



1600 South Second Street  
Mount Vernon, WA 98273-5202  
ph 360.428.1617  
fax 360.428.1620  
www.nwcleanair.org

**NORTHWEST CLEAN AIR AGENCY**

In the Matter of Additional Action Required by: ) **PROPOSED**  
 )  
 ) AGREED COMPLIANCE  
 ) ORDER  
 MT. BAKER SKI AREA, INC. ) No. 1743-2022-01  
 )  
 )

TO:  
DUNCAN HOWAT  
PRESIDENT  
1420 IOWA ST.  
BELLINGHAM, WA 98229-4710

**I.**

**Jurisdiction**

This Agreed Compliance Order (“Order”) is issued pursuant to the authority of RCW 70A.15.2040 and NWCAA Regulations 103 and 121.

**II.**

**Findings of Fact**

Northwest Clean Air Agency (NWCAA) makes the following Findings of Fact:

- A. MBSA owns and operates diesel-fired compression ignition engines to provide operating power to the ski area lifts, lodges, and utilities because there is no commercial power available at their location.
- B. On 12/16/2020, Mt. Baker Ski Area, Inc (MBSA) and NWCAA entered into agreed compliance order 1743-2020-30 after a 30-day public notice period to resolve Notice of

Violation 4319 with a compliance schedule for replacement of engines on Chairs 5 and 6.

- C. Under Order 1743-2020-30, MBSA upgraded the Chair 5 main engine to an EPA certified tier 4 unit during the summer of 2020 and proceeded to operate that engine as the main drive unit for the chair through the 2020-2021 season.
- D. The tier 4 equipment experienced significant operational incompatibilities with Chair 5 equipment related to integral design of the emissions control system.
- E. MBSA engaged with both the engine manufacturer and ski operations experts to research these issues and implement satisfactory procedures to address them. NWCAA was kept informed during the process.
- F. On March 17, 2021, NWCAA issued MBSA an allowance to operate the emergency engines for chairs 2, 3/4, 5, 6, 7 and 8 for up to 250 hours of readiness testing per operating season in accordance with 40 CFR 63.6670(c).
- G. On July 28, 2021, MBSA provided NWCAA with a written account and evidence of the operational issues and reasoning for delay of installation of a new engine in Chair 6 as agreed in Order 1743-2020-30. MBSA also provided an initial replacement compliance plan narrative.
- H. On or about October 18, 2021, MBSA confirmed their commitment to what the facility calls the “power consolidation project.”
  - a. The proposed project will prioritize powering Chair 6, and will include additional chairlifts as project constraints allow, replacing main drive engines with electric motors.
  - b. The Project is a multi-phase, multi-year replacement of individual chairlift main drive engines towards a central diesel engine generator set.
  - c. Due to design uncertainty regarding power demand profiles specific to chairlift engines, temporary, portable engines will be used for less than 12 months in the initial phase(s) of the project.

### III.

#### Regulatory Basis

The following is a list of pertinent citations regarding the alleged violations and definitions within this order. It is not a complete list for purposes of compliance demonstration with local, state, or federal rules.

- A. 40 CFR 63.6603(a) Table 2d 2. Non-Emergency, non-black start CI stationary RICE 300<HP≤500 (Site rating)
  - a. Limit concentration of CO in the stationary RICE exhaust to 49 ppmvd at 15 percent O<sub>2</sub>; or
  - b. Reduce CO emissions by 70 percent or more.
- B. 40 CFR 63.6640(f)(1)-(4) Emergency stationary RICE requirements.
- C. 40 CFR 63.6650 (b)(1)-(4) Compliance reporting requirements.
- D. 40 CFR 63.6655 (e) and (f) Recordkeeping.
- E. 40 CFR 63.6675 Definitions.
- F. NWCAA Regulation 300.1 and 300.2 Notice of Construction requirements.

#### IV.

#### Determinations

Based upon the foregoing Findings of Fact and Regulatory Basis, NWCAA makes the following Determinations:

- A. The Mount Baker Ski Area is classified under NAICS 713920 designated as a commercial operation consistent with 2010 EPA guidance (9/9/2010 memo to EPA Docket EPA-HP-OAR-2008-0708 from Melanie King).
- B. Replacement of the non-compliant Chair 5 non-emergency engine demonstrated that the integral design constraints of EPA tier 4 emission controls render these engines inappropriate as chair lift direct-drive installations, presenting both operational and safety issues. The actions needed to manage for these operational issues are unacceptable for long-term installation.
- C. As proposed, the temporary, portable diesel generator set(s) to be used for less than 12-months during the initial phases of the power consolidation project are exempt from NWCAA 300.1 and 300.2.
- D. The final *stationary* central power engine(s) will be subject to 40 CFR Part 60 Subpart IIII emissions standards and are expected to be subject to NWCAA 300.1 and 300.2 permitting requirements.
- E. The proposed power consolidation project will result in additional emissions reductions from those originally estimated by eliminating several engines, replacing them with a

single, EPA tier 4 engine. The overall emission reduction cannot be calculated until the final engine size and design is specified.

- F. NWCAA conducted a compliance inspection on September 9, 2021. The facility has implemented improvements to assure that they are meeting the requirements of 40 CFR Part 63 Subpart ZZZZ and Part 60 Subpart IIII as noted in Order 1743-2020-30 Section V. terms A., B., C., and E.
- G. This order fully supersedes Order 1743-2020-30 upon the effective date.

## V.

### Terms of Order: Actions to Be Taken

Based on the forgoing Facts, Regulatory Basis, and Determinations, it is hereby ordered that Mt. Baker Ski Area, Inc. take the following actions. For those actions completed prior to finalizing this agreement, information is included.

- A. The facility shall enter into financially binding contractual obligations to purchase a sustainable compliant solution for the Chair 6 non-emergency engine on or before April 1, 2022, and for installation of the engine by November 1, 2022. If delivery and installation by that date is not feasible due to circumstances beyond MBSA's control, report as provided in B.c, below.
- B. The facility shall notify NWCAA in writing of the following power consolidation project milestones:
  - a. Date of replacement for Chair 6 main drive engine.
  - b. Startup date of each temporary genset with size and location of the genset and what engine(s) it replaces.
  - c. Should replacement of the Chair 6 main drive engine be incomplete on November 1, 2022, the facility shall provide a written account of the delay, actions taken to minimize the delay, and a new estimated timeline.
- C. The facility shall apply for and obtain required permits for engines to be permanently (more than 12-months) installed at the facility as part of the power consolidation project.
- D. NWCAA, after reviewing all of the circumstances, reaffirms the total civil penalty of \$30,000 imposed upon Mt. Baker Ski Area, Inc. for the violations identified in NOV 4319 agrees to suspend the penalty in its entirety (\$30,000) in return for Mt. Baker Ski Area, Inc. agreeing to abide by this Agreed Order, subject to the conditions that:

- i. Mt. Baker Ski Area does not violate NWCAA 300.1 or 300.2 (requirements for obtaining a permit) for 5 years.
- ii. Mt. Baker Ski Area shall agree to purchase and operate EPA tier 4 compliant engines or the best emissions-performing engine, for new and replacement stationary non-emergency installations subject to permitting.

Should Mt. Baker Ski Area actions violate any of these conditions, the stipulated amount of penalty due is \$10,000 per each project that required permitting, for up to 3 projects, totaling \$30,000. This stipulated penalty shall be in addition to, and does not preclude, any enforcement action taken and any civil penalty issued specific to the violation. Penalties incurred are due immediately to the NWCAA, 1600 S Second Street, Mount Vernon, WA 98273-5202.

## **VI.**

### **Terms and Definitions in Order**

Unless otherwise specified, the definitions set forth in NWCAA Regulation 200, WAC 173-400 & 401, ch. 70A.15 RCW, 40 CFR Part 60 Subparts IIII and JJJJ, and 40 CFR Part 63 Subpart ZZZZ shall control the meanings of the terms used in this Agreed Order.

## **VII.**

### **Satisfaction of Order**

The provisions of this Agreed Order, as amended by any modifications, shall be deemed satisfied upon Mt. Baker Ski Area, Inc.'s receipt of written notification of such satisfaction from Northwest Clean Air Agency and upon compliance with all provisions of this Agreed Order.

## **VIII.**

### **Enforcement**

Pursuant to RCW 70A.15.2040, 3150 and 3160, this Order may be enforced by the Northwest Clean Air Agency.

**IX.**

**Order Not Subject to Appeal**

The terms of this Order having been agreed to by both parties, it is further stipulated that the same shall be final and not be subject to appeal in accordance with RCW 43.21B.230 and NWCAA Regulation 122.

Effective date of this Order: \_\_\_\_\_

ORDERED BY:  
NORTHWEST CLEAN AIR AGENCY

By: \_\_\_\_\_

Mark Buford,  
Executive Director

AGREED BY:  
MT. BAKER SKI AREA, INC.

By: \_\_\_\_\_

Duncan Howat  
President