIGIBILITY FOR EXPEDITED PROCESSING. The council prior to making a determination of eligibility for expedited processing shall:

(1) Conduct a public informational meeting in the county of the proposed site within 60 days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views,

(2) Determine at a public hearing within 60 days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances,

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071 (1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council, and

(4) Initiate processing of the applicant's NPDES application, if required, in accordance with chapter 463-38 WAC. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-040, filed 4/26/78.]

WAC 463-43-050 EXPEDITED PROCESSING DETERMINATION. Following the review of an application and land use hearing and within 120 days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council at a regular or special meeting and by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances, and

(2) The environmental impact, area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility are not significant enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-050, filed 4/26/78.]

WAC 463-43-060 EFFECT OF EXPEDITED PROCESSING. For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant, and

(2) Hold a contested case hearing under chapter 34.04 RCW. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-060, filed 4/26/78.]

## PROCEDURE--EXPEDITED PROCESSING

463-43-080

WAC 463-43-070 EXPEDITED APPLICATION PROCESSING. The council will prescribe the form, content and necessary supporting documentation for site certification during regular or special meetings of the council. All interested persons and the counsel for the environment shall be afforded an opportunity to make presentations on the matters herein. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-070, filed 4/26/78.]

WAC 463-43-080 RECOMMENDATION--TRANSMITTAL TO GOVERNOR. Within 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation for approval with a copy of the draft site certification agreement to the governor. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-080, filed 4/26/78.]

SEPA RULES

463-47-020

Chapter 463-47 WAC

SEPA RULES

WAC

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463-47-150 Coordination on combined council--Federal action.  
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WAC 463-47-010 AUTHORITY. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules). [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-010, filed 9/14/84. Formerly chapter 463-46 WAC.]

WAC 463-47-020 ADOPTION BY REFERENCE. The energy facility site evaluation council adopts the following sections or subsections of chapter 197-11 WAC by reference.

197-11-040 Definitions.  
197-11-050 Lead agency.  
197-11-055 Timing of the SEPA process.  
197-11-060 Content of environmental review.  
197-11-070 Limitations on actions during SEPA process.  
197-11-080 Incomplete or unavailable information.  
197-11-090 Supporting documents.  
197-11-100 Information required of applicants.  
197-11-300 Purpose of this part.  
197-11-305 Categorical exemptions.  
197-11-310 Threshold determination required.  
197-11-315 Environmental checklist.  
197-11-330 Threshold determination process.

197-11-335 Additional information.  
197-11-340 Determination of nonsignificance (DNS).  
197-11-350 Mitigated DNS.  
197-11-360 Determination of significance (DS)/initiation of scoping.  
197-11-390 Effect of threshold determination.  
197-11-400 Purpose of EIS.  
197-11-402 General requirements.  
197-11-405 EIS types.  
197-11-406 EIS timing.  
197-11-408 Scoping.  
197-11-410 Expanded scoping. (Optional)  
197-11-420 EIS preparation.  
197-11-425 Style and size.  
197-11-430 Format.  
197-11-435 Cover letter or memo.  
197-11-440 EIS contents.  
197-11-442 Contents of EIS on nonproject proposals.  
197-11-443 EIS contents when prior nonproject EIS.  
197-11-444 Elements of the environment.  
197-11-448 Relationship of EIS to other considerations.  
197-11-450 Cost-benefit analysis.  
197-11-455 Issuance of DEIS.  
197-11-460 Issuance of FEIS.  
197-11-500 Purpose of this part.  
197-11-502 Inviting comment.  
197-11-504 Availability and cost of environmental documents.  
197-11-508 SEPA register.  
197-11-510 Public notice.  
197-11-535 Public hearings and meetings.  
197-11-545 Effect of no comment.  
197-11-550 Specificity of comments.  
197-11-560 FEIS response to comments.  
197-11-570 Consulted agency costs to assist lead agency.  
197-11-600 When to use existing environmental documents.  
197-11-610 Use of NEPA documents.  
197-11-620 Supplemental environmental impact statement--Procedures.  
197-11-625 Addenda--Procedures.  
197-11-630 Adoption--Procedures.  
197-11-635 Incorporation by reference--Procedures.  
197-11-640 Combining documents.  
197-11-650 Purpose of this part.  
197-11-655 Implementation.  
197-11-660 Substantive authority and mitigation.  
197-11-680 Appeals.  
197-11-700 Definitions.  
197-11-702 Act.  
197-11-704 Action.  
197-11-706 Addendum.  
197-11-708 Adoption.  
197-11-710 Affected tribe.  
197-11-712 Affecting.  
197-11-714 Agency.  
197-11-716 Applicant.  
197-11-718 Built environment.  
197-11-720 Categorical exemption.

## SEPA RULES

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197-11-722 Consolidated appeal.  
197-11-724 Consulted agency.  
197-11-726 Cost-benefit analysis.  
197-11-728 County/city.  
197-11-730 Decisionmaker.  
197-11-732 Department.  
197-11-734 Determination of nonsignificance (DNS).  
197-11-736 Determination of significance (DS).  
197-11-738 EIS.  
197-11-740 Environment.  
197-11-742 Environmental checklist.  
197-11-744 Environmental document.  
197-11-746 Environmental review.  
197-11-748 Environmentally sensitive area.  
197-11-750 Expanded scoping.  
197-11-752 Impacts.  
197-11-754 Incorporation by reference.  
197-11-756 Lands covered by water.  
197-11-758 Lead agency.  
197-11-760 License.  
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197-11-764 Major action.  
197-11-766 Mitigated DNS.  
197-11-768 Mitigation.  
197-11-770 Natural environment.  
197-11-772 NEPA.  
197-11-774 Nonproject.  
197-11-776 Phased review.  
197-11-778 Preparation.  
197-11-780 Private project.  
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197-11-784 Proposal.  
197-11-786 Reasonable alternative.  
197-11-788 Responsible official.  
197-11-790 SEPA.  
197-11-792 Scope.  
197-11-793 Scoping.  
197-11-794 Significant.  
197-11-796 State agency.  
197-11-797 Threshold determination.  
197-11-799 Underlying governmental action.  
197-11-800 Categorical exemptions.  
197-11-880 Emergencies.  
197-11-890 Petitioning DOE to change exemptions.  
197-11-900 Purpose of this part.  
197-11-902 Agency SEPA policies.  
197-11-904 Agency SEPA procedures.  
197-11-906 Content and consistency of agency procedures.  
197-11-910 Designation of responsible official.  
197-11-912 Procedures on consulted agencies.  
197-11-914 SEPA fees and costs.  
197-11-916 Application to ongoing actions.  
197-11-917 Relationship to chapter 197-10 WAC.  
197-11-918 Lack of agency procedures.  
197-11-920 Agencies with environmental expertise.



- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.
- 197-11-950 Severability.
- 197-11-955 Effective date.
- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-020, filed 9/14/84.]

WAC 463-47-030 PURPOSE. This chapter implements the state-wide rules in chapter 197-11 WAC as they apply to the energy facility site evaluation council. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-030, filed 9/14/84.]

WAC 463-47-040 ADDITIONAL DEFINITIONS. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Office" means the offices of the energy facility site evaluation council.

(2) "Agency" should be read as synonymous of council.

(3) "Council" means the energy facility site evaluation council.

(4) "Final decision" means the recommendation to the governor required under RCW 80.50.100. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-040, filed 9/14/84.]

WAC 463-47-050 DESIGNATION OF DECISIONMAKER. Within the energy facility site evaluation council the decisionmaker is the council. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-050, filed 9/14/84.]

WAC 463-47-051 DESIGNATION OF RESPONSIBLE OFFICIAL. Within the energy facility site evaluation council the responsible official is the executive secretary. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-051, filed 9/14/84.]

WAC 463-47-060 ADDITIONAL TIMING CONSIDERATIONS. (1) The council will determine when it receives an application whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council when it receives an application and environmental checklist will determine whether the council or another agency is SEPA lead agency (see WAC 197-11-050 and 197-11-922 through 197-11-940) within five working days. If the council is not the lead agency, the council shall send the completed environmental checklist, a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(3) The council may initiate a contested case hearing required by RCW 80.50.100 prior to completion of the draft EIS. The council shall initiate and conclude a contested case hearing required by RCW 80.50.100 prior to issuance of the final EIS. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-060, filed 9/14/84.]

WAC 463-47-070 THRESHOLD DETERMINATION PROCESS--ADDITIONAL CONSIDERATIONS. When reviewing a completed environmental checklist to make the threshold determination, the council will:

(1) Independently evaluate the responses of the applicant and note comments, concerns, corrections, or new information in the right margin of the checklist.

(2) Conduct the initial review of the checklist and any supporting documents without requiring additional information from the applicant. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-070, filed 9/14/84.]

WAC 463-47-080 MITIGATED DNS. (1) An applicant may ask the council whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of an application and environmental checklist for a nonexempt proposal for which the council is lead agency; and

(c) Precede the council's actual threshold determination for the proposal.

(2) The council shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the council is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the council to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The council shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the council will make its threshold determination based on the changed or clarified proposal.

(a) If the council's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the council shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the council indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the council shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The council may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the council shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the council may require the applicant to submit a new checklist.

(7) The council may change or clarify features of its own proposals before making the threshold determination.

(8) The council's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the council to consider the clarifications or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the council's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-080, filed 9/14/84.]

WAC 463-47-090 EIS PREPARATION. (1) Preparation of draft and final EISs and SEISs is the responsibility of the application review committee or its successor. Before the council issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The council normally will prepare its own draft and final EISs. It may require an applicant to provide information that the council does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the council would be unable to prepare a draft and/or final EIS due to its commitments or other constraints or when a local agency transfers lead agency status to the council under WAC 197-11-940, the council may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The council retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the council agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the consultant will work directly for the council.

(c) The outside party will prepare the document under the supervision of the application review committee, or its successor, and the responsible official.

(d) Normally, the council will have the documents printed and distributed.

(4) Whenever someone other than the council prepares a draft or final EIS, the council shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the individual preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the EIS.

(d) Allow the person preparing the EIS access to council records relating to the EIS (under chapter 42.17 RCW--Public disclosure and public records law). [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-090, filed 9/14/84.]

WAC 463-47-100 PUBLIC NOTICE REQUIREMENTS. (1) The council shall give public notice when issuing a DNS under WAC 197-11-350(2), a scoping notice under WAC 173-802-090, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the council shall integrate the public notice required under this section with existing notice procedures for the council's review of an application.

(a) When more than one permit required from the council has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or certification must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the council must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits required for a proposal, the council must use one or more public notice methods in subsection (4) of this section.

(3) The council may require an applicant to perform the public notice requirement at his or her expense.

(4) The council shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or certification required from the council and, public interest expressed in the proposal:

(a) Mailing to persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be located, constructed and operated if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be located, constructed and operated; and/or

(c) Posting the property, for site specific proposals. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-100, filed 9/14/84.]

WAC 463-47-110 POLICIES AND PROCEDURES FOR CONDITIONING OR DENYING PERMITS OR OTHER APPROVALS. (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

## SEPA RULES

463-47-140

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits or rejection of applications. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-110, filed 9/14/84.]

WAC 463-47-120 ENVIRONMENTALLY SENSITIVE AREAS. In determining whether a proposal is exempt from SEPA, the council shall respect "environmentally sensitive area" designations made by local governments under WAC 197-11-908. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-120, filed 9/14/84.]

WAC 463-47-130 THRESHOLD LEVELS ADOPTED BY CITIES/COUNTIES. In determining whether a proposal is exempt from SEPA, the council shall inquire of the threshold levels adopted by cities/counties under WAC 197-11-800(1). [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-130, filed 9/14/84.]

WAC 463-47-140 RESPONSIBILITIES OF THE COUNCIL. The council shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, and scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-140, filed 9/14/84.]

WAC 463-47-150 COORDINATION ON COMBINED COUNCIL--FEDERAL ACTION.  
When the council is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-150, filed 9/14/84.]

WAC 463-47-190 SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-190, filed 9/14/84.]

## Chapter 463-50 WAC

## INDEPENDENT CONSULTANTS--GUIDELINES

WAC

- 463-50-010 Purpose and scope of this chapter.  
463-50-020 Solicitation of proposals to perform work.  
463-50-030 Principles governing selection of independent consultants.  
463-50-040 Duties to be performed.  
463-50-050 Basis for compensation.
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WAC 463-50-010 PURPOSE AND SCOPE OF THIS CHAPTER. It is the purpose of this chapter to publish guidelines regarding council use of independent consultants. [Order 110, § 463-50-010, filed 11/16/76.]

WAC 463-50-020 SOLICITATION OF PROPOSALS TO PERFORM WORK. Each proposal to contract with an independent consultant shall be the subject of a formal, written "request for proposal." The "request for proposal" shall generally follow the outline and address the provisions of the "Guidelines for using outside consultants" published by the office of financial management. A copy of the "request for proposal" shall be distributed to any requesting consulting firm. Further notice of the availability of the "request for proposal" may be provided by appropriate commercial advertising. [Statutory Authority: RCW 80.50.040(1). 78-09-083 (Order 78-10), § 463-50-020, filed 8/28/78; Order 110, § 463-50-020, filed 11/16/76.]

WAC 463-50-030 PRINCIPLES GOVERNING SELECTION OF INDEPENDENT CONSULTANTS. Each consultant selected to perform independent consulting services shall have demonstrated its qualifications on the basis of experience and competence in specific, or closely associated, areas for which consulting services are desired. A consultant shall not be hired or retained by the council if upon examination by the council, a significant conflict of interest is found with regard to the applicant or other parties involved or potentially involved in the contested case proceedings. [Order 110, § 463-50-030, filed 11/16/76.]

WAC 463-50-040 DUTIES TO BE PERFORMED. The independent consultant shall be primarily responsible for the review and evaluation of information provided by the applicant to determine areas of possible omissions or assignments or studies as may be specified or provided for by the contract with the council. The independent consultant may be contracted to:



- (1) Review and analyze the site certification application and supporting documents for compliance with the topical guidelines and for technical veracity,
- (2) Identify areas of critical environmental sensitivity,
- (3) Develop and provide such information as the council may deem essential to an adequate site appraisal and
- (4) Provide technical advice to the council during the site certification process. [Order 110, § 463-50-040, filed 11/16/76.]

WAC 463-50-050 BASIS FOR COMPENSATION. The basis for compensation to be specified in contracts with independent consultants shall generally be as follows:

(1) For applications for site certification, where the total scope and/or volume of work is variable and acts to prevent advance determination of total project cost, the consultant shall be compensated on the basis of actual cost plus a net fee for profit,

(2) For potential site studies, where the total scope and/or volume of work to be performed can be specified in advance, the consultant shall be compensated on the basis of a lump sum payment.

All payments to independent consultants shall be subject to audit. [Order 110, § 463-50-050, filed 11/16/76.]

## Chapter 463-54 WAC

## CERTIFICATION COMPLIANCE DETERMINATION AND ENFORCEMENT

WAC

463-54-010 Intent and purpose of this chapter.  
463-54-020 Compliance to be determined.  
463-54-030 Compliance inspections and reports.  
463-54-040 Compliance reports and determinations.  
463-54-050 Noncompliance determinations and enforcement.  
463-54-060 DOE monitoring and enforcement role.  
463-54-070 Emergency action by chairman.

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WAC 463-54-010 INTENT AND PURPOSE OF THIS CHAPTER. This chapter sets forth rules relating to effects and compliance determination of energy facility construction and operation pursuant to RCW 80.50.040(1). [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-010, filed 6/23/78; Order 108, § 463-54-010, filed 11/4/76.]

WAC 463-54-020 COMPLIANCE TO BE DETERMINED. Compliance determination procedures shall be implemented by the council as necessary to keep it and the public properly informed as to the status of compliance with the terms of certification agreements and NPDES permits. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-020, filed 6/23/78; Order 108, § 463-54-020, filed 11/4/76.]

WAC 463-54-030 COMPLIANCE INSPECTIONS AND REPORTS. Compliance determinations shall include consideration of on-site inspections, data analyses and/or reporting activities as prescribed by the council and performed by other state agencies pursuant to annual interagency agreements. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-030, filed 6/23/78; Order 108, § 463-54-030, filed 11/4/76.]

WAC 463-54-040 COMPLIANCE REPORTS AND DETERMINATIONS. Written reports by state agencies reporting to the council under interagency agreements shall be submitted regularly and contain certifications as to the certificate holders satisfactory compliance or noncompliance with the appropriate terms of the site certification agreement. Certifications of satisfactory compliance in the absence of compelling evidence to the contrary shall be deemed by the council as bona fide compliance by the certificate holder. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-040, filed 6/23/78; Order 108, § 463-54-040, filed 11/4/76.]

WAC 463-54-050 NONCOMPLIANCE DETERMINATIONS AND ENFORCEMENT. The council shall make the determination of noncompliance with the terms of a certification agreement or NPDES permit where circumstances so warrant and on such finding of noncompliance will institute appropriate enforcement action. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-050, filed 6/23/78; Order 108, § 463-54-050, filed 11/4/76.]

WAC 463-54-060 DOE MONITORING AND ENFORCEMENT ROLE. The DOE is delegated the monitoring activities pertaining to water discharges and when it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement and the incorporated NPDES permit. Immediate enforcement action as needed may be undertaken by DOE subject to subsequent confirmation or modification by the council. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-060, filed 6/23/78.]

WAC 463-54-070 EMERGENCY ACTION BY CHAIRMAN. (1) The chairman of the council or his designee is authorized and shall take action to immediately and effectively halt or eliminate any imminent or substantial endangerments to the health or welfare of persons resulting from the release of pollutants from facilities sited under chapter 80.50 RCW including as appropriate:

(a) The issuance of an order to immediately terminate an endangerment or an endangering release and the suspension of the NPDES or other permit issued by the council.

(b) The notification of the departments of emergency services and social and health services and other appropriate agencies, as necessary, that protective measures are required immediately to safeguard the health or welfare of persons so endangered.

(c) The reference of matters to the attorney general for appropriate enforcement action for violations of site certification agreements and NPDES or other permits issued by the council.

(2) The chairman's action will be confirmed or modified by the council within seventy-two hours of execution at a special or regular meeting of the council, whichever will occur the earliest. [Statutory Authority: RCW 80.50.040(1). 81-11-011 (Order 81-3), § 463-54-070, filed 5/13/81; 78-07-036 (Order 78-3), § 463-54-070, filed 6/23/78.]

## Chapter 463-58 WAC

FEES OR CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND  
EXPEDITED APPLICATION PROCESSING, DETERMINING COMPLIANCE AND POTENTIAL  
SITE STUDYWAC

463-58-010 Intent and purpose of this chapter.  
463-58-020 Fees for the independent consultant study.  
463-58-030 Fees for regular application processing.  
463-58-040 Fees for expedited application processing.  
463-58-050 Fees for determining compliance.  
463-58-060 Fees for potential site study.  
463-58-070 Failure to provide necessary fees.  
463-58-080 Payment, reporting and auditing procedures.

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WAC 463-58-010 INTENT AND PURPOSE OF THIS CHAPTER. This chapter sets forth rules relating to fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-010, filed 4/26/78.]

WAC 463-58-020 FEES FOR THE INDEPENDENT CONSULTANT STUDY. Pursuant to RCW 80.50.071, a fee of twenty-five thousand dollars for each proposed site shall accompany the application. This fee shall be applied toward the cost of the independent consultant study authorized by RCW 80.50.070. The determination of the total fees required for the independent consultant shall generally be as follows:

(1) The consultant selected to perform independent consulting services shall be required to provide the council with an estimate of costs required to complete the study. Upon approval of the estimate by the council, the applicant shall be advised of the costs, totally or by phase, required to complete the study,

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs,

(3) If the estimate of the costs, as stated in (1) or (2) above, totally or by phase, exceeds twenty-five thousand dollars, the applicant shall provide prior approval for the expenditure of such excess amounts, and

(4) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has provided agreement to pay the required costs, and the council has provided the

applicant with a statement of amount due. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-020, filed 4/26/78.]

WAC 463-58-030 FEES FOR REGULAR APPLICATION PROCESSING. Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary,

(2) A court reporter(s) for the recording and preparation of transcripts of the contested case hearing, council meetings or public sessions which the council shall consider necessary,

(3) Additional staff salaries consisting of at least one application processing officer placed on the council staff for the duration of the application processing period--provided that the council may in the interest of efficiency and effectiveness assign one application processing officer to more than one application, and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-030, filed 4/26/78.]

WAC 463-58-040 FEES FOR EXPEDITED APPLICATION PROCESSING. Applicants filing applications for expedited processing shall provide fees in accordance with WAC 463-58-020 and 463-58-030 above with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-040, filed 4/26/78.]

WAC 463-58-050 FEES FOR DETERMINING COMPLIANCE. Pursuant to RCW 80.50.071 each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined as follows:

(1) For the period subsequent to the date of execution of the site certification agreement until the beginning of construction or until the beginning of any work covered by an NPDES permit, five hundred dollars, and

(2) For the period subsequent to beginning of construction or beginning of any work covered by an NPDES permit, twenty thousand dollars. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-050, filed 4/26/78.]

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WAC 463-58-060 FEES FOR POTENTIAL SITE STUDY. A fee of ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-060, filed 4/26/78.]

WAC 463-58-070 FAILURE TO PROVIDE NECESSARY FEES. Failure to provide the initial deposit or subsequently required payments within thirty days following receipt of a statement from the council may result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in suspension of the certification agreement. At the conclusion of the thirty-day period allowed for making necessary payments, the council will notify any delinquent applicant or certificate holder to appear at the next regularly scheduled meeting or a subsequent meeting to show cause why the council should not suspend application processing of the certificate. In the event of suspension, action to reinstate application processing or the certificate will be taken by the council at the next regularly scheduled meeting following deposit of all required fees. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-070, filed 4/26/78.]

WAC 463-58-080 PAYMENT, REPORTING AND AUDITING PROCEDURES. (1) Following payment of initial deposits for application processing and determination of compliance, the council will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain reasonable and necessary expenditures made against the deposited funds. Within thirty days of the receipt of the council's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the originally established level provided that:

(a) An applicant may be requested by the council to increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. The council will provide to the applicant written justification for an increased deposit,

(b) Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant or, at the applicant's option, credited against required deposits of certificate holders, and

(c) If actual reasonable and necessary expenditures for inspection and determination of compliance in a calendar quarter have exceeded the amount of funds on deposit, such excess costs, pursuant to RCW 80.50.071, will be paid by the certificate holder. A statement will be provided to the certificate holder by the council in sufficient detail to provide an adequate explanation of these expenditures.

(2) All payments shall be made by a cashier's check payable to the state treasurer and delivered to the council office. The council will

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## INDEPENDENT CONSULTANT STUDY

establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-080, filed 4/26/78.]