

**WSR 20-05-092**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed February 19, 2020, 10:48 a.m.]

Original Notice.

Proposal is exempt under RCW [70.94.141](#)(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency.

Hearing Location(s): On April 8, 2020, at 10 a.m., at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA.

Date of Intended Adoption: April 9, 2020.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), fax 360-428-1620, by April 8, 2020, at 11 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), by April 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the effective date for external rules that are adopted by reference (AbR) in NWCAA Sections 104 and 155 to allow NWCAA to implement the most recent version of the referenced state and federal rules.

Remove the definitions in NWCAA Section 580 because they have previously been rolled into NWCAA Section 200.

New/amended regulation section derivations: Amended NWCAA Section 580: Deleted definitions.

Reasons Supporting Proposal: See list above.

Statutory Authority for Adoption: Chapter [70.94](#) RCW.

Statute Being Implemented: RCW [70.94.141](#)(1).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

A school district fiscal impact statement is not required under RCW [28A.305.135](#).

A cost-benefit analysis is not required under RCW [34.05.328](#). Not applicable under RCW [70.94.141](#).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW [70.94.141](#).

Explanation of exemptions: Not applicable under RCW [70.94.141](#).

February 19, 2020

Mark Buford

Executive Director

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of the following state rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except – -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state-wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60

(Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYYY, ZZZZ, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, JJJJ, MMMM, NNNN, QQQQ, SSSS, TTTT, VVVV, WWWW, XXXXX, ZZZZZ, AAAAAA, DDDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, April 9, 2020

#### SECTION 155 – STATE ENVIRONMENTAL POLICY ACT

##### 155.1 Authority

(A) NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW [43.21C.120](#), and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

(B) The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

##### 155.2 Purpose and Adoption by Reference.

(A) NWCAA adopts the following sections of Chapter 197-11 WAC by reference in effect as of February 19, 2020:

WAC 197-11-040:	Definitions
-050:	Lead Agency
-055:	Timing of the SEPA Process
-060:	Content of Environmental Review
-070:	Limitations on Actions During SEPA Process
-080:	Incomplete or Unavailable Information
-090:	Supporting Documents
WAC 197-11-100:	Information Required of Applicants
-250:	SEPA/Model Toxics Control Act Integration
-253:	SEPA Lead Agency for MTCA Actions
-256:	Preliminary Evaluation
-259:	Determination of Nonsignificance for MTCA Remedial Action
-262:	Determination of Significance

- and EIS for MTCA Remedial Action
- 265: Early Scoping for MTCA Remedial Actions
- 268: MTCA Interim Actions
- WAC 197-11-300: Purpose of This Part
- 305: Categorical Exemptions
- 310: Threshold Determination Required
- 315: Environmental Checklist
- 330: Threshold Determination Process
- 335: Additional Information
- 340: Determination of Non-Significance (DNS)
- 350: Mitigated DNS
- 360: Determination of Significance (DS)/Initiation of Scoping
- 390: Effect of Threshold Determination
- WAC 197-11-400: Purpose of EIS
- 402: General Requirements
- 405: EIS Types
- 406: EIS Timing
- 408: Scoping
- 410: Expanded Scoping
- 420: EIS Preparation
- 425: Style and Size
- 430: Format
- 435: Cover Letter or Memo
- 440: EIS Contents
- 442: Contents of EIS on Non-Project Proposals
- 443: EIS Contents When Prior Non-Project EIS
- 444: Elements of the Environment
- 448: Relationship of EIS to Other Considerations
- 450: Cost-Benefit Analysis
- 455: Issuance of DEIS
- 460: Issuance of FEIS
- WAC 197-11-500: Purpose of This Part
- 502: Inviting Comment
- 504: Availability and Cost of Environmental Documents
- 508: SEPA Register
- 510: Public Notice
- 535: Public Hearings and Meetings
- 545: Effect of No Comment
- 550: Specificity of Comments
- 560: FEIS Response to Comments
- 570: Consulted Agency Costs to Assist Lead Agency
- WAC 197-11-600: When to Use Existing Environmental Documents
- 610: Use of NEPA Documents

- 620: Supplemental Environmental Impact Statement - Procedures
- 625: Addenda - Procedures
- 630: Adoption - Procedures
- 635: Incorporation by Reference - Procedures
- 640: Combining Documents
- WAC 197-11-650: Purpose of This Part.
- 655: Implementation.
- 660: Substantive Authority and Mitigation.
- 680: Appeals.
- WAC 197-11-700: Definitions
- 702: Act
- 704: Action
- 706: Addendum
- 708: Adoption
- 710: Affected Tribe
- 712: Affecting
- 714: Agency
- 716: Applicant
- 718: Built Environment
- 720: Categorical Exemption
- 722: Consolidated Appeal
- 724: Consulted Agency
- 726: Cost-Benefit Analysis
- 728: County/City
- 730: Decision-Maker
- 732: Department
- 734: Determination of Non-Significance (DNS)
- 736: Determination of Significance (DS)
- 738: EIS
- 740: Environment
- 742: Environmental Checklist
- 744: Environmental Document
- 746: Environmental Review
- 750: Expanded Scoping
- 752: Impacts
- 754: Incorporation by Reference
- 756: Lands Covered by Water
- 758: Lead Agency
- 760: License
- 762: Local Agency
- 764: Major Action
- 766: Mitigated DNS
- 768: Mitigation
- 770: Natural Environment
- 772: NEPA
- 774: Non-Project
- 776: Phased Review
- 778: Preparation
- 780: Private Project
- 782: Probable

- 784: Proposal
- 786: Reasonable Alternative
- 788: Responsible Official
- 790: SEPA
- 792: Scope
- 793: Scoping
- 794: Significant
- 796: State Agency
- 797: Threshold Determination
- 799: Underlying Governmental Action
- WAC 197-11-800: Categorical Exemptions
  - 880: Emergencies
  - 890: Petitioning DOE to Change Exemptions
- WAC 197-11-900: Purpose of This Part
  - 902: Agency SEPA Policies
  - 904: Agency SEPA Procedures
  - 916: Application to Ongoing Actions
  - 920: Agencies with Environmental Expertise
  - 922: Lead Agency Rules
  - 924: Determining the Lead Agency
  - 926: Lead Agency for Governmental Proposals
  - 928: Lead Agency for Public and Private Proposals
  - 930: Lead Agency for Private Projects With One Agency With Jurisdiction
  - 932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
  - 934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
  - 936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency
  - 938: Lead Agencies for Specific Proposals
  - 940: Transfer of Lead Agency Status to a State Agency
  - 942: Agreements on Lead Agency Status
  - 944: Agreements on Division of Lead Agency Duties
  - 946: DOE Resolution of Lead Agency Disputes
  - 948: Assumption of Lead Agency Status
- WAC 197-11-960: Environmental Checklist

- 965: Adoption Notice
- 970: Determination of Non-Significance (DNS)
- 980: Determination of Significance and Scoping Notice (DS)
- 985: Notice of Assumption of Lead Agency Status
- 990: Notice of Action

(B) In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:

SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

### 155.3 Responsible Official Designation and Responsibilities

(A) For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

(B) For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

(C) NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

### 155.4 Lead Agency Determination and Responsibilities

(A) When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(B) When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(C) If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

(D) NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

(E) When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

### 155.5 Time Limits and Other Considerations Applicable to SEPA Rules

(A) For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

### 155.6 Use of Exemptions

(A) When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

(B) In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

(C) If a proposal includes both exempt and nonexempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

(1) NWCAA shall not give authorization for:

- (a) Any nonexempt action;
- (b) Any action that would have an adverse environmental impact; or
- (c) Any action that would limit the choice of alternatives.

(2) NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(3) NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

### 155.7 Environmental Checklist

(A) A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

(B) NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

(C) For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1) NWCAA has technical information on a question or questions that is unavailable to the private applicant; or

(2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

### 155.8 Mitigated DNS

(A) As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(B) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

(1) Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and

(2) Precede NWCAA's actual threshold determination for the proposal.

(C) The responsible official should respond to the request for early notice within 30 working days. The response shall:

(1) Be written;

(2) State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and

(3) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(D) As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(E) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

(1) If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those `specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).

(2) If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.

(3) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(4) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

(F) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

(G) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

(H) If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

(I) NWCAA's early notice under NWCAA 155.8(C) above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

#### 155.9 Preparation of EIS—Additional Considerations

(A) Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

(B) The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(C) NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

#### 155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under these policies and procedures:

(A) Economy

(B) Social policy analysis

(C) Cost-benefit analysis

#### 155.11 Public Notice



(A) Whenever the NWCAA issues a DNS under WAC 197-11-340 (2)(b) or a DS under WAC 197-11-360(3), the NWCAA shall give public notice as follows:

(1) If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

(2) If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

(a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

(b) Posting notice on the NWCAA website.

(3) Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(B) Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(1) Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

(2) Posting the property, for site-specific proposals;

(3) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(4) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

(5) Notifying the news media;

(6) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

(7) Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or

(8) Posting notice on the NWCAA website.

(C) Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures with existing notice procedures for the NWCAA's nonexempt permit(s) or approval(s) required for the proposal.

(D) The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### 155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

(A) The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(B) The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

#### 155.13 SEPA Substantive Authority

(A) The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

(B) NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

(1) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

(2) Such conditions are in writing; and

(3) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(4) NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(5) Such conditions are based on one or more policies in subsections (D) through (F) of this section and cited in the permit or other decision document.

(C) The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

(1) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

(2) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(3) The denial is based on one or more policies identified in subsections (D) through (F) of this section and identified in writing in the decision document.

(D) NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

(1) NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(E) NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

(1) Federal and state Clean Air Acts, and regulations adopted thereunder.

(2) The Regulation of the Northwest Clean Air Agency

(3) Resolutions adopted by NWCAA Board of Directors.

(4) Maintenance plans.

(5) Washington State Implementation Plan.

(F) NWCAA establishes the following additional policies:

(1) Air quality

(a) Policy Background

(i) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

(iii) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

(b) Policies

(i) To minimize or prevent adverse air quality impacts.

(ii) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chloro-fluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and

in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

(2) Land Use

(a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

(b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

(3) Transportation

(a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

(b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

(4) Cumulative Effects

(a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

(b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

#### 155.14 Administrative Appeals

(A) NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA; and

(B) NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

#### 155.15 Notice/Statute of Limitations

(A) NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW [43.21C.080](#) for any action.

(B) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW [43.21C.080](#).

#### 155.16 Fees

(A) In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

(1) Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environmental checklist or other information needed for NWCAA to make a threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

(2) Environmental Impact Statement

(a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

(b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

(d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under NWCAA 155.16 (A)(1) and (2) of these policies and procedures that remain after incurred costs are paid.

(e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

(f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter [42.56](#) RCW.

#### 155.17 Severability

(A) If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

PASSED: June 10, 2010 AMENDED: August 13, 2015, April 9, 2020

## SECTION 580 - VOLATILE ORGANIC COMPOUND CONTROL

580.1 The Board of Directors has noted the measurement of ozone concentrations (one hour ave.) nearing the Federal ambient standard at the northern and southern boundaries of the NWCAA jurisdiction. The expanding population and the presence of four large refineries contribute volatile organic compound (VOC) emissions to the atmosphere. Photochemically reactive VOC's are precursors to ozone formation. In order to maintain the current attainment status for ozone, the Board has adopted specific measures to control VOC emissions. Reasonable Available Control Technology (RACT) is required for existing refinery operations, gasoline marketing, and in the use of cutback asphalt. RACT is defined as the lowest emission limit that a particular source is capable of meeting by the application of control that is reasonably available considering technological and economic feasibility.

~~(SECTION 580 - DEFINITIONS~~

~~BOTTOM LOADING -- means the filling of a tank through a submerged fill line.~~

~~BULK GASOLINE PLANT -- means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks. See also "gasoline station" and "gasoline loading terminal."~~

~~CERTIFIED VAPOR RECOVERY SYSTEM -- means a stage II vapor recovery system which has been certified by the California Air Resources Board.~~

~~CLOSED REFINERY SYSTEM -- means a disposal system that will process or dispose of those VOC collected from another system.~~

~~CUTBACK ASPHALT -- means an asphalt that has been blended with more than seven percent petroleum distillates by weight.~~

~~DISPOSAL SYSTEM -- means a process or device that reduces the mass quantity of the uncontrolled VOC emissions by at least ninety percent.~~

~~GASOLINE -- Means a petroleum distillate having a true vapor pressure greater than 28.0 kilopascals (kPa) (4 pounds per square inch absolute -p.s.i.a.) - at 20 degrees Celsius (20 C) temperature, that is a liquid at standard conditions of 102.9 Kpa (14.7 psi) and 20 C, and is used as a fuel for internal combustion engines.~~

~~GASOLINE STATION -- means any facility dispensing gasoline into fuel tanks of motor vehicles, from stationary storage tanks. See also "bulk gasoline plant" and "gasoline loading terminal."~~

~~GASOLINE LOADING TERMINAL -- means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks. See also "bulk gasoline plant" and "gasoline station."~~

~~LEAK FREE -- means a liquid leak of less than four drops per minute.~~

~~PETROLEUM REFINERY -- means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives.~~

~~PROCESS UNIT -- means all the equipment essential to a particular production process.~~

~~PROPER ATTACHMENT FITTINGS -- means connecting hardware for the attachment of fuel transfer or vapor lines which meets or exceeds industrial standards or specifications and the standards of other agencies or institutions responsible for health and safety.~~

~~REID VAPOR PRESSURE -- means the true vapor pressure of volatile organic compounds at 37.8 degrees Celsius (100 degrees Fahrenheit) temperature.~~

~~STAGE II -- means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.~~

~~SUBMERGED FILL LINE -- means a pipe, tube, fitting or other hardware for loading liquid into a tank either a discharge opening flush with the tank bottom; or with a discharge opening entirely below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.~~

~~SUBMERGED LOADING -- means the filling of a tank with a submerged fill line.~~

~~SUITABLE CLOSURE OR SUITABLE COVER -- means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices specifically required for safety and fire protection are not included.~~

~~TRANSPORT TANK -- means a container with a capacity greater than one thousand liters (260 gallons) used for transporting gasoline, including but not limited to, tank truck, tank trailer, railroad car, and metallic or nonmetallic tank or cell conveyed on a flatbed truck, trailer or railroad car.~~

~~THROUGHPUT -- means the amount of material passing through a facility.~~

~~TRUE VAPOR PRESSURE -- means the equilibrium partial pressure of an organic liquid (determined with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962).~~

~~TURNAROUND OF PROCESS UNIT TURNAROUNDS -- means the shutting down and starting up of process units for periodic major maintenance and repair of equipment, or other planned purpose.~~

~~UPGRADED -- means the replacement or modification gasoline storage tank(s) and/or piping system(s) that exceeds 50% of the replacement cost.~~

~~VAPOR BALANCE SYSTEM -- means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and receiving tank such that the vapors displaced from the receiving tank are transferred to the tank being unloaded.~~

~~VAPOR BALANCING -- means use of a vapor balance system.~~

~~VAPOR RECOVERY SYSTEM -- means a process which prevents emission to the atmosphere of volatile organic compounds released by the operation of any transfer, storage, or process equipment.~~

~~VOLATILE ORGANIC COMPOUND OR VOC -- means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s).~~

~~WAXY, HEAVY POUR CRUDE OIL -- means a crude oil with a pour point of 10 C or higher (determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils".))~~

~~PASSED: December 13, 1989 AMENDED: April 14, 1993, October 13, 1994, February 8, 1996, April 9, 2020~~

~~Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW [34.08.040](#).~~