



RULE-MAKING ORDER

CR-103 (Implements RCW 34.05.360)

Agency: Energy Facility Site Evaluation Council

- Permanent Rule
 Emergency Rule

Effective date of rule:

- Permanent Rules**
 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

- Emergency Rules**
 Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Update and reorganize EFSEC's rules for energy facilities (Title 463) and adopt siting standards. Updates incorporate changes to the APA and SEPA since Title 463 was last updated and incorporation of EFSEC's current procedures and operations. Title 463 was reorganized for ease of use and understanding. Adoption of new siting standards to streamline siting process.

Citation of existing rules affected by this order:

Repealed: 463-06-130, 140, 160; 463-18-030, 040, 060, 070,080; 463-26-040, 070, 080, 120, 130; 463-28-090; 463-36-010; 463-38-020, 030, 040, 050, 060; 463-42-382, 385, 435, 525, 625, 645, 655, 665, 675, 680, 685, 690; 463-47-040; 463-50-020.
 Amended: Chapters: 463-06, 463-10, 463-14, 463-18, 463-22, 463-26, 463-28, 463-30, 463-34, 463-36, 463-38, 463-40, 463-42, 463-43, 463-47, 463-50, 463-54, 463-58.
 Suspended:

Statutory authority for adoption: RCW 80.50.040 (1) and (12)

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-13-154 on June 23, 2004 (date).
 Describe any changes other than editing from proposed to adopted version: A sentence was added to WAC 463-62-010, 463-68-010, and 463-72-010 to clarify statement and intent.
 If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Allen Fiksdal phone (360) 956-2152
 Address: PO Box 43172, fax (360) 956-2158
 Olympia, WA 98504-3172 e-mail allenf@ep.cted.wa.gov

EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: October 11, 2004

NAME (TYPE OR PRINT)
James O. Luce

SIGNATURE

TITLE
EFSEC Chair

CODE REVISER USE ONLY

Stamp area with handwritten text: OCT 11 2004, 3:22, 04.21.013

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

New	<u>61</u>	Amended	<u>139</u>	Repealed	<u>43</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>61</u>	Amended	<u>139</u>	Repealed	<u>43</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Chapter 463-06 WAC

~~((GENERAL--ORGANIZATION--))~~ AGENCY OPERATIONS AND PUBLIC RECORDS

AMENDATORY SECTION (Amending WSR 98-01-079, filed 12/12/97, effective 1/12/98)

WAC 463-06-010 ~~((Organization of this title.))~~ Purpose.
~~((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 463-28 WAC sets forth the council's procedures in determining whether to recommend that the state preempt local land use plans or zoning ordinances for a site.~~

~~Chapter 463-30 WAC contains procedural provisions governing adjudicative proceedings held pursuant to RCW 80.50.090(3).~~

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

~~Chapter 463-36 WAC sets forth the council's procedures in amending or terminating a site certification agreement.~~

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

~~Chapter 463-39 WAC provides the basic framework for the conduct of the council's responsibilities for air pollution prevention and control.~~

~~Chapter 463-42 WAC embodies council procedures and guidelines~~

~~governing preparation of applications for energy facility site certification.~~

~~Chapter 463-43 WAC sets forth requirements for preparation and processing of applications which qualify for expedited processing.~~

~~Chapter 463-47 WAC implements the statewide SEPA rules in chapter 197-11 WAC.~~

~~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).~~

~~Chapter 463-58 WAC contains rules relating to independent consultant fees for potential site study, application processing, and compliance determination.)) The purpose of this chapter is to describe the council and set out general information on agency operations and implementation of the public records provisions of chapter 42.17 RCW.~~

AMENDATORY SECTION (Amending WSR 98-01-078, filed 12/12/97, effective 1/12/98)

WAC 463-06-020 Description of organization. (1) The council is a state agency authorized by chapter 80.50 RCW.

(2) The voting membership of the council consists of ((the authorized representatives)) directors, administrators, or their designee 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)) (3) The chair ((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.

(a) The chair has a vote on all matters before the council and has an office at the ((department of community, trade, and economic development)) council's office.

((3)) (b) Pursuant to RCW 80.50.030, the chair may designate a member of the council to serve as acting chair. The acting chair shall remain entitled to vote on any proposed council action and shall continue to fulfill his or her responsibilities under RCW 80.50.030 (3) through (5).

(c) The chair or a designee executes all official documents, contracts and other materials on behalf of the council.

(d) The chair or any member of the council may perform such duties as are specifically authorized and directed by the council, not in conflict with RCW 80.50.040.

(4) The department of community, trade, and economic

development provides administrative services and staff to the council.

AMENDATORY SECTION (Amending WSR 98-01-078, filed 12/12/97, effective 1/12/98)

WAC 463-06-030 Council office--Business hours. The council office is currently located at (~~the Department of Community, Trade, and Economic Development,~~) 925 Plum Street 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. The council's mailing address is P.O. Box 43172, Olympia, WA 98504-3172.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-06-050 General method by which operations are conducted. (1) In general, the council reaches major policy and operational decisions through formal council action at (~~regular and special~~) meetings held pursuant to the Open Public Meetings Act, the state Administrative Procedure Act, or other applicable laws.

(2) In some circumstances, the chair may perform duties which are specifically authorized by the council.

(3) Day-to-day administration is handled by the council manager and staff.

(4) The council manager is responsible for implementing the decisions of the council and for directing the staff that supports the council.

(5) The council staff shall assist applicants in identifying issues presented by the application, review all information submitted, and recommend resolutions to issues in dispute that would allow site approval and may make recommendations to the council.

(6) The council staff are not parties to adjudicative proceedings conducted under chapter 34.05 RCW.

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

WAC 463-06-060 How to obtain public records ((available)).

(1) All public records of the council are available for public inspection and copying at the council office ((pursuant to)), during regular business hours, in accordance with chapter 42.17 RCW and these rules, except as otherwise provided by ((RCW 42.17.310 or any superseding)) law.

(2) The public may request public records through the following mechanisms:

(a) Mail. Requests by mail shall be addressed to the council's mailing address: The Energy Facility Site Evaluation Council, P.O. Box 43172, Olympia, WA 98504-3172. The front of the envelope shall conspicuously state: "Public Records Request."

(b) E-mail. As of the date these rules are promulgated, the council's e-mail address is: efsec@ep.cted.wa.gov. This e-mail address may change without notice. The subject line of e-mail requests shall state: "Public Records Request."

(c) In person. In-person requests shall be made at the council's office, 925 Plum Street S.E., Olympia, Washington, or as such office may subsequently be relocated, during regular business hours.

(d) Fax. Faxed requests shall be accompanied by a cover sheet that conspicuously states: "Public Records Request."

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-06-070 Public records officer. The council's public records officer is the council manager, or designee, who 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.))~~

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

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.)) Chapter 42.17 RCW requires the council to prevent invasions of privacy, protect public records from damage or disorganization, prevent excessive interference with its essential functions, and prevent unreasonable disruptions of operations. Accordingly, the public may inspect and copy public records upon compliance with the following procedures:~~

~~(1) A member of the public who seeks a public record shall make a written request. The purpose of requiring written requests is to assist the council in tracking, managing and responding to the request in a timely and orderly fashion.~~

~~(2) No particular form of writing is required so long as the request complies with WAC 463-06-060 and contains the following information:~~

~~(a) Name, mailing address, and telephone number of the requesting party;~~

~~(b) The date on which the written request is made;~~

~~(c) Identification of the record requested with sufficient particularity that the council can identify the record and make it available. Such identifying information should, if possible, include the title, subject matter, and date of the record;~~

~~(d) A signed statement that the records will not be used for commercial purposes if a list of individuals is being requested, or for any use prohibited by law; and~~

~~(e) A prominent statement that the request is being made pursuant to chapter 42.17 RCW and these regulations.~~

~~(3) To facilitate processing the request, the requesting party should also include:~~

~~(a) Either a fax number or an e-mail address or both.~~

~~(b) A reference to the record as it is described in the current public record index maintained by the council.~~

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

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.))~~ The council staff shall provide assistance to help persons requesting records to identify the records they seek. The staff may ask the requesting party to

clarify what records are being sought.

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

WAC 463-06-110 (~~(Fees for)~~) Copying and fees. ((No fees are charged for inspection of public records. Requestors will be charged a fee not to exceed twenty-five 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.)) (1) Copying. The council shall make copies on the council's copy equipment when doing so will not unreasonably disrupt the council's operations or cause excessive interference with other essential functions. If it is determined that making copies will disrupt the council's operations, an alternative schedule will be developed, or other arrangements for copying will be made.

(2) Fees.

(a) The council shall not impose a fee for locating documents, for making them available, or for inspection of records by the public.

(b) The council may charge up to fifteen cents per page fee for copies of public records provided.

(c) The council, at its option, shall not provide copies unless the associated fees have been paid in full prior to delivery of documents; provided that this advance payment requirement shall not apply to other government agencies or tribes or to parties or intervenors in proceedings before the council.

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

WAC 463-06-120 (~~(Determination of exempt status.)~~) Disclosure procedure. ((Determination whether a requested record is exempt under the provisions of RCW 42.17.310 will be made in each instance.)) (1) In accordance with RCW 42.17.320, within five business days of receiving a public records request, the council shall respond by:

(a) Providing the records;

(b) Acknowledging the council has received the request and providing a reasonable estimate of the time the council will

require to respond; or

(c) Denying the record request, as set out in subsection (4) of this section.

(2) The council shall review the requested public records prior to disclosure.

(3) If the records do not contain materials exempt from public disclosure, the council shall disclose the records.

(4) If the records contain materials exempt from public disclosure, the council shall deny disclosure of the exempt materials and disclose any remaining, nonexempt materials. At the time of denial, the council shall clearly specify in writing the reasons for denial, including a statement of the specific exemptions or reason for denial of disclosure.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

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 council manager who shall either affirm or reverse the denial. The council manager may request a special meeting of the council to review the denial if such action is requested in writing and is otherwise warranted.))
For the purpose of judicial review, final agency action is deemed to have occurred at the end of the second business day after the requesting party received notification of a denial of inspection.

AMENDATORY SECTION (Amending Order 103, filed 11/4/76)

WAC 463-06-170 Records index. The council shall maintain((s)) and make available for public inspection an index of those classes of records described in RCW 42.17.260 ((which)). The index is available for public inspection and copying.

(1) Form and content. The index shall be maintained in electronic form with copies available on paper. The index shall contain topic headings.

(2) Location and availability. The index shall be available to the public under the same rules and on the same conditions as are applied to other public records.

(3) Schedule for revisions and updates. The council shall revise and update the index annually.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-06-130	Deletion of identifying details.
WAC 463-06-140	Written denials.
WAC 463-06-160	Time for completion of review.

AMENDATORY SECTION (Amending WSR 98-01-080, filed 12/12/97, effective 1/12/98)

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

(1) "Council" (~~((refers to))~~) means 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) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been (~~((approved by the council and))~~) signed by the governor, and who is bound by (~~((the))~~) its terms (~~((therein))~~).

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "Council manager" means the individual who handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council.

(7) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

(8) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

AMENDATORY SECTION (Amending Order 104, filed 11/4/76)

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.

AMENDATORY SECTION (Amending Order 104, filed 11/4/76)

WAC 463-14-020 Need for energy facilities--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))~~) including, but not limited to:

(1) Ensuring through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life;

(2) Enhancing the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; and

(3) Providing abundant power at reasonable cost.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

WAC 463-14-030 Public meetings and hearings policy for application reviews. ~~((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))~~ The council encourages, and will provide for, public participation in its public meetings and hearings during reviews of applications for site certification as afforded by law and rule. The following sets forth the public participation in those meetings and hearings required in RCW 80.50.090.

(1) The public informational hearing as prescribed in RCW 80.50.090(1) shall be held in the county of the proposed site. All persons shall be afforded an opportunity to comment to the council

regarding the proposed site.

(2) The public land use consistency hearing as prescribed in RCW 80.50.090(2) shall be held in the county where the proposed site is located to determine whether or not the proposed use of the site is consistent and in compliance with city, county or regional land use plans ((or)) and 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)) If the proposed site is located in more than one county, a land use consistency hearing shall be held in each county. The council shall limit public testimony at this hearing to the issue of consistency and compliance with city, county, or regional land use plans and zoning ordinances.

(3) Although all persons desirous of participating may not be accorded "party" status in the public hearing held as an adjudicative proceeding under chapter 34.05 RCW((. Although all persons desirous of participating may not be accorded "party" status in this proceeding))prior to preparation of any recommendation to the governor, the council, at times and places designated by the council, upon compliance with reasonable procedures, shall allow 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)) site.

(4) The council views the provisions of RCW 80.50.090(4) as authorizing it to conduct additional public hearings ((of either the)) as "~~((local))~~ public informational hearings," "public land use consistency hearings" or "adjudicative proceedings." ((variety)) The council may also hold public meetings concerning the application for site certification.

AMENDATORY SECTION (Amending Order 104, 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 by state agencies and local governments.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

WAC 463-14-080 EFSEC deliberative process. RCW 80.50.100 requires the council to report to the governor its recommendation ~~((as to the))~~ of 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))~~ use wherever applicable the following deliberative process:

(1) Evaluate an application to determine compliance with chapter 80.50 RCW and chapter 463-60 WAC;

(2) Contract for an independent consultant study of the application~~((An environmental impact statement also will be adopted.~~

~~The council during the deliberative process will)) ;~~

(3) Conduct a review under the State Environmental Policy Act;

(4) Conduct an ~~((extensive public hearing as an))~~ adjudicative proceeding for the presentation of evidence on the application~~((The council will)) ;~~

(5) Conduct one or more sessions for the taking of public testimony concerning the proposed project~~((The council will evaluate)) ;~~

(6) Consider public comments received ~~((as part of the environmental review. The council throughout all of the deliberative process will)) ;~~

(7) 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))~~ reviewed, will consider and by majority decision will act on the question of approval or rejection of an application.

NEW SECTION

WAC 463-14-100 Citations. As used in Title 463 WAC citations to state statutes and regulations include such laws as they now exist or as hereafter amended.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 463-14-060

Open meetings with full discussion

Chapter 463-18 WAC

~~((PROCEDURE--REGULAR AND SPECIAL))~~
COUNCIL MEETINGS AND PROCEEDINGS

AMENDATORY SECTION (Amending Order 105, filed 11/4/76)

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))~~ at meetings of the council. Business conducted by the council may fall within the scope of the Open Public Meetings Act, chapter 42.30 RCW, or the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

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 adjudicative 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.))~~ The following procedures shall apply to proceedings under the Open Public Meetings Act, chapter 42.30 RCW and rule-making proceedings under the Administrative Procedure Act, chapter 34.05 RCW:

(1) A majority of the voting council members constitutes a quorum for the conduct of council business.

(2) All council decisions shall be transacted by motion. Motions may be made by any council member and shall require a second.

(3) Voting on all motions shall be by voice vote unless a division is called for, in which case the chair shall call the roll by agency and record the votes of each voting member present, "yea" or "nay."

(4) The order of business shall be conducted as prescribed by the agenda.

(a) The council manager shall prepare each meeting's agenda in consultation with the chair.

(b) The council may modify a meeting's agenda.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97 effective 1/12/98)

WAC 463-18-050 ((Special meetings.)) **Open Public Meetings Act proceedings.** The following requirements apply to those portions of the council's business that fall within the scope of the Open Public Meetings Act, chapter 42.30 RCW:

(1) Other than executive sessions, the council's meetings are open to the public.

(2) Regular meetings. Because the council does not hold meetings in accordance with a periodic schedule declared by statute or rule, the council's meetings are not "regular meetings" within the meaning of the Open Public Meetings Act.

(3) Special meetings.

(a) The chair or a majority of the voting members of the council may call a special meeting ((may be called)) at any time ((by the chair or by a majority of the members of the council)) in accordance with RCW 42.30.080 by delivering written notice personally or by mail ((written notice)) to each council 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 meeting((s of)) or of 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 ((EFSEC)) council manager 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.

(b) In addition to the special meeting notice requirements under RCW 42.30.080 described in subsection (4) of this section, the council shall, on or before January of each year, fix the time and place of the special meetings it proposes to hold during the upcoming calendar year and publish a schedule of those meetings in the Washington State Register. The council need not publish in the Register notice of any change from such meeting schedule although it may, in its discretion, elect to do so. In addition to the

scheduled special meetings published in the Washington State Register, the council may hold other special meetings without publication in the Register.

(4) Executive sessions. The chair or a majority of the voting members of the council may call an executive session at any time in accordance with RCW 42.30.110.

NEW SECTION

WAC 463-18-090 **Adjudicative proceedings.** Adjudicative proceedings required by RCW 80.50.090(3) shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 463-30 WAC.

NEW SECTION

WAC 463-18-100 **Rule-making proceedings.** Rule-making proceedings shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-18-030	Quorum.
WAC 463-18-040	Delegation of duties.
WAC 463-18-060	Procedure in the absence of the chairman.
WAC 463-18-070	Council duties of acting chairman.
WAC 463-18-080	County, city and port district representatives--Participation.

Chapter 463-22 WAC

~~((PROCEDURE AND GUIDELINES--))~~ POTENTIAL SITE STUDIES

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-010 Purpose ~~((of this chapter))~~. This chapter sets forth procedures and guidelines for processing potential site~~((s))~~ studies pursuant to RCW ~~((80.50.170 and))~~ 80.50.175.

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-020 Potential site study request--Where submitted. Requests shall be submitted to the energy facility site evaluation council at the council office in writing.

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-030 Potential site study--Fee. ~~((A))~~ An initial 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.

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-050 Retention of consultant. Upon ~~((determining that the request is complete))~~ receipt of a request for a potential site study, the council ~~((will))~~ shall 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))~~ shall set forth a general analysis of the potential environmental impact

of the proposed energy facility and (~~will,~~ shall 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 and potentially impacted areas surrounding or adjacent to the site.

AMENDATORY SECTION (Amending Order 106, 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~~) provide the potential applicant (~~and shall furnish~~) an estimate of the (~~supplemental fees~~) full cost needed to complete the study including costs for consultants, council staff, council members, and other such expenses that are deemed reasonable by the council. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof.

NEW SECTION

WAC 463-22-100 Public information meeting. During the potential site study, the council may hold a public information meeting in the county or counties within whose boundaries the site of the proposed energy facility is located, or as close to the proposed site as practicable. The council shall publish notice of the meeting in local daily or weekly news publications. This public information meeting shall not be in lieu of the requirements of RCW 80.50.090.

Chapter 463-26 WAC

~~((PROCEDURE--INITIAL PUBLIC HEARING AND))~~
PUBLIC ~~((INFORMATION))~~ INFORMATIONAL MEETING AND LAND USE HEARING

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

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 pursuant to RCW 80.50.090(1) and as described in WAC ~~((463-26-130))~~ 463-26-025, and the public land use hearing held pursuant to RCW 80.50.090(2).

AMENDATORY SECTION (Amending Order 78-8, filed 8/28/78)

WAC 463-26-020 Notification of local authorities. Before ~~((scheduling the initial public hearing))~~ conducting either the public informational meeting under RCW 80.50.090(1) or the public land use hearing under RCW 80.50.090(2), 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.

NEW SECTION

WAC 463-26-025 Public informational meeting. The council shall conduct at least one public informational 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.

(1) 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.

(2) The general public shall be afforded an opportunity to present written or oral comments relating to the proposed project. The comments may become part of the adjudicative proceeding record.

(3) The informational meeting shall be held in the general proximity of the proposed project as soon as practicable within sixty days after receipt of an application for site certification.

NEW SECTION

WAC 463-26-035 Introduction of counsel for the environment.

The council shall invite the counsel for the environment to be present at the public informational meeting. Counsel for the environment shall be introduced and afforded an opportunity to explain his or her statutory duties under chapter 80.50 RCW.

AMENDATORY SECTION (Amending Order 78-8, filed 8/28/78)

WAC 463-26-050 Purpose for land use hearing. At the commencement of the ~~((initial))~~ public land use hearing, the council shall explain that the purpose of the ~~((initial))~~ hearing under RCW 80.50.090~~((+))~~ (2) is to determine whether at the time of application the proposed facility ~~((is))~~ was consistent and in compliance with ~~((county or regional))~~ land use plans ~~((or))~~ and 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.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-26-060 Public announcement--Testimony. At the outset of the (~~initial~~) public land use 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~~) and zoning ordinances.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-26-090 Procedure where certificates affirming compliance with (~~zoning ordinances or~~) land use plans and zoning ordinances are presented. This rule contemplates that applicants will enter as exhibits, at the land use 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~~) and zoning ordinances. In cases where this is done, such certificates will be regarded as *prima facie* proof of consistency and compliance with such land use plans and zoning ordinances (~~or land use plans~~) absent contrary demonstration by anyone present at the hearing.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-26-100 Procedure where no certificates relating to (~~zoning ordinances or~~) land use plans and zoning ordinances are presented. In cases where no certificates relating to (~~zoning or~~) land use plans and zoning ordinances 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~~) and local authorities shall address compliance or noncompliance with land use plans or zoning ordinances.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-26-110 Determination regarding (~~zoning or~~) land use plans and zoning ordinances. (~~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~~) and zoning ordinances pursuant to RCW 80.50.090(2).

REPEALER

The following sections of the Washington Administrative Code
are repealed:

WAC 463-26-040	Adversary nature of hearings.
WAC 463-26-070	Introduction of counsel for the environment.
WAC 463-26-080	Explanation of entire certification process.
WAC 463-26-120	Initial determination subject to review.
WAC 463-26-130	Public information meeting.

Chapter 463-28 WAC

(~~PROCEDURE~~) STATE PREEMPTION

AMENDATORY SECTION (Amending Order 78-3, filed 6/23/78)

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.

AMENDATORY SECTION (Amending Order 78-3, 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 463-28-090

Governing rules.

Chapter 463-30 WAC

~~((PROCEDURE--))~~ ADJUDICATIVE PROCEEDINGS

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-010 Purpose ~~((and scope of this chapter))~~. The purpose of this chapter is to set forth procedures by which adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter 10-08 WAC shall not apply to adjudicative proceedings before the council.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-020 Council conducted hearings and administrative law judges. The council ~~((may conduct))~~ is the presiding officer at adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW ((or it)). The council 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, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable)) to facilitate conduct of administrative hearings and all matters related thereto. Administrative hearings shall be governed by chapter 34.05 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-050 Status of ~~((agencies and agency))~~ members in adjudicative proceedings. All state agencies and local governments

having members on the council are deemed to be parties to any adjudicative proceeding before the council. For purposes of any adjudicative proceeding, however, the agency or local government representative on the council shall be deemed to be a member of the council and not a member of the agency or local government. (~~It shall be proper for the agency representative on the council to~~) Members of the council shall not communicate with employees of the represented agency or local government, (~~excepting those agency employees~~) who have participated in the proceeding (~~in any manner~~) or who are otherwise disqualified by RCW 34.05.455.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

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~~) specified in RCW 80.50.030 (3) through (6).
- (3) The "counsel for the environment" as defined in RCW 80.50.020(12).
- (4) Each person admitted to an adjudicative proceeding as an "intervenor," is a party only for the purposes and subject to any limitations and conditions specified in the council order granting intervention.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

WAC 463-30-080 Commencement of adjudicative proceedings. Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

- (1) Upon the record without further written notice to the parties; or
- (2) By letter from the (~~EFSEC~~) council manager; or

(3) By letter from the presiding officer.

In such instances, twenty days' prior notice is not required.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-090 Publicity--Commencement of adjudicative 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 notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC (~~463-30-400~~) 463-30-091.

NEW SECTION

WAC 463-30-091 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.

NEW SECTION

WAC 463-30-092 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 allow 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.

NEW SECTION

WAC 463-30-093 Participation by county, city and port district representatives. In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

WAC 463-30-120 Format, filing and service of documents. (1) ~~((Filing. Filing of any document shall be deemed complete only upon receipt by the EFSEC manager or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.~~

~~(a)) Format.~~

(a) All pleadings, motions, and other documents (including prefiled testimony) filed with the council shall be legibly written or printed. The use of letter size paper (8 1/2 by 11 inches) is mandatory. The writing or printing shall appear on two sides of

the page.

(b) The requirements of (a) of this subsection are not mandatory for exhibits but the use of exhibits that comply with (a) of this subsection is encouraged if it does not impair legibility.

(2) Filing.

(a) In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council.

(b) Document shall be deemed filed only upon actual receipt by the council manager or designee during office hours.

(c) Faxes.

(i) As used in this rule, "fax" means electronic telefacsimile transmission.

(ii) Except as specified in (c)(iii) of this subsection, receipt of a document in the council's fax machine does not constitute filing.

(iii) For good cause shown, a party may request and the council manager or designee may in his or her sole discretion grant authority to file a document by fax.

(iv) Filing by fax is perfected when a complete legible copy of the document is reproduced on the council manager's fax machine during the council's normal office hours, so long as the council receives the required number of nonfaxed originals on the next successive business day. If a transmission of a document by fax commences after the council's normal office hours, the document shall be filed on the next successive business day.

(v) Any document filed by fax must be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the document relates, and indicating the date faxed and total number of pages included in the transmission.

(vi) The party attempting to file a document by fax bears the risk that the document will not be timely received or legibly printed, regardless of the cause. If a fax is not received in legible form, it will be considered as if it had never been sent.

(d) E-mail. The filing of documents with the council by electronic mail is not authorized without the express approval of the council manager or designee and under such circumstances as the council manager or designee allows.

(e) Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(f) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

~~((b) Other pleadings. All pleadings shall be legible and a copy shall be served upon each party to the proceeding.~~

~~(2))~~ (3) Service.

(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.

(b) Service by parties.

(i) Service of pleadings, motions, and other documents by parties shall be made by delivering one copy to each party (A) in person, (B) by mail, ((properly addressed with postage prepaid,)) (C) by commercial parcel delivery company ((properly tendered with fees prepaid, or by telefacsimile transmission)) or (D) for documents not exceeding twenty-five pages, if authorized by the council manager or designee, by fax, where originals are mailed simultaneously.

(ii) Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party ((of all future pleadings before the council)). ((Service of pleadings by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.

(b)) (iii) Service of documents shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the fax machine of a confirmation of transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(c) Service by the council. All notices, ((findings of fact, decisions, and)) orders and other documents required to be served by the council may be served by delivery of one copy to each party (i) in person, (ii) by mail, (iii) by commercial parcel delivery company, ((properly tendered with fees prepaid, or by telefacsimile transmission)) or (iv) by fax, when originals are mailed simultaneously. Service of documents ((shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company)) by the council shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the council's fax machine of a confirmation of the transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

((+c)) (d) Certificate of service. There shall appear on or in a separate document accompanying the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120 ((+2)(a)) (3).

Dated at this day of
(signature)

(4) Courtesy copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-200 Subpoenas--Practice. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff (~~in any proceeding before the council~~). For these purposes, the council's independent consultant is deemed a member of the council staff.

(6) The council shall (~~only~~) be responsible for paying only the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-250 Stipulations ((and settlement)) of fact.

~~((1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.~~

~~(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the council.))~~

A stipulation is an agreement among parties intended to establish one or more operative facts in an adjudicative proceeding. The council encourages parties to enter stipulations of fact. The parties to an adjudicative proceeding before the council may agree to all of the facts or any portion of the facts involved in the proceeding. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the council, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The council may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

NEW SECTION

WAC 463-30-251 Alternative dispute resolution. The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

(1) Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. The council may assign a mediator or facilitator to assist the parties. The

council may also assign an arbitrator whose decision is subject to council review.

(2) Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.

(3) Collaborative.

(a) Defined; membership. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.

(b) Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third party neutral in the collaborative, or through the council manager, subject to agreement among the participants to the form and substance of any such communication.

(4) ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider any guidelines or directions by the council, and determine the ground rules governing the negotiations;

(b) No statement, admission or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the council without the consent of the participants or unless necessary to address the process of the negotiations;

(c) To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and

(d) Participants in a council-sanctioned ADR process must periodically advise any nonparticipating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

NEW SECTION

WAC 463-30-252 Settlement. A settlement is an agreement among two or more parties. Applicants, member agencies, and the counsel for the environment may enter into a settlement concerning any matter. Intervenors may enter into a settlement agreement

subject to any limits and conditions specified in the council's order granting intervention. Settlements are filed with the council as a proposed resolution of the issues addressed in the agreement.

(1) Full settlement. An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for council review.

(2) Partial settlement. An agreement of all parties on fewer than all issues in a proceeding may be presented as a partial settlement for council review, and remaining matters may be the subject of further council proceedings.

(3) Multiparty settlement. An agreement of some but not all parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it.

(4) Notice to council. Parties must advise the council if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 463-30-253 and 463-30-254. The council will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 463-30-253 and 463-30-254.

NEW SECTION

WAC 463-30-253 Settlement consideration procedure. The council must have a reasonable opportunity to hear parties' views on why a proposed settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of their settlement presentation to the council.

(1) Settlement presentation timing. Parties must file a proposed settlement that allows the council sufficient time for the filing, review, and approval of any filing.

(2) Settlement presentation contents. When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the council that the proposal is appropriate for adoption.

(a) Supporting documentation should include supporting evidence; a narrative outlining the scope of the settlement and its principal aspects; a statement explaining in detail why the proposal is appropriate for adoption; a summary of its costs and benefits; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting prefiled testimony, brief, or other form that serves the same functions.

(b) Parties must make a brief presentation to the council concerning the proposed settlement and address any legal or factual

matters associated with it. Each party to the settlement agreement must offer to present one or more witnesses to testify in support of the proposal and to answer questions. In the case of a contested settlement, parties opposed to the council's adoption of the proposal may offer to present one or more witnesses to testify or argue against the proposal.

NEW SECTION

WAC 463-30-254 Council discretion to accept or reject a proposed settlement or other agreement. The council will not delegate to parties the power to make decisions. The council retains the right to exercise its authority in every adjudicative proceeding to consider any proposed settlement or other agreement of the parties. The council may decide whether or not to consider a proposed settlement or agreement. If the council considers a proposed settlement or agreement, the council may accept it, reject it, or take any other action the council deems appropriate.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-270 Prehearing conference. (1) The ((presiding officer)) council upon ((his or her)) its own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
 - (d) Limitations on the number and consolidation of the examination of witnesses;
 - (e) Procedural matters;
 - (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
 - (g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC ((463-30-400)) 463-30-091 may be ruled upon at a prehearing conference;
 - (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.
- (2) Prehearing conferences may be held by telephone conference

call or at a time and place specified by the ~~((presiding officer))~~ council.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, ~~((and))~~ the agreements made by the parties concerning all of the matters considered and other matters as appropriate. If no objection to ~~((such notice))~~ the order is filed within ten days after the date ~~((such notice))~~ the order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the ~~((presiding officer))~~ council may ~~((at his or her discretion,))~~ conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The ~~((presiding officer))~~ council shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-320 ~~((Entry of initial and final orders.))~~

Preparation of recommendation to the governor. Every ~~((decision and order whether initial or final))~~ recommendation to the governor shall:

(1) Be correctly captioned to identify the council and name of the proceeding;

(2) Identify all parties and representatives participating in the proceeding;

(3) Include a concise statement on the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact ~~((meeting the requirements of RCW 34.05.461))~~;

(5) Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;

(6) Contain ~~((an initial or final order))~~ a recommendation disposing of all contested issues;

(7) ~~((if applicable,))~~ Contain such other information deemed appropriate by the council;

(8) Contain a statement describing the parties' rights to reconsideration or other administrative relief.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

WAC 463-30-335 Petition for reconsideration of recommendations to the governor. A petition for reconsideration of a ~~((final order under RCW 34.05.470))~~ recommendation to the governor shall be filed with the ~~((EFSEC))~~ council manager.

(1) The petition for reconsideration shall be filed with the council within twenty days of the date of service of the recommendation to the governor, unless a different place and time limit for filing the petition are specified in the recommendation to the governor in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(2) The petition for reconsideration shall specify the challenged portions of the recommendation to the governor and shall refer to the evidence of record and legal authority which is relied upon to support the petition.

(3) Any party may file an answer to a petition for reconsideration. The answer shall be filed with the council manager within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

NEW SECTION

WAC 463-30-345 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-30-030
WAC 463-30-055

Use of the term "council."
Applicant funding of council members salaries and fringe benefits for extended adjudications.

WAC 463-30-280

Attendance by council members at prehearing conferences.

WAC 463-30-330

Petition for review and replies.

WAC 463-30-3.

Recommendation--Transmittal to
governor.

WAC 463-30-400

Intervention.

WAC 463-30-410

Participation by intervenor.

WAC 463-30-420

Participation by county, city and
port district representatives.

Chapter 463-34 WAC

~~((PROCEDURE--))~~ PETITIONS FOR RULE MAKING AND DECLARATORY ORDERS

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-010 Purpose ~~((and scope of this chapter))~~. This chapter sets forth procedures to be followed in petitions for rule making and for declaratory orders pursuant to chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-030 Petitions for rule making ~~--((Form,))~~
Content((7)) and filing. ((A)) (1) Petitions for adoption, amendment, or repeal of a rule may be filed pursuant to RCW 34.05.330 and shall ~~((generally adhere to the following form:~~

~~(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rule making." Opposite the caption shall appear the word "petition."~~

~~(2) The body of the petition shall be set out in numbered paragraphs:~~

~~(a) The first paragraph shall state the name and address of the petitioner and whether the petition seeks the adoption of a new rule or amendment or repeal of an existing rule.~~

~~(b) The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. If the petition seeks repeal of an existing rule, the rule proposed to be repealed shall be set forth in full.~~

~~(c) The third paragraph shall set forth concisely the reasons for the proposal and shall state the petitioner's interest in the subject matter of the rule. The petition should in subsequent paragraphs state a full explanation of reasons supporting the proposal.~~

~~(3) Petitions shall be dated and signed by the petitioner or~~

~~its attorney. The original and two legible copies shall be filed with the council))~~ include the information required by WAC 82-05-020. In addition, petitioners are encouraged to include the information identified in WAC 82-050-020 (1)(c) and (2).

(2) Petitions for adoption, repeal, or amendment of a rule must be submitted in accordance with WAC 82-05-030.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-050 Petitions for rule making--Consideration ((and disposition)). (1) In accordance with WAC 82-05-040, within a reasonable time of receipt of a petition for rule making, the council will send the petitioner an acknowledgment of receipt of the petition and the name and telephone number of the council's contact person.

(2) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the council, and the council may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

~~((2) If the council denies the petition, the denial shall be in writing and shall be served upon the petitioner.))~~

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-060 Petitions for rule making--Disposition ((time)). In accordance with RCW 34.05.330 and WAC 82-05-040, within sixty days after receipt of the petition((+s submission)), the council shall deny the petition in writing, stating its reasons for the denial, and serve petitioner with a copy, or initiate rule-making proceedings.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-070 Declaratory orders--Form, content, and filing. A petition for a declaratory order may be filed pursuant to RCW 34.05.240 to determine the applicability to a specified circumstance of a statute, rule, or order enforceable by the

council and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the caption shall appear the words "petition for declaratory order."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioning party.

(b) The second paragraph shall ~~((state))~~ identify all statutes, rules, orders, or ((statutes)) other legal requirements that ((may be brought into the)) are at issue ((by the petition)).

(c) Succeeding paragraphs shall set out the facts relied upon ~~((and))~~ by the ((reasons for granting its relief)) petitioner to make the showing required by RCW 34.05.240(1) and to support the petitioner's requested outcome.

(d) The concluding paragraph shall specify the ~~((relief))~~ outcome sought by the petitioner.

The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the council.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-34-080 Declaratory orders--Procedural rights of persons in relation to petition. (1) In accordance with WAC 10-08-251, if a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the ((agency)) council shall give not less than seven days' advance written notice of the proceeding to the petitioner and all persons described in RCW 34.05.240(3). The notice shall specify the time, date, place, and nature of the proceeding and shall describe how interested persons may participate.

(2) The council may order that RCW 34.05.410 through 34.05.494 and chapter 463-30 WAC shall apply in a proceeding under this section.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90,
effective 3/16/90)

**WAC 463-34-090 Declaratory orders--Disposition ((of
petition)).** In accordance with WAC 10-08-252, a declaratory order
entered by the council or a decision by the council to decline to
enter a declaratory order shall be in writing and shall be served
upon the petitioner and all other persons described in RCW
34.05.240(3).

Chapter 463-36 WAC

~~((PROCEDURE--))~~ AMENDING, TRANSFERRING, OR TERMINATING A SITE
CERTIFICATION AGREEMENT

AMENDATORY SECTION (Amending Order 87-2, filed 11/19/87)

WAC 463-36-030 Request for amendment. A request for amendment of ~~((an))~~ a site certification agreement shall be made in writing by a certificate holder to the council. The council will consider the request and determine a schedule for action at the next feasible council meeting. ~~((The council will then refer the question to committee for recommendation, determine a schedule for action, or take action upon the request.))~~ The council may, if appropriate and required for full understanding and review of the proposal, secure the assistance of a consultant or take other action at the expense of the certificate holder. The council shall hold one or more public hearing sessions upon the request for amendment at times and places determined by the council.

AMENDATORY SECTION (Amending Order 87-2, filed 11/19/87)

WAC 463-36-070 Approval by ~~((resolution))~~ council action. An amendment request which ~~((changes a technical provision or requirement within the terms of the SCA, and constitutes no substantial alteration))~~ does not substantially alter the substance of any provisions of the SCA, ~~((and))~~ or which is determined not to have ~~((no))~~ a significant detrimental effect upon the environment, shall be effective upon ~~((adoption))~~ approval by the council. Such approval may be in the form of a council resolution.

AMENDATORY SECTION (Amending Order 87-2, filed 11/19/87)

WAC 463-36-080 Approval by governor. An amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor ((of Washington state)).

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-36-100 Transfer of a site certification agreement. ((+)) No site certification agreement, any portion of a site certification agreement, nor any legal or equitable interest in such an agreement issued under this chapter shall be transferred, assigned, or in any manner disposed of (including abandonment), either voluntarily or involuntarily, directly or indirectly, through transfer of control of the certification agreement or the site certification agreement owner or project sponsor without express council approval of such action. In the event a site certification agreement is to be acquired via a merger, leveraged buy-out, or other change in corporate or partnership ownership, the successor in interest must file a formal petition under the terms of this section to continue operation or other activities at the certificated site.

((+2-a)) (1) A certification holder seeking to transfer or otherwise dispose of a site certification agreement must file a formal application with the council including information about the new owner required by WAC ((463-42-065 and 463-42-075)) 463-60-015 and 463-60-075 that demonstrate the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the original site certification agreement including council approved plans for termination of the plant and site restoration. The council may place conditions on the transfer of the certification agreement including provisions that reserve liability for the site in the original certification holder.

((+b)) (2) If the certification holder is seeking an alternative disposition of a certificated site, the certification holder must petition the council for an amendment to its site certification agreement pursuant to the provisions of this chapter and gain council approval of its alternative disposition plan. In submitting a request for an alternative disposition of a certificated site, the certification holder must describe the operational and environmental effects of the alternative use of the site on the certified facility. If the proposed alternative use of the site is inconsistent with the terms and conditions of the original site certification agreement the council may reject the application for alternative use of the site.

(3) The council shall require any person who submits an application to acquire a site certification agreement under provisions of this section to file a written consent from the current certification holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right, subject to the provisions of chapter 80.50 RCW et seq. and the rules of this chapter, to possession of the energy facility involved.

(4) After mailing a notice of the pending application for transfer of the site certification agreement to all persons on its mailing list, the council shall hold an informational hearing on the application. Following the hearing the council may approve an application for transfer of the site certification agreement if the council determines that:

(a) The applicant satisfies the provisions of WAC (~~463-42-065 and 463-42-075~~) 463-60-015 and 463-60-075;

(b) The applicant is entitled to possession of the energy facility described in the certification agreement; and

(c) The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.

(5) The council shall issue a formal order either approving or denying the application for transfer of the site certification agreement. If the council denies the request, it shall state the reasons for its denial.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-36-020	463-66-020
463-36-030	463-66-030
463-36-040	463-66-040
463-36-050	463-66-050
463-36-060	463-66-060
463-36-070	463-66-070
463-36-080	463-66-080
463-36-090	463-66-090
463-36-100	463-66-100

REPEALER

The following section of the Washington Administrative Code
is repealed:

WAC 463-36-010

Council policy.

NEW SECTION

WAC 463-38-005 Purpose. (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state individual permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, EPA, and applicable state laws and regulations.

(3) These regulations apply to:

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

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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 (FWPCA) as amended, (~~Public Law 92-500~~) (33 U.S.C. (~~1314~~) 1251, 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))~~ state and federal law, including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 CFR 131.36.

~~((4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to ((the act and section 402(b) thereof)) this chapter.~~

~~((6) The term))~~ (5) "Certification agreement" means that binding site certification 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"))~~ (6) "Chair" means the chairman of the energy facility site evaluation council.

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

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

~~((The term))~~ "Council manager" means the individual holding the position of manager of the council.

(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant ((to navigable waters)) or combination of pollutants to surface waters of the state from any point source((7));

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

~~((10) The term "DOE"))~~ (11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration or surface waters as may be present.

(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen thousand five hundred gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

~~((11) The term))~~ (14) "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)) surface waters, the waters of the ((contiguous zone

~~or the ocean)) state, including schedules of compliance.~~

~~((12) The term)) (15) "Energy facility" means any energy facility, as defined in RCW 80.50.014.~~

~~(16) "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)) (17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.~~

~~(18) "Governor" ((shall)) means 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)) (19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).~~

~~(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.~~

~~((18) The term)) (21) "New source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced ((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)):~~

~~(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or~~

~~(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source,~~

but only if the standards are promulgated in accordance with section 306 within one hundred twenty days of their proposal.

~~((19) The term))~~ (22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) as ((adopted)) prescribed by the council for use in the Washington state NPDES program.

~~((20) The term))~~ (23) "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))~~ (24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

~~((22) The term))~~ (25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

~~((23) The term))~~ (26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

~~((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))~~ (27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

(30) "Pollutant" means dredged spoil, solid waste, incinerator

residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(a) Sewage from vessels within the meaning of section 312 of the act; or

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

(31) "Regional administrator" means the EPA's region X administrator.

((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)) (32) "State" means ((a)) any of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

((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-))~~ (33) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, storm water discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 CFR 122.2 and 122.26(b) shall be used.

NEW SECTION

WAC 463-38-025 Authorization required. No waste materials or pollutants may be discharged from any energy facility as defined in WAC 463-76-010 into surface waters of the state, except as authorized pursuant to this chapter or as authorized by the council pursuant to its authority under chapter 80.50 RCW for coverage under a general permit promulgated by ecology.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

WAC 463-38-031 Application filing with the council. (1) For each energy facility (~~described in WAC 463-38-020(3)~~) proposing to commence a discharge of pollutants to surface waters of the state, there shall be filed with the council:

(a) A complete (~~Refuse Act~~) NPDES 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,) at the time of submitting an application for site certification to the council pursuant to RCW 80.50.071, for proposals to discharge wastewater or storm water to surface waters of the state. Applicants may seek coverage for storm water discharge associated with construction activity or storm water from areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the areas described in WAC 463-76-010(33) under a NPDES storm water general permit, promulgated by ecology. Any subsequent determination of such an NPDES application's adequacy shall not affect the council's finding that a complete application pursuant to RCW 80.50.070 has been received.

(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) for any energy facility and not covered above shall be filed either:

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

pollutants(~~(7)~~)_i or(~~(7)~~)

(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 and reviewed by the council. Information shall be provided in sufficient detail such as to fulfill the requirements of 40 CFR 122.26(c).

(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.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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.)~~ (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation. By a responsible corporate officer. For the purpose of this section, responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or

operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility.

(2) All reports required by permits, and other information requested by the council shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of facility manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the council.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the council prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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))~~ shall be included in the tentative determination:

(i) Proposed effluent limitations, identified pursuant to WAC ~~((463-38-053))~~ 463-76-053(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))~~ (ii) A brief description of any other proposed special conditions (other than those required pursuant to WAC ~~((463-38-055))~~ 463-76-055) 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.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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))~~ 463-76-041 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) The type of facility or activity which is subject of the

application;

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

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

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

(ii) For thermal discharges ~~((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, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under this chapter and RCW 90.48.010, 90.54.020 and sections 301, 302, 306 or 307 of the act and regulations published thereunder;

~~((c))~~ (d) The tentative determinations required under WAC ~~((463-38-033))~~ 463-76-033.

~~((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))~~ (e) The legal and technical grounds for the tentative determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the act and chapters 90.48, 90.52, and 90.54 RCW;

(f) The effluent standards and limitations applied to the proposed discharge;

(g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified by ecology;

(h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(i) A description of the procedures to be used by the council in formulating final determinations for an NPDES permit, which shall include, but not be limited to:

(i) Thirty day comment period required by WAC ~~((463-38-041))~~ 463-76-041(2);

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

(iii) Any other procedures by which the public may participate, either directly or through counsel for the environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental impact and any public hearings which may be held by the council prior to the final determination on the ~~((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 the applicant and each person or group on such mailing list. Each person or group on such mailing list will be sent notice of any subsequent revision of the permit or fact sheet.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

WAC 463-38-041 Public notice(~~(, provisions)~~). (1) (~~Notices shall be circulated~~) The council shall circulate notice of the NPDES application and tentative determination within the geographical areas of the proposed discharge(~~(, and shall be published in a local or daily newspaper of general circulation, such)~~). Circulation (~~(may)~~) shall include (~~(any)~~) one or (~~(all)~~) more of the following:

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

(b) Posting for a period of thirty days at or near the entrance of the applicant's principal place of business and in nearby places;

(c) Posting on the council's internet website;

(d) Publishing in a major local newspaper of general circulation.

(2) Any persons may, within thirty 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)~~) thirty-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)~~) the council;

(b) Name and address of applicant;

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

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

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

(f) A brief description of the procedures for the formulation of final determinations, including the ~~((30))~~ thirty-day comment period required by paragraph (2) of this section and any other means set forth in WAC ~~((463-38-034))~~ 463-76-034 (1) ~~((e))~~ (i).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC ~~((463-38-033))~~ 463-76-033(2), request a copy of the fact sheet described in WAC ~~((463-38-034))~~ 463-76-034 and inspect and copy NPDES forms and related documents at a reasonable charge.

(4) The council shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received and reference to the procedures for contesting the decision.

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

(a) ~~((Notice shall be mailed))~~ The council shall mail the notice to any person or group carried on the mailing list identified in WAC ~~((463-38-034))~~ 463-76-034(2). Upon written request, the name of any person or group shall be added upon written request to a mailing list for distributing copies of notices for all NPDES applications within the state or within a certain geographical area.

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

(i) Any other state whose waters may be affected by the issuance of the NPDES permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such state and interstate agencies with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to WAC ~~((463-38-033))~~ 463-76-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the council and to the regional administrator, which shall be duly considered by the council in accordance with the policies, provisions and regulations of the act, chapter 80.50 RCW et seq., and chapter 34.05 RCW et seq.

(ii) The district engineer of the Army Corps of Engineers ((for NPDES applications for discharges (other than minor discharges) into navigable waters)), the United States Fish and Wildlife Service, the United States National Oceanic and Atmospheric Administration - Fisheries, the state departments of ecology, fish and wildlife, natural resources, and social and health services, the office of archaeology and historic preservation office, applicable Indian tribes and any other applicable government agency.

(iii) Any other federal, state or local agency ~~((or any affected county)),~~ Indian tribe, upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC ~~((463-38-042))~~ 463-76-042. ~~((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.)~~

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

WAC 463-38-042 Public hearings. (1) ~~((Any))~~ The applicant, any affected state, any affected interstate agency, any affected county, any interested agency, any affected tribe, person or group of persons, or the regional administrator may request of or petition the council for a public hearing ~~((to be held with respect to an NPDES application))~~ on the council's tentative determination under WAC 463-76-033. 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))~~ 463-76-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing. ~~((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 34.05 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC ~~((463-38-042))~~ 463-76-042 (1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

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

(b) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet ~~((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))~~ 463-76-041.

(6) The contents of public notice of any hearing held pursuant to WAC ((~~463-38-042~~)) 463-76-042 (1) through (4) shall include at least the following notice which meets the requirements of this section:

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

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

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

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

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

(f) The purpose of the hearing;

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

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC ((~~463-38-033~~)) 463-76-033(2) above, request a copy of each fact sheet prepared pursuant to WAC ((~~463-38-034~~)) 463-76-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(7) The council shall cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

WAC 463-38-043 Public access to information. (1) All ((NPDES forms)) records relating to NPDES applications (including the draft NPDES permit prepared pursuant to WAC ((~~463-38-033~~)) 463-76-033(2) or any public comment upon those ((forms)) records pursuant to WAC ((~~463-38-041~~)) 463-76-041(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)) consistent with WAC 463-06-110 - Copying and fees.

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

(a) The name and address of any permit applicant or permittee;

(b) Permit applicants, permits, and effluent data;

(c) Information required by NPDES application forms pursuant to WAC 463-76-031 may not be claimed confidential.

(3) Any information afforded confidential status (~~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 nonconfidential information relating to NPDES forms during normal business hours of the council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with council business. The ~~((executive secretary))~~ council manager shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the council.

AMENDATORY SECTION (Amending Order 86-1, filed 12/17/86)

WAC 463-38-051 General conditions. (1) Any NPDES permit shall be issued for a period of not longer than five years, which period shall start on the date of issuance of said permit. Review and reissuance of this authorization per WAC 463-76-061 to

discharge wastewater, storm water, and sanitary sewer wastes and any related changes to the site certification agreement shall not require approval of the governor. However, the permittee shall inform the council at least ((180)) one hundred eighty 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)) chapter. A majority vote of council members ((listed in RCW 80.50.030(3))) shall resolve any dispute and shall determine the approval or rejection of ((a Refuse Act or)) an NPDES application.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

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

(a) ((Discharge)) When the conditions of the permit do not provide for compliance with the applicable requirements of the act, or regulations promulgated under the act;

(b) When the applicant is required to obtain a state certification under section 401 of the act and 40 CFR 124.53 and that certification has not been obtained or waived;

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Washington state;

(d) For the discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into ((navigable)) surface waters of the state;

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

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

((d)) (g) For discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act;

(h) For the discharge of any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the act;

(i) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(i) Before the promulgation of guidelines under section 403(c) of the act, unless the council determines permit issuance to be in

the public interest;

(ii) After promulgation of guidelines under section 403(c) of the act, when insufficient information exists to make a reasonable judgment whether the discharge complies with them;

(j) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the act, and for which the state has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of comment period, that:

(i) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The council may waive the submission of information by the new source or new discharger required by (j) of this subsection if the council determines that the council already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet;

(k) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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)) All known, available, and reasonable methods of treatment; including effluent limitations established under sections 301, 302, 306, and 307 of the act. The effluent limitations shall not be less stringent than those based upon the treatment facility design efficiency contained in approved engineering plans and reports or approved revisions thereto. The effluent limitations shall reflect any seasonal variation in industrial loading;

(b) Any more stringent limitation, including those:

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

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

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

~~((e))~~ (iv) Prevent or control pollutant discharges from facility site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage; and

(v) Meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5).

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

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

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

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to ~~((paragraphs))~~ subsections (1) and (2) ~~((hereof))~~ of this section, each issued NPDES permit shall specify:

(a) Average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate;

(b) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution zone.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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))~~ 463-76-053 (1) ~~((d)(e))~~ (b) and (c), the permittee shall be required to take specific steps to achieve compliance with the following:

(a) Any legally applicable schedule of compliance contained in:

- (i) Applicable effluent standards and limitations;
- (ii) ~~((If more stringent,))~~ Water quality standards; or
- (iii) ~~((If more stringent,))~~ Legally applicable requirements listed in WAC ~~((463-38-053 (1)(d)(e))~~ 463-76-053; or

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

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

(3) Either before or up to ~~((14))~~ fourteen days following each interim date and the final date of compliance, the permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the council may modify or revoke the permit or take direct enforcement action.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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)) 463-76-051, 463-76-052 and 463-76-053, each issued NPDES permit shall require that:

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

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

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

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

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

(d) A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.

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

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

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

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

(d) To sample any discharge of pollutants.

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

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the (~~council shall revise or modify the NPDES permit in accordance with the toxic effluent~~

standard of prohibition and so notify the)) permittee shall comply with that toxic effluent standard or prohibition even if this permit has not yet been modified to incorporate the requirement.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

WAC 463-38-061 Reissuance of NPDES permits. (1) Any permittee shall make application for reissuance of an NPDES permit(~~(s)~~) or continuation of discharges after the expiration date of ~~((his))~~ the NPDES permit by filing with the council an application for reissuance of ~~((his))~~ the permit at least ~~((180))~~ one hundred eighty 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, and the nature, content and frequencies of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports ~~((resubmitted))~~ submitted to the council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC ~~((463-38-053))~~ 463-76-053 (1) and (2), including any additions to, or revisions or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC ~~((463-38-041 and 463-38-042))~~ 463-76-041 and 463-76-042 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.)~~ When a permittee has made timely and sufficient application for the renewal of a permit, an expiring permit remains in effect and enforceable until the application has been denied or a replacement permit has been issued by the council pursuant to WAC 463-76-0625 - Permit issuance.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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 for cause including, but not limited to, the causes listed in WAC 463-76-055(2).

(2) The council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES permit if the council determines good and valid cause exists for such revision and if within (~~30~~) thirty 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~~) 463-76-041, 463-76-042 and 463-76-043.

NEW SECTION

WAC 463-38-0625 Permit issuance. Any permit issued by the council pursuant to this chapter shall become an attachment to a site certification agreement. For an energy facility proposal requiring the execution of a governor-approved site certification agreement, the permit shall be effective upon the governor's approval and execution of the site certification agreement. For existing facilities under the jurisdiction of the council, revisions, modifications or reissuance of the NPDES permit shall be effective when approved by the council and signed by the chair.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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

(2) Immediately following execution by the applicant and the state, a copy of every issued NPDES permit ((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.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

WAC 463-38-065 Monitoring and enforcement. (1) Monitoring.

(a) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the council, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include:

(i) Flow (in gallons per day);

(ii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to limitation, reduction, or elimination under the terms and conditions of the permit;

(iii) Pollutants which the council finds could have a significant impact on the quality of waters of the state; and

(iv) Pollutants specified by the administrator, in regulations

issued pursuant to the act, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(c) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required when determined necessary by the council to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the surface waters of the state.

(2) Recording of monitoring activities and results. Any permit which requires monitoring of the authorized discharge shall require that:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of them in their permit;

(b) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses; and

(c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the council or regional administrator.

(3) Reporting of monitoring results.

(a) The permittee shall periodically report (at a frequency of not less than once per year) on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a permit. In addition to the required reporting form, the council at its discretion may require submission of such other results as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, by a responsible corporate officer or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

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

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

(iv) In the case of a municipal, state or other public

facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Use of registered or accredited laboratories.

(a) Except as established in (b) of this subsection, monitoring data submitted to the council in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC. These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as conditions of a permit.

(b) The following parameters need not be done by an accredited or registered lab:

(i) Flow;

(ii) Temperature;

(iii) Settleable solids;

(iv) Conductivity, except that conductivity shall be accredited if the laboratory must otherwise be registered or accredited;

(v) pH, except that pH shall be accredited if the laboratory must otherwise be registered or accredited;

(vi) Turbidity, except that turbidity shall be accredited if the laboratory must otherwise be registered or accredited; and

(vii) Parameters which are used solely for internal process control.

(5) Compliance monitoring. The council (~~hereby delegates to the DOE the~~) may establish an interagency contract with ecology for compliance 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.~~) Monitoring and/or appropriate enforcement activities by ecology are authorized by WAC 463-70-060(1).

(6) Enforcement.

(a) Enforcement activities regarding the NPDES program, including the levying of civil and criminal fines pertaining to all energy facilities where the permit is issued by the council, shall be undertaken by the council, with assistance from ecology, the attorney general, or the prosecuting attorney, as appropriate.

(b) Pursuant to the provisions of RCW 80.50.150 - Enforcement of compliance penalties, the council shall take or initiate such actions to enforce the terms of any site certification agreement and the incorporated NPDES permit. The council may take any or all

of the following actions:

(i) Assess or sue to recover in court such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term or condition thereof;

(C) Any filing requirements;

(D) Any duty to permit or carry out inspection, entry, or monitoring activities; or

(E) Any rules, regulations, or orders issued by the council.

(ii) Request the prosecuting attorney to seek criminal sanctions for the violation of any permits or conditions thereof without the necessity of a prior revocation of the permit;

(iii) Request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term condition thereof; or

(C) Any filing requirements.

(iv) Seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the council.

(v) Enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

WAC 463-38-080 Transmittal of data to regional administrator.

(1) ~~((Copies of NPDES))~~ A complete NPDES form or relevant portions of any 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))~~ required such deficiency to be corrected, so long as ~~((he))~~ the administrator acts to inform ~~((by written letter))~~ the council by letter 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 council will send to 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)) thirty days.

(3) For all minor discharges, the council may require the operator of such a discharge to submit NPDES application forms or such other information as may be requested by the regional administrator.

(4) On the last day of the months of February, May, August, and November, the council shall transmit to the regional administrator a list of all instances in the previous ninety days of failure or refusal of a permittee to comply with an interim or final requirement. Such list shall be available to the public for inspection or copying and shall contain at least the following information on each instance of noncompliance:

(a) Name and address of each noncomplying permittee;

(b) A short description of the instance of noncompliance (e.g., failure to submit preliminary plans, delay in commencement of construction of treatment facility, failure to notify the council of compliance with an interim requirement, etc.);

(c) A short description of any actions or proposed actions by the permittee or the council to comply or enforce compliance with the interim or final requirement; and

(d) Any details which explain or mitigate an instance of noncompliance with an interim or final requirement.

AMENDATORY SECTION (Amending Order 114, filed 2/4/77)

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)) 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.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-38-010	463-76-010
463-38-031	463-76-031
463-38-032	463-76-032
463-38-033	463-76-033
463-38-034	463-76-034
463-38-041	463-76-041
463-38-042	463-76-042
463-38-043	463-76-043
463-38-051	463-76-051
463-38-052	463-76-052
463-38-053	463-76-053
463-38-054	463-76-054
463-38-055	463-76-055
463-38-061	463-76-061
463-38-062	463-76-062
463-38-063	463-76-063
463-38-064	463-76-064
463-38-065	463-76-065
463-38-080	463-76-080
463-38-090	463-76-090

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-38-020
WAC 463-38-030

Scope and purpose.
NPDES application and tentative
determination.

WAC 463-38-05

Notice, hearings and information
accessibility.

WAC 463-38-050

NPDES permit contents.

WAC 463-38-060

NPDES permits review and appeal.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-39-005	463-78-005
463-39-010	463-78-010
463-39-020	463-78-020
463-39-030	463-78-030
463-39-070	463-78-070
463-39-090	463-78-090
463-39-095	463-78-095
463-39-100	463-78-100
463-39-105	463-78-105
463-39-115	463-78-115
463-39-120	463-78-120
463-39-135	463-78-135
463-39-140	463-78-140
463-39-170	463-78-170
463-39-230	463-78-230

AMENDATORY SECTION (Amending Order 82-5, filed 12/22/82)

WAC 463-40-010 Purpose. The energy facility site evaluation council, under authority (~~(invested)~~) vested in it by chapter 80.50 RCW is charged with the responsibility of adopting rules sufficient to (~~(the protection of)~~) protect the public and the environment from the effects of dangerous wastes generated at energy facilities subject to chapter 80.50 RCW.

AMENDATORY SECTION (Amending Order 82-5, 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)~~) the department of ecology 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 remain in effect until confirmed or modified by the council.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-40-010	463-74-010
463-40-020	463-74-020
463-40-030	463-74-030
463-40-040	463-74-040

Chapter 463-42 WAC

~~((PROCEDURE--GUIDELINES--))~~ APPLICATIONS FOR SITE CERTIFICATION

Subpart A - General

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

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. Applications for siting energy facilities must contain information regarding the standards required by chapter 463-62 WAC.

The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, and the built environment (~~(, and plans for project termination and site restoration)~~). This information shall be in such detail as determined by the council to enable the council to go forward with its application review.

The council encourages applicants to consult with appropriate agencies for guidance in gathering sufficient detailed information, and development of comprehensive mitigation plans, for inclusion in their application.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

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.

(1) To aid in the council's review under SEPA and chapter 463-47 WAC, WAC (~~463-42-302~~) 463-60-302 through (~~463-42-382~~) 463-

60-372 are similar to the elements required in an environmental impact statement.

(2) 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.

NEW SECTION

WAC 463-42-021 Council recognizes pressing need for energy facilities. RCW 80.50.010 requires the council to "recognize the pressing need for increased energy facilities." For that reason, applications for site certification need not demonstrate a need for the energy facility.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-42-055 General--Form and number of copies. (1) Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. The applicants shall supply ((thirty-five)) a sufficient number of copies of the application to the council, the number to be determined by the council in consultation with its staff, consultants and the applicant. The applicants shall also supply two copies to each county, two copies to each city, and one copy to each port district in which the proposed project would be located. 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, bearing the date of the submission.

(2) An applicant shall also provide the council copies of its application in a digital format for use in personal computers. Digital format shall be determined by the council in consultation with its staff, consultants and the applicant.

(3) At the time of submittal of the application, the applicant shall submit one copy of the applicable land use plans and zoning ordinances for the project site.

AMENDATORY SECTION (Amending Order 87-1, filed 2/11/87)

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, operation, abandonment, termination, or when operations cease at the completion of a project's life. The application shall describe the applicant's commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-085 General--Mitigation measures. (1) Mitigation measures summary. The application shall ~~((describe))~~ summarize the impacts to each element of the natural or built environment and the means to be utilized to minimize or mitigate possible adverse impacts ~~((on the physical or human environments))~~ during construction, operation, and decommissioning of the proposal, all associated facilities, and any alternatives being brought forward.

(2) Fair treatment. The application shall describe how the proposal's design and mitigation measures ensure that no group of people, including any racial, ethnic, or socioeconomic group, bear a disproportionate share of the environmental or socioeconomic impacts resulting from the construction and operation of the proposed facility.

NEW SECTION

WAC 463-42-101 General--Consultation. (1) Preapplication consultation. The application shall summarize all consultation that the applicant has conducted with local, state and federal agencies and governments, Indian tribes, nonprofit organizations and community citizen and interest groups prior to submittal of the application to the council.

(2) Meaningful involvement. The application shall describe all efforts made by the applicant to involve the public, regardless of race, ethnicity, or socioeconomic status, prior to submittal of the application to the council. The application shall also set forth information for contacting local interest and community groups to allow for meaningful involvement of all people, regardless of race, ethnicity or socioeconomic status. For example, such information may include contacts with local minority radio stations and news publications.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

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~~) spatial relationships. 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.

NEW SECTION

WAC 463-42-116 General--Amendments to applications, additional studies, procedure. (1) Applications to the council for site certification shall be complete and shall reflect the best available current information and intentions of the applicant.

(2) Amendments to a pending application must be presented to the council at least thirty days prior to the commencement of the adjudicative hearing, except as noted in subsection (3) of this section.

(3) Within thirty days after the conclusion of the hearings, the applicant shall submit to the council, application amendments which include all commitments and stipulations made by the applicant during the adjudicative hearings.

(4) After the start of adjudicative hearings, additional environmental studies or other reports shall be admitted only for good cause shown after petitions to the council or upon request of the council, or submitted as a portion of prefiled testimony for a witness at least thirty days prior to appearance.

NEW SECTION

WAC 463-42-117 General--Applications for expedited processing. (1) Request for expedited processing. Requests for expedited processing shall be accompanied by a completed environmental checklist delineated in WAC 197-11-960. The request for expedited processing shall also address the reasons for which the following are not significant enough to warrant a full review

of the application for certification under the provisions of chapter 80.50 RCW:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility;

and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site.

(2) Contents. Applications for expediting processing submitted to the council in accordance with the requirements of chapter 463-43 WAC must address all sections of chapters 463-60 and 463-62 WAC.

(3) Fees. The applicant shall submit those fees and costs 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 shall be returned to the applicant at the completion of application processing.

Subpart B - Proposal

AMENDATORY SECTION (Amending Order 82-6, filed 12/22/82)

WAC 463-42-135 Proposal--Legal descriptions and ownership interests. (1) Principal facility((~~τ~~)). 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~~)) Associated and transmission facilities((~~τ~~)). 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 described and of those lands lying equidistant for 1/4 mile either side of such center line.

AMENDATORY SECTION (Amending Order 82-6, filed 12/22/82)

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.)) The application shall identify the federal, state, and industry criteria used in the conceptual design, route selection, and construction for all facilities identified in RCW 80.50.020 (6) and (7), and shall indicate how such criteria are met.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-42-165 Proposal--Water supply ((system)). ((The applicant shall describe the location and type of water intakes and associated facilities.)) (1) Water intake and conveyance facilities. The application shall describe the location and type of water intakes, water lines, pipelines and water conveyance systems, and other associated facilities required for providing water to the energy facility for which certification is being requested.

(2) Water supply and usage alternatives.

(a) The applicant shall consider water supply alternatives, including use of reclaimed water, water reuse projects, and conservation methods. The application shall describe all supply alternatives considered, including the associated cost of implementing such alternatives, and the resulting benefits and penalties that would be incurred.

(b) The application shall include detailed information regarding using air cooling as an alternative to consumptive water use, including associated costs.

(c) The application shall describe water conservation methods that will be used during construction and operation of the facility.

(3) Water rights and authorizations. An applicant proposing to use surface or ground water for the facility shall describe the source and the amount of water required during construction and operation of the energy facility and shall do one or more of the following:

(a) Submit a water use authorization or a contractual right to use water supplied by a municipal corporation or other water purveyor; or

(b) Submit a water right permit or water right certificate issued by the department of ecology for the proposed facility in an amount sufficient to meet the need of the facility. If the permit and/or certificate has been issued five years prior to the

submittal date, the applicant shall provide evidence that the water right permit is in good standing, or that the certificate has not relinquished through nonuse; or

(c) For applications for new surface or ground water withdrawals, or applications for water right changes or transfers of existing rights or certificates for withdrawal, the applicant shall submit appropriate application(s) for such rights certificates or changes in rights and certificates, to the department of ecology prior to submittal of the application for site certification to the council. The application for site certification shall include report(s) of examination, identifying the water rights, or water right changes, submitted to and under review by the department of ecology, the quantities of water in gallons per minute and acre feet per year that are eligible for change, together with any limitations on use, including time of year. The report(s) of examination shall also include comments by the Washington state department of fish and wildlife with respect to the proposed water right applications under review by the department of ecology.

(d) Mitigation. The application shall contain a description of mitigation proposed for water supply, and shall include any and all mitigation required by the department of ecology pursuant to the review of water rights or certificates, or changes to water rights or certificates required in (c) of this subsection.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-175 Proposal--System of heat dissipation. The ((applicant)) application shall describe both the proposed and alternative systems for heat dissipation from the proposed facilities.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-185 Proposal--Characteristics of aquatic discharge systems. (1) Where discharges into a watercourse are involved, the applicant shall identify outfall configurations ((and show proposed locations)) including:

- (a) Location(s) of water discharge pipeline or conveyance system, the outfall, and any associated dilution systems;
- (b) Average and maximum discharge rate;
- (c) Extent of the dilution zone if necessary;
- (d) Width of the receiving water body at the outfall location;
- (e) Dimension(s), and rated and maximum carrying capacity of

the water discharge pipeline or conveyance system, the outfall structure and any associated dilution systems;

(f) Depth and width of the receiving water body at the discharge point;

(g) Average, minimum and maximum water velocity of the receiving water body at the discharge point, and the times when the maximum and minimum flows occur.

(2) Where discharges are into a water-course via an existing discharge system for which certification is not being sought, the applicant shall also provide the following information:

(a) Ownership of the discharge conveyance system;

(b) A description of, and the terms and duration contained in, the use agreement that allows the applicant to use the discharge conveyance system;

(c) Identification of the party responsible for operation and maintenance of the discharge conveyance system;

(d) NPDES or state wastewater discharge permit number for the existing system discharge;

(e) Location of connection point into the existing discharge system;

(f) Diameter and rated and maximum volume capacity of the wastewater line or conveyance system into which discharge is being proposed;

(g) Existing, rated and maximum flow levels in the wastewater line or conveyance system into which the discharge is being proposed;

(h) Where a discharge is proposed to a publicly owned treatment works, in addition to the items provided in subsections (1) and (2) of this section, the applicant shall provide an engineering analysis showing that the proposed discharge will not cause the waste treatment facility to exceed capacities or to violate its authorized discharge limits, including both the quality of the discharge and the volume of the discharge, or to violate the permits governing its operation.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-42-195 Proposal--Wastewater treatment. (1) The ((applicant)) application 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 to ensure it meets current waste discharge and water quality regulations.

(2) 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:

(a) Waste source(s) ((7)):

(b) Average and maximum daily amounts and composition of wastes ((7)):

(c) The type of storage vessel and the storage capacity and duration ((7)): and

(d) Any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters.

(3) Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including:

(a) Appropriate flow diagrams and tables showing the sources of all tributary waste streams ((7)):

(b) Their average and maximum daily amounts and composition ((7)):

(c) Individual treatment units and their design criteria ((7)):

(d) Major piping (including all bypasses) ((7)): and

(e) Average and maximum daily amounts and composition of effluent(s).

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-205 Proposal--Spillage prevention and control.

The ((applicant)) application 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. The application shall describe in general detail the content of a Construction Phase and an Operational Phase Spill Prevention, Control and Countermeasure Plan (chapter 40 CFR Part 112 and Hazardous Waste Management Plan) that will be required prior to commencement of construction.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-215 Proposal--Surface-water runoff.

The ((applicant)) application shall describe how surface-water runoff and erosion are to be controlled during construction and operation to assure compliance with state water quality standards. The application shall describe in general detail the content of the construction and operational storm water pollution prevention plans that will be prepared prior to commencement of construction and/or operation of the facility.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-42-225 Proposal--Emission control. (1) The application shall describe and quantify all construction and operational air emissions subject to regulation by local, state or federal agencies.

(2) The application shall identify all construction and operational air emissions that are exempt from local, state and federal regulation, and the regulatory basis for the exemption.

(3) The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation.

(4) The application shall identify all state and federal air emission permits that would be required after approval of the site certification agreement by the governor, and the timeline for submittal of the appropriate applications for such permits.

(5) In the case of fossil-fuel ((power)) fired energy plants, ((petroleum refineries, and transmission and associated facilities, the applicant should deal with products containing sulphur, NO_x, volatile organics, CO, CO₂, aldehydes, particulates, and any other emissions subject to regulation by local, state, or federal agencies)) the application shall describe and quantify all emissions of greenhouse gases.

(6) In the case of a nuclear-fueled plant, the applicant ((should deal with)) shall address optional plant designs as these may relate to gaseous emissions.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-235 Proposal--Construction and operation activities. The ((applicant)) application 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.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-245 Proposal--Construction management. The ((applicant)) application shall describe the organizational structure including the management of project quality and environmental functions.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-255 Proposal--Construction methodology. The ((applicant)) application shall describe in detail the construction procedures, including major equipment, proposed for any construction activity within watercourses, wetlands and other sensitive areas.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-42-265 Proposal--Protection from natural hazards. The ((applicant)) application shall describe the means to be employed for protection of the facility from earthquakes, volcanic eruption, flood, tsunami, storms, avalanche or landslides, and other major natural disruptive occurrences.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-275 Proposal--Security concerns. The ((applicant)) application shall describe the means employed for protection of the facility from sabotage, terrorism, vandalism and other security threats.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-285 Proposal--Study schedules. The ((applicant)) application 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.

AMENDATORY SECTION (Amending Order 81-5, filed 10/8/81)

WAC 463-42-295 Proposal--Potential for future activities at site. The ((applicant)) application 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.

NEW SECTION

WAC 463-42-296 Proposal--Analysis of alternatives. The application shall include an analysis of alternatives for site, route, and other major elements of the proposal.

NEW SECTION

WAC 463-42-297 Proposal--Pertinent federal, state and local requirements. (1) Each application shall include a list of all applicable federal, state, and local statutes, ordinances, rules, permits, and required use authorizations (i.e., leases, easements, rights of way, or similar authorizations) that would apply to the project if it were not under council jurisdiction. For each federal, state, or local requirement, the applicant shall describe how the project would comply or fail to comply. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.

(2) Inadvertent failure by the applicant to discover and list a pertinent requirement shall not invalidate the application, but may delay the council's processing of the application.

Subpart C - Natural Environment

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-302 Natural environment--Earth. (1) The applicant shall provide detailed descriptions of the existing environment, project impacts, and mitigation measures for the following:

~~((1))~~ (a) Geology((-)). The ((applicant)) application shall include the results of a comprehensive geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities.

~~((2))~~ (b) Soils((-)). The ((applicant)) application 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.

~~((3))~~ (c) Topography((-)). The ((applicant)) application 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.

~~((4))~~ (d) Unique physical features((-)). The ((applicant)) application shall list any unusual or unique geologic or physical features in the project area or areas potentially affected by the project.

~~((5))~~ (e) Erosion/enlargement of land area (accretion) ((-)). The ((applicant)) application shall identify any potential for erosion, deposition, or change of any land surface, shoreline, beach, or submarine area due to construction activities, placement of permanent or temporary structures, or changes in drainage resulting from construction or placement of facilities associated with construction or operation of the proposed energy project.

(2) The application shall show that the proposed energy facility will comply with the state building code provisions for seismic hazards applicable at the proposed location.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-312 Natural environment--Air. The ((applicant)) application shall provide detailed descriptions of the affected environment, project impacts, and mitigation measures for the following:

(1) Air quality((-)). The ((applicant)) application 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 applicable local, state, and federal air quality and emission standards.

(2) Odor((-)). The ((applicant)) application shall describe for the area affected((7)) all odors caused by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

(3) Climate((-)). The ((applicant)) application 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.

(4) Dust((-)). The ((applicant)) application shall describe for any area affected((7)) all dust sources created by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-322 Natural environment--Water. (1) The ((applicant)) application shall provide detailed descriptions of the affected natural water environment, project impacts and proposed mitigation measures, and shall demonstrate that facility construction and/or operational discharges will be compatible with and meet state water quality standards. ~~((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.~~

~~(1))~~ (2) Surface water movement/quality/quantity((-)). 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.

~~((2))~~ (3) Runoff/absorption((-)). The ((applicant)) application shall describe how surface water runoff and erosion are to be controlled during construction and operation, how runoff can be reintroduced to the ground for ~~((retention))~~ return to the ground water supply, and to assure compliance with state water quality standards.

~~((3))~~ (4) Floods(-). The ~~((applicant))~~ application shall describe potential for flooding, identify the five, fifty, and one hundred ~~((, and five hundred))~~ year flood boundaries, and describe possible flood impacts at the site, as well as possible flood-related impacts both upstream and downstream of the proposed facility as a result of construction and operation of the facility and all protective measures to prevent possible flood damage to the site and facility.

~~((4))~~ (5) Ground water movement/quantity/quality(-). The ~~((applicant))~~ application shall ~~((include the results of a comprehensive hydrologic survey,))~~ describe the existing ground water ((conditions)) movement, quality, and quantity on and near the site, and in the vicinity of any points of water withdrawal associated with water supply to the project. The application shall describe any changes in surface and ground water movement, quantity, ((or)) quality or supply uses which might result from project construction or operation and from ground water withdrawals associated with water supply for the project, and shall provide mitigation for adverse impacts that have been identified.

~~((5))~~ (6) Public water supplies(-). The ~~((applicant))~~ application shall provide a detailed description of any public water supplies which may be used or affected by the project during construction or operation of the facility.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-332 Natural environment--((Plants and animals)) Habitat, vegetation, fish and wildlife. ~~((1) Habitat for and number or diversity of species of plants, fish, or other wildlife -- The applicant shall describe all habitat types, vegetation, wetlands, animal life, and aquatic life which might reasonably be affected by construction, operation, or cessation of construction or operation of the energy facility and any associated facilities. Assessment of these factors shall include density and distribution information. The application shall contain a full description of each measure to be taken by the applicant to protect all habitat types, vegetation, wetlands, animal life, and aquatic life from the effects of project construction, operation, abandonment, termination, or cessation of operations.~~

~~(2) Unique species -- Any endangered species or noteworthy species or habitat shall receive special attention.~~

~~(3) Fish or wildlife migration routes -- The applicant shall identify all fish or wildlife migration routes which may be affected by the energy facility or by any discharge to the environment.)~~ The application shall describe all existing habitat types, vegetation, wetlands, fish, wildlife, and in-stream flows on and near the project site which might reasonably be affected by

construction, operation, decommissioning, or abandonment of the energy facility and any associated facilities. For purposes of this section, the term "project site" refers to the site for which site certification is being requested, and the location of any associated facilities or their right of way corridors, if applicable. The application shall contain the following information:

(1) Assessment of existing habitats and their use. The application shall include a habitat assessment report prepared by a qualified professional. The report shall contain, but not be limited to, the following information:

(a) A detailed description of habitats and species present on and adjacent to the project site, including identification of habitats and species present, relative cover, density, distribution, and health and vigor;

(b) Identification of any species of local importance, priority species, or endangered, threatened, or candidate species that have a primary association with habitat on or adjacent to the project site;

(c) A discussion of any federal, state, or local special management recommendations, including department of fish and wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct and indirect impacts on habitat, species present and their use of the habitat during construction, operation and decommissioning of the energy facility. Impacts shall be quantified in terms of habitat acreage affected, and numbers of individuals affected, threatened or removed. The discussion of impacts shall also include:

(a) Impacts to water quality, stream hydrology and in-stream flows;

(b) Impacts due to introduction, spread, and establishment of noxious or nonnative species;

(c) Impacts and changes to species communities adjacent to the project site;

(d) Impacts to fish and wildlife migration routes;

(e) Impacts to any species of local importance, priority species, or endangered, threatened, or candidate species;

(f) Impacts due to any activities that may otherwise confuse, deter, disrupt or threaten fish or wildlife;

(g) An assessment of risk of collision of avian species with any project structures, during day and night, migration periods, and inclement weather;

(h) An assessment for the potential of impacts of hazardous or toxic materials spills on habitats and wildlife.

(3) Mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing habitats and species, proposed to compensate for the impacts that have been identified.

The mitigation plan shall also:

(a) Be based on sound science;

(b) Address all best management practices to be employed and setbacks to be established;

(c) Address how cumulative impacts associated with the energy facility will be avoided or minimized;

(d) Demonstrate how the mitigation measures will achieve equivalent or greater habitat quality, value and function for those habitats being impacted, as well as for habitats being enhanced, created or protected through mitigation actions;

(e) Identify and quantify level of compensation for impacts to, or losses of, existing species due to project impacts and mitigation measures, including benefits that would occur to existing and new species due to implementation of the mitigation measures;

(f) Address how mitigation measures considered have taken into consideration the probability of success of full and adequate implementation of the mitigation plan;

(g) Identify future use of any manmade ponds or structures created through construction and operation of the facility or associated mitigation measures, and associated beneficial or detrimental impacts to habitats, fish and wildlife;

(h) Discuss the schedule for implementation of the mitigation plan, prior to, during, and post construction and operation;

(i) Discuss ongoing management practices that will protect habitat and species, including proposed monitoring and maintenance programs;

(j) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Guidelines review. The application shall give due consideration to any project-type specific guidelines established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans. The application shall describe how such guidelines are satisfied. For example, wind generation proposals shall consider *Washington state department of fish and wildlife Wind Power Guidelines*, August 2003, or as hereafter amended. Other types of energy facilities shall consider department of fish and wildlife Policy M-5002, dated January 18, 1999, or as hereafter amended.

(5) Federal approvals. The application shall list any federal approvals required for habitat, vegetation, fish and wildlife impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

NEW SECTION

WAC 463-42-333 Natural environment--Wetlands. The application shall include a report for wetlands prepared by a qualified professional wetland scientist. For purposes of this section, the term "project site" refers to the site for which site certification is being requested, and the location of any associated facilities or their right of way corridors if applicable. The report shall include, but not be limited to, the following information:

(1) Assessment of existing wetlands present and their quality. The assessment of the presence and quality of existing wetlands shall include:

(a) A wetland delineation performed by a qualified professional according to the *Washington State Wetlands Delineation and Identification Manual*, 1997, and associated data sheets, site maps with data plots and delineated wetlands areas, photographs, and topographic and aerial site maps.

(b) A description of wetland categories found on the site according to the Washington state wetland rating system found in *Western Washington, Ecology Publication #93-74* and *Eastern Washington, Ecology Publication 391-58*, or as revised by the department of ecology.

(c) A discussion of water sources supplying wetlands and documentation of hydrologic regime encountered.

(d) A function assessment report prepared according to the *Washington State Wetland Function Assessment Method* to assess wetlands functions for those wetland types covered by the method, and including a description of type and degree of wetland functions that are provided.

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct and indirect impacts on wetlands, their functions and values, and associated water quality and hydrologic regime during construction, operation and decommissioning of the energy facility. The discussion of impacts shall also include impacts to wetlands due to proposed mitigation measures.

(3) Wetlands mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing wetlands, proposed to compensate for the direct and indirect impacts that have been identified. The mitigation plan shall be prepared consistent with the *Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised. The application shall also include, but not be limited to:

(a) A discussion of how standard buffer widths have been incorporated into the mitigation proposal. Variances from standard buffer widths must be supported with professional analyses demonstrating that smaller or averaged buffer widths protect the wetland functions and values based on site-specific characteristics;

(b) A demonstration of how enhancement, restoration or compensatory mitigation actions will achieve equivalent or greater hydrologic and biological functions at the impact site, and whether any existing wetland functions would be reduced by the mitigation measures;

(c) A discussion of how standard mitigation ratios have been incorporated into the mitigation proposal. Variances from standard mitigation ratios must be supported with professional analyses demonstrating that equivalent or greater hydrologic and biological functions will be achieved;

(d) A demonstration that the mitigation actions are being conducted in an appropriate location, and that consideration was given in order of preference to: On-site opportunities; opportunities within the same subbasin or watershed assessment unit; opportunities within the same Water Resources Inventory Area (WRIA); opportunities in another WRIA;

(e) A discussion of the timing and schedule for implementation of the mitigation plan;

(f) A discussion of ongoing management practices that will protect wetlands, including proposed monitoring and maintenance programs;

(g) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Federal approvals. The application shall list any federal approvals required for wetlands impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-342 Natural environment--Energy and natural resources. (1) Amount required/rate of use/efficiency((-)). The ((applicant)) application shall describe the rate of use and efficiency of consumption of energy and natural resources ((consumption)) during both construction and operation of the proposed ((~~facilities as rate of use and efficiency that can be achieved during construction and operation~~)) facility.

(2) Source/availability((-)). The ((applicant)) application shall describe the sources of supply, locations of use, types, amounts, and availability of energy or resources to be used or consumed during construction and operation of the facility.

(3) Nonrenewable resources((-)). The ((applicant))

application shall describe all nonrenewable resources that will be used, made inaccessible or unusable by construction and operation of the facility.

(4) Conservation and renewable resources((-)). The ((applicant)) application shall describe conservation measures and/or renewable resources which will or could be used during construction and operation of the facility.

(5) Scenic resources((-)). The ((applicant)) application shall describe any scenic resources which may be affected by the facility or discharges from the facility.

Subpart D - Built Environment

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-352 Built environment--Environmental health. (1) Noise((-)). The ((applicant)) application shall:

(a) Describe and quantify the background noise environment that would be affected by the energy facility. The number of locations used for assessment of the existing noise environment shall be commensurate with the type of energy facility being proposed, the impacts expected, and the presence of high density receptor locations in the vicinity of the proposed site.

(b) Identify and quantify the impact of noise emissions resulting from construction and operation ((and shall describe the measures to be taken in order to eliminate or lessen this impact)) of the energy facility, using appropriate state-of-the-art modeling techniques, and including impacts resulting from low frequency noise;

(c) Identify local, state, and federal environmental noise impact guidelines;

(d) Describe the mitigation measures to be implemented to satisfy WAC 463-62-030;

(e) Describe the means the applicant proposes to employ to assure continued compliance with WAC 463-62-030.

(2) Risk of fire or explosion((-)). The ((applicant)) application shall describe any potential for fire or explosion during construction, operation, standby or nonuse, dismantling, or restoration of the facility and what measures will be made to mitigate any risk of fire or explosion.

(3) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials((-)). The ((applicant)) application shall describe any potential for

release of toxic or hazardous materials to the environment and shall identify plans for complying with the federal Resource Conservation and Recovery Act and the state Dangerous waste regulations (chapter 173-303 WAC). The ((applicant)) application shall describe the treatment or 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 solid waste regulations.

(4) Safety standards compliance((-)). The ((applicant)) application 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.

(5) Radiation levels((-)). For facilities which propose to release any radioactive materials, the ((applicant)) application shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The ((applicant)) application 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.

(6) Emergency plans. The application 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 as well as identifying the specific responsibilities that will be assumed by the applicant.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-362 Built environment--Land and shoreline use.

(1) ~~((The relationship to existing land use plans and to estimated population - As part of))~~ The application(~~(, the applicant))~~ shall ~~((furnish copies of adopted))~~ identify 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:~~

~~(a) In the case of thermal power plants, twenty-five miles radius;~~

~~(b) In the case of petroleum refineries ten miles radius;~~

~~(c) In the case of petroleum or LNG storage areas or underground natural gas storage, ten miles radius from center of storage area or well heads;~~

~~(d) In the case of pipe lines and electrical transmission routes, one mile either side of center line.~~

~~(2) Housing - The applicant shall describe potential impact on housing needs, costs, or availability due to influx of workers for construction and/or operation of the facility)) applicable to the project site.~~

~~((3)) (2) Light and glare((-)). The ((applicant)) application shall describe the impact of light((s)) and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact.~~

~~((4)) (3) Aesthetics((-)). The ((applicant)) application 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. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads).~~

~~((5)) (4) Recreation((-)). The ((applicant)) application shall list all 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.~~

~~((6)) (5) Historic and cultural preservation((-)). The ((applicant)) application shall coordinate with and provide a list of all historical and archaeological sites within the area affected by construction and operation of the facility ((and)) to the Washington state office of archaeology and historic preservation and interested tribe(s). The application shall ((then)):~~

~~(a) Provide evidence of this coordination;~~

~~(b) Describe how each site will be impacted by construction and operation; and~~

~~(c) Identify what mitigation will be required.~~

~~((7)) (6) Agricultural crops/animals((-)). The ((applicant)) application shall identify all agricultural crops and animals which could be affected by construction and/or operation of the facility and any operations, discharges, or wastes which could impact the adjoining agricultural community.~~

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-372 Built environment--Transportation. (1) Transportation systems((-)). The ((applicant)) application 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:

(a) Expected traffic volumes during construction, based on where the work force is expected to reside;

(b) Access routes for moving heavy loads, construction materials, or equipment;

(c) Expected traffic volumes during normal operation of the facility;

(d) For transmission facilities, anticipated maintenance access; and

(e) Consistency with local comprehensive transportation plans.

(2) Vehicular traffic((-)). The ((applicant)) application shall describe existing roads, estimate volume, types, and routes of vehicular traffic which will arise from construction and operation of the facility. The applicant shall indicate the applicable standards to be utilized in improving existing roads and in constructing new permanent or temporary roads or access, and shall indicate the final disposition of new roads or access and identify who will maintain them.

(3) Waterborne, rail, and air traffic((-)). The ((applicant)) application shall describe existing railroads and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. 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.

(4) Parking((-)). The ((applicant)) application shall identify existing and any additional parking areas or facilities which will be needed during construction and operation of the energy facility, and plans for maintenance and runoff control from the parking areas or facilities.

(5) Movement/circulation of people or goods((-)). The ((applicant)) application shall describe any change to the current movement or circulation of people or goods caused by construction or operation of the facility. The ((applicant)) application shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. The ((applicant)) application shall describe the means proposed to ensure safe utilization of those areas under applicant's control (~~on or in which~~) where public access will be granted during project construction, operation, abandonment, termination, or when operations cease.

(6) Traffic hazards((-)). The ((applicant)) application shall identify all hazards to traffic caused by construction or operation of the facility. 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.

AMENDATORY SECTION (Amending WSR 92-23-012, filed 11/6/92, effective 12/7/92)

WAC 463-42-535 Socioeconomic impact. The ~~((applicant))~~ application shall ~~((submit))~~ include a detailed socioeconomic impact ~~((study))~~ analysis which identifies primary ~~((and))~~, secondary ~~((and))~~, positive as well as negative impacts on the socioeconomic environment in the area potentially affected by the project, with particular attention ~~((and analysis of))~~ to the impact of the proposed facility on population, work force~~((s))~~, property values, housing, ~~((traffic,))~~ health ~~((and safety))~~ facilities and services, education facilities ~~((and))~~, governmental services, and local economy. The study area shall include the area that may be affected by employment within a one-hour commute distance of the project site. The analysis shall use the most recent data as published by the U.S. Census or state of Washington sources.

(1) The analysis shall include:

(a) Population and growth rate data for the most current ten-year period for the county or counties and incorporated cities in the study area;

(b) Published forecast population figures for the study area for both the construction and operations periods;

(c) Numbers and percentages describing the race/ethnic composition of the cities and counties in the study area;

(d) Average per capita and household incomes, including the number and percentage of the population below the poverty level for the cities and counties within the study area;

(e) A description of whether or not any minority or low-income populations would be displaced by this project or disproportionately impacted;

(f) The average annual work force size, total number of employed workers, and the number and percentage of unemployed workers including the year that data are most recently available. Employment numbers and percentage of the total work force should be provided for the primary employment sectors;

(g) An estimate by month of the average size of the project construction, operational work force by trade, and work force peak periods;

(h) An analysis of whether or not the locally available work force would be sufficient to meet the anticipated demand for direct workers and an estimate of the number of construction and operation workers that would be hired from outside of the study area if the locally available work force would not meet the demand;

(i) A list of the required trades for the proposed project construction;

(j) An estimate of how many direct or indirect operation and maintenance workers (including family members and/or dependents) would temporarily relocate;

(k) An estimate of how many workers would potentially commute on a daily basis and where they would originate.

(2) The application shall describe the potential impact on

housing needs, costs, or availability due to the influx of workers for construction and operation of the facility and include the following:

(a) Housing data from the most recent ten-year period that data are available, including the total number of housing units in the study area, number of units occupied, number and percentage of units vacant, median home value, and median gross rent. A description of the available hotels, motels, bed and breakfasts, campgrounds or other recreational facilities;

(b) How and where the direct construction and indirect work force would likely be housed. A description of the potential impacts on area hotels, motels, bed and breakfasts, campgrounds and recreational facilities;

(c) Whether or not meeting the direct construction and indirect work force's housing needs might constrain the housing market for existing residents and whether or not increased demand could lead to increased median housing values or median gross rents and/or new housing construction. Describe mitigation plans, if needed, to meet shortfalls in housing needs for these direct and indirect work forces.

(3) The application shall have an analysis of the economic factors including the following:

(a) The approximate average hourly wage that would likely be paid to construction and operational workers, how these wage levels vary from existing wage levels in the study area, and estimate the expendable income that direct workers would likely spend within the study area;

(b) How much, and what types of direct and indirect taxes would be paid during construction and operation of the project and which jurisdictions would receive those tax revenues;

(c) The other overall economic benefits (including mitigation measures) and costs of the project on the economies of the county, the study area and the state, as appropriate, during both the construction and operational periods.

(4) The application shall describe the impacts, relationships, and plans for utilizing or mitigating impacts caused by construction or operation of the facility to the following public facilities and services:

(a) Fire;

(b) Police;

(c) Schools;

(d) Parks or other recreational facilities;

(e) Utilities;

(f) Maintenance;

(g) Communications;

(h) Water/storm water;

(i) Sewer/solid waste;

(j) Other governmental services.

(5) The application shall compare local government revenues generated by the project (e.g., property tax, sales tax, business and occupation tax, payroll taxes) with their additional service expenditures resulting from the project; and identify any potential gaps in expenditures and revenues during both construction and

operation of the project. This discussion should also address potential temporal gaps in revenues and expenditures.

(6) To the degree that a project will have a primary or secondary negative impact on any element of the socioeconomic environment, the applicant is encouraged to work with local governments to avoid, minimize, or compensate for the negative impact. The term "local government" is defined to include cities, counties, school districts, fire districts, sewer districts, water districts, irrigation districts, or other special purpose districts.

Subpart E - Applications for Permits and Authorizations

NEW SECTION

WAC 463-42-536 Air emissions permits and authorizations. (1) The application for site certification shall include a completed prevention of significant deterioration permit (PSD) application and a notice of construction application pursuant to the requirements of chapter 463-78 WAC.

(2) The application shall include requests for authorization for any emissions otherwise regulated by local air agencies as identified in WAC 463-60-297 Pertinent federal, state and local requirements.

NEW SECTION

WAC 463-42-537 Wastewater/storm water discharge permit applications. The application for site certification shall include:

(1) A completed National Pollutant Discharge Elimination System (NPDES) permit application, for any proposed discharge to surface waters of the state of Washington, pursuant to the requirements of WAC 463-76-031; or

(2) For any proposed discharge to publicly owned treatment works (POTW) and/or ground water of the state of Washington, a state waste discharge application;

(3) A notice of intent to be covered under any applicable statewide general permit for storm water discharge.

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-42-010	463-60-010
463-42-012	463-60-012
463-42-015	463-60-015
463-42-025	463-60-025
463-42-035	463-60-035
463-42-045	463-60-045
463-42-055	463-60-055
463-42-065	463-60-065
463-42-075	463-60-075
463-42-085	463-60-085
463-42-095	463-60-095
463-42-105	463-60-105
463-42-115	463-60-115
463-42-125	463-60-125
463-42-135	463-60-135
463-42-145	463-60-145
463-42-155	463-60-155
463-42-165	463-60-165
463-42-175	463-60-175
463-42-185	463-60-185
463-42-195	463-60-195
463-42-205	463-60-205
463-42-215	463-60-215
463-42-225	463-60-225
463-42-235	463-60-235
463-42-245	463-60-245
463-42-255	463-60-255
463-42-265	463-60-265
463-42-275	463-60-275
463-42-285	463-60-285
463-42-295	463-60-295
463-42-302	463-60-302
463-42-312	463-60-312
463-42-322	463-60-322
463-42-332	463-60-332
463-42-342	463-60-342
463-42-352	463-60-352
463-42-362	463-60-362
463-42-372	463-60-372
463-42-535	463-60-535

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-42-382	Built environment--Public services and utilities.
WAC 463-42-385	PSD application.
WAC 463-42-435	NPDES application.
WAC 463-42-525	Emergency plans.
WAC 463-42-625	Criteria, standards, and factors utilized to develop transmission route.
WAC 463-42-645	Analysis of alternatives.
WAC 463-42-655	Initial site restoration plan.
WAC 463-42-665	Detailed site restoration plan--Terminated projects.
WAC 463-42-675	Site preservation plan--Suspended projects.
WAC 463-42-680	Site restoration--Terminated projects.
WAC 463-42-685	Pertinent federal, state and local requirements.
WAC 463-42-690	Amendments to applications, additional studies, procedure.

Chapter 463-43 WAC

~~((PROCEDURE--APPLICATIONS FOR))~~ EXPEDITED PROCESSING

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-43-010 Purpose ~~((and scope))~~. This chapter sets forth eligibility and processing 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.

AMENDATORY SECTION (Amending Order 78-2, 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))~~ submit an application for site certification, fees, and a request for expedited processing as required by RCW 80.50.075.

AMENDATORY SECTION (Amending Order 78-2, 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))~~ sixty 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~~((7))~~;

(2) Determine at a public hearing within ~~((60))~~ sixty days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans ~~((or))~~ and zoning ordinances~~((7))~~;

(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~~((7))~~; and

(4) Initiate processing of the applicant's NPDES application, if required, in accordance with chapter ~~((463-38))~~ 463-76 WAC.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-43-050 Expedited processing determination. Following the review of an application and land use hearing and within ~~((120))~~ one hundred twenty 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))~~ and zoning ordinances~~((7))~~; 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.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

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 an adjudicative proceeding (~~(hearing)~~) under chapter 34.05 RCW; and

(3) Continue an adjudicative proceeding that has commenced.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

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)~~) council 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.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-43-080 Recommendation--Transmittal to governor. Within (~~(60)~~) sixty 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, and if the recommendation is for approval (with), the council will also forward a copy of (~~(the)~~) a draft site certification agreement to the governor.

AMENDATORY SECTION (Amending WSR 98-01-082, filed 12/12/97, effective 1/12/98)

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 as of the effective date of this rule.

- ~~((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.

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.
197-11-750 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.
197-11-762 Local agency.
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.
197-11-782 Probable.
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.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

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 an adjudicative proceeding hearing required by RCW ~~((80.50.100))~~ 80.50.090 prior to completion of the draft EIS. The council shall initiate and conclude an adjudicative proceeding ~~((hearing required by RCW 80.50.100))~~ prior to issuance of the final EIS.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-47-090 EIS preparation. (1) Preparation of draft and final EISs and SEISs is the responsibility of the council ~~((or a council subcommittee))~~. 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))~~ (b) The outside party will prepare the document under

the supervision of the council or council subcommittee, and the responsible official.

~~((d))~~ (c) 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).

AMENDATORY SECTION (Amending WSR 98-01-082, filed 12/12/97, effective 1/12/98)

WAC 463-47-120 Critical areas. In determining whether a proposal is exempt from SEPA, the council shall ~~((respect))~~ consider "critical area" designations made by local governments under WAC 197-11-908.

AMENDATORY SECTION (Amending Order 84-2, 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))~~ consider the threshold levels adopted by cities/counties under WAC 197-11-800(1).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 463-47-040

Additional definitions.

Chapter 463-50 WAC

INDEPENDENT CONSULTANTS (~~--GUIDELINES~~)

AMENDATORY SECTION (Amending Order 110, filed 11/16/76)

WAC 463-50-010 Purpose (~~(and scope of this chapter)~~). (~~It is the purpose of~~) This chapter (~~to publish~~) establishes guidelines regarding council use of independent consultants.

AMENDATORY SECTION (Amending Order 110, filed 11/16/76)

WAC 463-50-040 Duties to be performed by consultant. 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~~), and may undertake 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~~) Prepare a potential site study and supporting documents for compliance with the topical guidelines and for technical veracity, and prepare a criteria document which details the contents of an application for site certification;

(2) Review and analyze an energy project site certification application for compliance with the requirements contained in chapter 463-62 WAC (Construction and operation standards for energy facilities) and chapter 463-60 WAC;

(3) Identify areas of critical environmental sensitivity (~~(7)~~); (~~(3)~~) (4) Develop and provide such information as the council may deem essential to an adequate site appraisal; and (~~(4)~~) (5) Provide technical advice to the council during the site certification process.

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((~~7~~));

(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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 463-50-020

Solicitation of proposals to perform work.

Chapter 463-54 WAC

CERTIFICATION COMPLIANCE ((DETERMINATION)) MONITORING AND ENFORCEMENT

AMENDATORY SECTION (Amending Order 78-3, filed 6/23/78)

WAC 463-54-010 ((Intent and)) Purpose ((of this chapter)).

This chapter sets forth rules relating to ((effects and compliance determination of energy facility)) monitoring the construction and operation of energy facilities to determine compliance with the terms of certification agreements and/or permits pursuant to RCW 80.50.040((+1+)) (9).

AMENDATORY SECTION (Amending WSR 94-16-031, filed 7/26/94, effective 8/26/94)

WAC 463-54-020 Compliance to be determined. Compliance

((determination)) monitoring procedures shall be implemented by the council as necessary to determine compliance and keep it and the public properly informed as to the status of compliance with the terms of certification agreements((7)) and PSD, NPDES, or other permits issued by the council.

AMENDATORY SECTION (Amending WSR 94-16-031, filed 7/26/94, effective 8/26/94)

WAC 463-54-040 Compliance reports and determinations.

Written reports by state agencies, or their authorized representatives reporting to the council under interagency agreements, shall be submitted regularly and contain certifications as to the certificate holder's 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.

AMENDATORY SECTION (Amending WSR 94-16-031, filed 7/26/94, effective 8/26/94)

WAC 463-54-050 Noncompliance determinations and enforcement.
The council shall make ~~((the))~~ a determination of noncompliance with the terms of a certification agreement, PSD, NPDES, or other permits where circumstances so warrant and on such finding of noncompliance will institute appropriate enforcement action.

AMENDATORY SECTION (Amending WSR 94-16-031, filed 7/26/94, effective 8/26/94)

**WAC 463-54-060 ((Ecology)) Monitoring and enforcement--
Departments of ecology and health.** (1) The council may contract with the department of ecology, or its authorized representative, ~~((is delegated the))~~ to perform monitoring activities pertaining to air and water discharges, except as provided in subsection (2) of this section, 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 PSD, NPDES, or other permits. Immediate enforcement action as needed may be undertaken by ecology, or its authorized representative, subject to subsequent confirmation or modification by the council.

(2) The council may contract with the department of health ~~((is responsible))~~ for monitoring activities pertaining to radionuclide emissions to the air in accordance with such an ~~((approved memorandum of))~~ agreement. 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 or attached permit. Immediate enforcement action as needed may be undertaken by health subject to subsequent confirmation or modification by the council.

AMENDATORY SECTION (Amending WSR 94-16-031, filed 7/26/94, effective 8/26/94)

WAC 463-54-070 Enforcement actions. (~~Consistent with RCW 70.94.422, all enforcement actions and penalties for all air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431 (1) through (7), and 70.94.435.~~)

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

(2) Emergency action by chair.

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

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

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

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

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

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

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

(3) Notice of incident and request for assurance of

compliance.

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

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

(4) Notice of violation.

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

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

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

(i) A request for mitigation or remission of a penalty must be filed within fifteen days after service of the notice of violation.

A decision upon a request for remission or mitigation of a penalty is an administrative decision which the council may make in its discretion.

(ii) An appeal of a notice of violation must be filed within thirty days after service of the notice of violation. The appeal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

(iii) Any penalty imposed in a notice of violation shall be due and payable thirty days after the following: Service of the notice of violation, if no review is sought; service of the

council's decision upon remission or mitigation, if no appeal is made; or service of the council's final order on review of an appeal of a notice of violation. If the penalty is not paid when due, the council shall request the attorney general to commence an action in the name of the state to recover the penalty pursuant to RCW 80.50.150.

(5) Air (~~pollution episodes~~) emission violations. Consistent with RCW 70.94.422, all council enforcement actions and penalties for all air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431 (1) through (7), and 70.94.435. The council may enter such orders as authorized by chapter 80.50 RCW regarding air pollution episodes or violations, as set forth in WAC (~~463-39-230~~) 463-78-230.

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

(7) Judicial enforcement.

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

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

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

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

NEW SECTION

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
463-54-010	463-70-010
463-54-020	463-70-020
463-54-030	463-70-030
463-54-040	463-70-040
463-54-050	463-70-050
463-54-060	463-70-060
463-54-070	463-70-070

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 463-54-080

Site preservation or restoration plan.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-58-010 (~~((Intent and)) Purpose ((of this chapter))~~). This chapter sets forth rules relating to fees or charges for independent consultant (~~((study))~~) studies, regular and expedited application processing, determining compliance and potential site (~~((study))~~) studies.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-58-020 Fees for the independent consultant ((study)) studies. Pursuant to RCW 80.50.071, a fee of twenty-five thousand dollars for each proposed site shall accompany the application for an energy facility site certification. This fee shall be applied toward the total cost of the independent consultant study authorized by RCW (~~((80.50.070))~~) 80.50.071. The determination of the total fees required for the (~~((independent consultant))~~) study 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,))~~) The council may determine that the initial fee of twenty-five thousand dollars is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental fees needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(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(~~((7))~~);

(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~~) paid the required costs (~~, and the council has provided the applicant with a statement of amount due~~).

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

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 (~~(7)~~);

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding (~~hearing~~), council meetings or public sessions which the council shall consider necessary (~~(7)~~);

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period (~~(7)~~); 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;

(5) The council may determine that the initial fee of twenty thousand dollars is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-58-040 Fees for expedited application processing.

Applicants filing applications for expedited processing under RCW 80.50.075 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))~~.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-58-050 Fees for determining compliance. Pursuant to RCW 80.50.071 (1)(c) 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)) by the council and deposited by the applicant within thirty days of the governor's signing the site certification agreement.~~

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-58-060 Fees for potential site ~~((study))~~ studies. 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.

AMENDATORY SECTION (Amending Order 78-2, 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))~~ comply with WAC 463-58-020 through 463-58-060 shall

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's initiation of enforcement action pursuant to WAC 463-54-070. The council will ~~((notify))~~ require 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)).~~ Following deposit of all required fees the council shall in the case of application processing, consider reinstatement of application processing, or in the ~~((certificate will be taken by the council at the next regularly scheduled meeting following deposit of all required fees))~~ case of a certificate holder, reconsider enforcement action.

AMENDATORY SECTION (Amending Order 78-2, 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))~~ level 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))~~ pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended ~~((at the conclusion of application processing))~~ shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder ~~((s, 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))~~ (3) All payments shall be made by a cashier's check

payable to the state treasurer and delivered to the council office. The council will 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.

Chapter 463-62 WAC

CONSTRUCTION AND OPERATION STANDARDS FOR ENERGY FACILITIES

NEW SECTION

WAC 463-62-010 Purpose. (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50.010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-36 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to 43.21 RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

NEW SECTION

WAC 463-62-020 Seismicity. The seismicity standard for construction of energy facilities shall be the standards contained in the state building code.

NEW SECTION

WAC 463-62-030 Noise standards. Energy facilities shall meet the noise standards established in chapter 70.107 RCW, the Noise Control Act of 1974; and state rules adopted to implement those requirements in chapter 173-60 WAC, Maximum environmental noise levels.

(1) Adoption by reference. The energy facility site evaluation council adopts the following provisions of chapter 173-60 WAC by reference.

(a) WAC 173-60-010 Authority and purpose.

(b) WAC 173-60-020 Definitions.

(c) WAC 173-60-030 Identification of environments.

(d) WAC 173-60-040 Maximum permissible environmental noise levels.

(e) WAC 173-60-050 Exemptions.

(f) WAC 173-60-080 Variances and implementation schedules.

(g) WAC 173-60-090 Enforcement policy.

(2) Additional definitions.

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

(b) In addition to the definitions contained in WAC 173-60-020, "department" and "director" shall be synonymous with the council unless a different meaning is plainly required by context.

NEW SECTION

WAC 463-62-040 Fish and wildlife. The council's intent is to achieve no net loss of habitat functions and values by maintaining the functions and values of fish and wildlife habitat in the areas impacted by energy development.

(1) The council encourages applicants to select sites that avoid impacts to any species on federal or state lists of endangered or threatened species or to priority species and habitats.

(2) Standards.

(a) An applicant must demonstrate no net loss of fish and wildlife habitat function and value.

(b) Restoration and enhancement are preferred over creation of habitats due to the difficulty in successfully creating habitat.

(c) Mitigation credits and debits shall be based on a scientifically valid measure of habitat function, value, and area.

(d) The ratios of replacement habitat to impacted habitat shall be greater than 1:1 to compensate for temporal losses, uncertainty of performance, and differences in functions and values.

(e) Wetlands shall be replaced at ratios following the wetland standard established by the council in WAC 463-62-050.

(f) Fish and wildlife surveys shall be conducted during all seasons of the year to determine breeding, summer, winter, migratory usage, and habitat condition of the site.

NEW SECTION

WAC 463-62-050 Impact and mitigation standards for wetlands.

(1) The council's intent is to achieve no net loss of wetland areas. Wetland impacts shall be avoided wherever possible. Where impacts cannot be avoided, the applicant shall be required to take one or more of the following actions (in the following order of preference): Restore wetlands on upland sites that were formerly wetlands; create wetlands on disturbed upland sites; enhance significantly degraded wetlands; and preserve high-quality wetlands that are under imminent threat.

(2) Wetland mitigation actions proposed to compensate for project impacts shall not result in a net loss of wetland area except when the lost wetland area provides minimal functions and the mitigation action(s) will clearly result in a significant net gain in wetland functions as determined by a site-specific function assessment.

NEW SECTION

WAC 463-62-060 Water quality. Waste water discharges from projects under the council's jurisdiction shall meet the requirements of applicable state water quality standards, chapter 173-201A WAC, state ground water quality standards, chapter 173-200 WAC, state sediment management standards, chapter 173-204A WAC, requirements of the Federal Water Pollution Control Act as amended (86 Stat 816,33 U.S.C. 1251, et seq.) and regulations promulgated thereunder.

NEW SECTION

WAC 463-62-070 Air quality. Air emissions from energy facilities shall meet the requirements of applicable state air quality laws and regulations promulgated pursuant to the Washington State Clean Air Act, chapter 70.94 RCW, and the Federal Clean Air Act (42 U.S.C. 7401 et seq.), and chapter 463-78 WAC.

Chapter 463-64 WAC

ISSUANCE OF A SITE CERTIFICATION AGREEMENT

NEW SECTION

WAC 463-64-010 Purpose. This chapter sets forth rules relating to reporting recommendations to the governor as to approval or rejection of an application for site certification and the governor's actions regarding approval or rejection of certification or directing reconsideration of certain aspects of certification.

NEW SECTION

WAC 463-64-020 Recommendations to governor--Approval or rejection of certification. The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The draft site certification agreement shall include, but shall not be limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of the laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

NEW SECTION

WAC 463-64-030 Governor's action--Approval or rejection of certification, or reconsideration. Pursuant to RCW 80.50.100, within sixty days of receipt of the council's report, the governor will take one of the following actions:

- (1) Approve the application and execute the draft certification agreement; the certification agreement shall be binding upon execution by the governor and the applicant;
- (2) Reject the application; or
- (3) Direct the council to reconsider certain aspects of the draft certification agreement.

NEW SECTION

WAC 463-64-040 Reconsideration of draft certification agreement. If directed by the governor under RCW 80.50.100 (2) (c) to reconsider certain aspects of the draft certification agreement, the council shall:

- (1) Reconsider such aspects of the draft application or, as necessary, reopen the adjudicative proceeding to receive additional evidence. Such reconsideration shall be conducted expeditiously.
- (2) Resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration.
- (3) Within sixty days of receipt of such draft certification agreement, the governor will either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

NEW SECTION

WAC 463-64-050 Rejection of an application for certification. The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

Chapter 463-68 WAC

SITE CERTIFICATION AGREEMENT--START OF CONSTRUCTION, EXPIRATION,
AND REPORTING

NEW SECTION

WAC 463-68-010 Purpose. This chapter sets forth the length of time before a site certification agreement expires if construction is not started, or commercial operation has not commenced, defines what activities constitute start of construction, and specifies the time frame within which a certificateholder must notify the council of the certificateholder's intentions, any project design changes, and the status of the site. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-36 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

NEW SECTION

WAC 463-68-020 Construction and operation subject to certification conditions. The state of Washington authorizes a certificateholder to construct and operate an energy facility as defined in RCW 80.50.060 and 80.50.020 at the approved site subject to the terms and conditions of the site certification agreement approved by the governor and applicable laws and rules.

NEW SECTION

WAC 463-68-030 Term for start of construction. Subject to conditions in the site certification agreement and this chapter, construction may start any time within ten years of the effective

date of the site certification agreement.

NEW SECTION

WAC 463-68-040 Start of construction. Construction shall be deemed to have started with the initiation of any of the following construction activities:

- (1) Site preparation by grading of the site, foundation excavation, or other significant earthwork on the site;
- (2) Construction of footings or foundations, form work, installation of rebar, or pouring concrete for a project's major components or auxiliary structures;
- (3) Excavation for natural gas supply, water supply, water or waste water discharge pipelines or structures;
- (4) Earthwork or construction of access or service roads, electrical transmission lines, switchyard structures, or laydown areas.

NEW SECTION

WAC 463-68-050 Submittal of plans and specifications prior to start of construction. At least ninety days prior to start of construction as defined in WAC 463-68-040, a certificateholder shall provide the plans and specifications required by the site certification agreement to the council for approval.

NEW SECTION

WAC 463-68-060 Review and reporting changes in the project status or site conditions. If construction does not both start within five years of the effective date of the site certification agreement and thereupon continue in a reasonably uninterrupted fashion toward project completion, then at least ninety days prior to the end of the five-year period, the certificateholder shall report to the council its intention to proceed or not to proceed with the project. If the certificateholder intends to proceed with the project, the certificateholder shall submit a report to the council describing:

- (1) The nature and degree of any changes to the following since the effective date of the site certification agreement:

(a) Project design;

(b) Statements and information in the application;

(c) Statements and information in project-related environmental documents; and

(d) Project-related environmental conditions.

(2) Whether any new information or changed conditions indicate the existence of probable significant adverse environmental impacts that were not covered in any project-related environmental documents, including, but not limited to, those prepared under chapter 43.21C RCW.

(3) Suggested changes, modification, or amendments to the site certification agreement and/or any regulatory permits.

NEW SECTION

WAC 463-68-070 Review of changes. Under WAC 463-68-060, construction may start, or restart if construction has been suspended, only upon the council finding that no changes or amendments to the site certification agreement, regulatory permits, or project-related environmental documents are necessary or appropriate, or upon the council's approval of any necessary or appropriate changes or amendments. The council may retain an independent consultant, at the certificateholder's expense, to evaluate and make recommendations about whether changes to the site certification agreement, regulatory permits, or project-related environmental documents are necessary or appropriate. This work may include, but is not limited to, verification of project-related environmental conditions, regulatory requirements, or appropriate technology.

NEW SECTION

WAC 463-68-080 Site certification agreement expiration. (1)

If the certificateholder does not start or restart construction within ten years of the effective date of the site certification agreement, or has canceled the project, the site certification agreement shall expire.

(2) If commercial operations have not commenced within ten years of the effective date of the site certification agreement, the site certification agreement expires unless the certificateholder requests, and the council approves, an extension of the term of the site certification agreement.

(3) Upon a request to extend the term of the site certification agreement, the council may conduct a review

consistent with the requirements of WAC 463-68-050 and 463-68-070,
and other applicable legal requirements.

Chapter 463-72 WAC

SITE RESTORATION AND PRESERVATION

NEW SECTION

WAC 463-72-010 Purpose. This chapter sets forth rules for the content and timing of preparing site restoration or preservation plans for implementation at the conclusion of a plant's operating life; if a project is terminated; or if construction is suspended. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-36 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

NEW SECTION

WAC 463-72-020 Plan elements. Site restoration or preservation plans shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues, to include provisions for funding or bonding and monitoring. Specific plans shall:

(1) Describe the process and/or assumptions used to evaluate the options considered and the measures selected to restore or preserve the site to protect the environment and all segments of the public against risks and dangers resulting from the site operations and activities.

(2) Address provisions for funding or bonding to meet restoration or preservation costs. Financial assurance shall be provided to ensure that funding is available and sufficient for site restoration or preservation. Such financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the initial site restoration plan.

(3) Address the scope of monitoring to be conducted during

site restoration or preservation and possible continued monitoring to ensure site restoration is achieved.

NEW SECTION

WAC 463-72-030 Council approval and schedules required. The council shall approve all site restoration or preservation plans. Each plan shall include schedules for implementation of the proposed site restoration or preservation activities.

NEW SECTION

WAC 463-72-040 Initial site restoration plan. (1) At least ninety days prior to the beginning of site preparation, the certificate holder shall provide the council with an initial site restoration plan which addresses site restoration occurring at the conclusion of the plant's operating life, or in the event the project is suspended or terminated during construction or before it has completed its useful operating life.

(2) The plan shall parallel a decommissioning plan, if such a plan is prepared for the project.

(3) The initial site restoration plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues presently anticipated. It shall describe the process used to evaluate the options and select measures that will be taken to restore or preserve the site or otherwise protect all segments of the public against risks or danger resulting from the site. The plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the site restoration or management costs. The provision of financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the plan.

NEW SECTION

WAC 463-72-050 Detailed site restoration plan--Terminated projects. When a project is terminated, a detailed site restoration plan shall be submitted within ninety days from the time the council is notified of the termination. An extension of time may be granted for good cause shown. The site restoration plan shall address the elements required to be addressed in WAC 463-72-040, in detail commensurate with the time until site restoration is to begin. The council will act on the plan at the earliest feasible time and may take or require action as necessary to deal with extraordinary circumstances.

NEW SECTION

WAC 463-72-060 Site preservation plan--Suspended projects. In the event that construction is suspended, a plan for site preservation shall be prepared at the earliest feasible time, as agreed to by the council, and the council shall be advised of interim concerns and the measures being taken to remedy those concerns. The site preservation plan shall address environmental, and public health and safety concerns, the scope of proposed monitoring and the provisions for funding or bonding to meet site preservation costs. It shall describe measures that will be taken to preserve the site or otherwise protect all segments of the public and environment against risks or danger resulting from the site. The preservation plan shall also address options for preservation and the costs and benefits associated with those options. The council will act on the plan at the earliest feasible time and may take or require action as necessary to deal with the extraordinary circumstances.

NEW SECTION

WAC 463-72-070 Site restoration--Terminated projects. In the absence of a council determination as to the level of site restoration, restoration of the site to a reasonable approximation of its original condition prior to construction shall be required.

NEW SECTION

WAC 463-72-080 Site preservation or restoration plan. When a site is subject to preservation or restoration pursuant to a plan as defined in WAC 463-72-040 through 463-72-060, the certificate holder shall conduct operations within terms of the plan; shall advise the council of unforeseen problems and other emergent circumstances at the site; and shall provide site monitoring pursuant to an authorized schedule. After approval of an initial site restoration plan pursuant to WAC 463-72-040, a certificate holder shall review its site restoration plan in light of relevant new conditions, technologies, and knowledge, and report to the council the results of its review, at least every five years or upon any change in project status. The council may direct the submission of a site preservation or restoration plan at any time during the development, construction, or operating life of a project based upon council's review of the project's status. The council may require such information and take or require such action as is appropriate to protect the environment and all segments of the public against risks or dangers resulting from conditions or activities at the site.