

**SECTION 100 - NAME OF AGENCY**

- 100.1 The multi-county agency, consisting of Island, Skagit and Whatcom Counties, having been formed pursuant to the Washington State Clean Air Act RCW 70.94, shall be known and cited as the "Northwest Clean Air Agency", and hereinafter may be cited as the "NWCAA" or the "Authority."
- 100.2 Any reference to the Northwest Air Pollution Authority, the Authority or the NWAPA in any document previously issued by the agency, including without limitation orders, permits, judgments, letters and the like shall be deemed reference to the Northwest Clean Air Agency or the NWCAA.

AMENDED: July 14, 2005

**SECTION 101 - SHORT TITLE**

- 101.1 This Regulation may be known and cited as the "Regulation of the Northwest Clean Air Agency".

**SECTION 102 - POLICY**

- 102.1 It shall be the policy of the NWCAA to secure and maintain such levels of air quality as will protect human health and safety, prevent injury to plant and animal life and to property, and foster the comfort and convenience of the inhabitants of this area in order to facilitate their enjoyment of the area's natural beauty and thus promote economic and social well-being.
- 102.2 In order to carry out the requirements of the Washington Clean Air Act and to provide uniform administration and enforcement, the NWCAA adopts the following policies, procedures, standards, prohibitions, and ambient air quality objectives.

The establishment of control procedures, compliance schedules, emission and ambient air standards, and prohibitions are the administrative means of achieving this goal.

- 102.3 Guidelines

In carrying out its responsibilities for air pollution control the NWCAA is concerned with the interrelationship of land use, activities of people, and industries since each of these contributes to the overall air pollution problem. The ongoing program carried out by the NWCAA attempts to seek solutions to existing problems and to develop strategies for prevention of problems as the area of jurisdiction experiences growth and change. To accomplish this best, it is necessary for the NWCAA to enter into the planning stages of domestic and industrial development and to participate with other agencies in decisions on location of population and industrial centers considering the kinds of air contaminants these may emit in relation to those from

surrounding areas. Coordination with air pollution authorization and other agencies in contiguous areas is necessary.

In the development of strategies, it is necessary to consider three very interrelated areas and develop appropriate guidelines for:

- (a) Minimal degradation of air quality.
- (b) Implementation of land use and zoning.
- (c) Population density control.

#### 102.4 Minimal Degradation Guidelines

It shall be the policy of the NWCAA not to allow the atmosphere to degrade below the levels set out by appropriate air quality objectives. These are the points where the health, comfort, and convenience of the individual is assured and the effects of air pollution are known not to occur. To achieve this objective, it shall be necessary, when growth or change occurs, to:

- 102.41 Require the best practical technology for those who locate here or are required to upgrade their facilities.
- 102.42 Allow expansion of an area only if the probable emissions of the newcomers, when added to those from presently existing facilities, are not likely to cause violations of existing ambient air standards.

#### 102.5 Land Use Planning and Zoning

Zoning is the most effective way to regulate land use. The practice in land use planning to allocate certain districts for particular uses can create a problem.

By locating too many units which emit similar types of pollutants in one area, a problem may be created which would ordinarily not exist or be of minimal consequence if the units were more scattered.

Air pollution control authorities have a responsibility to minimize the impact of air contaminants and to keep the air basins within the NWCAA's jurisdiction below the air quality objectives even under the most adverse meteorological conditions. The NWCAA thus has a planning responsibility in terms of warning and insuring that incompatible land uses do not occur. It is the policy of the NWCAA to work with other agencies to assure that:

- 102.51 Incompatible land uses are discouraged.
- 102.52 Zones are intermixed in such a way that air pollution problems may be minimized.

- 102.53 Zones are not made so large that air pollution problems are created by locating too many units with similar emissions. In industrial zones, the industries should be dissimilar in nature to minimize the concentration of a single contaminant.

102.6 Population Density Control

In land use planning the density of use is an important factor to consider along with the type of zone degradation. In problem areas, often times the type of zone is not at fault but too many units of a given type are allowed.

It shall be the policy of the NWCAA, in order to minimize the population density problem to recommend that:

- 102.61 Zones should be intermixed in such a way that high density zones are intermixed with low density zones so as to reduce air contaminant output.
- 102.62 As the density of zones becomes greater, consideration must be given to restricting the number of units a given zone can accommodate.
- 102.63 Concentrations of population or industries be allowed only up to the point where there is reason to believe that the air quality objectives in a given air basin are not likely to be exceeded.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 10, 1993, May 11, 1995, July 14, 2005

**SECTION 103 - DUTIES AND POWERS**

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

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

- 103.2 The Board shall require that the Control Officer maintain appropriate records and prepare periodic reports.
- 103.3 The Board shall receive minutes of meetings of the Advisory Council as required. The decisions of the Advisory Council shall be forwarded to the

Board in writing and shall include minority opinions in cases of serious disagreement.

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

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, April 14, 1993

### **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 August 24, 2022 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 statewide regulations adopted and enforced under this paragraph.

- 104.2 All provisions of the following federal rules that are in effect as of August 24, 2022 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, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWW, YYYYY, ZZZZZ, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, JJJJJ, MMMMM, NNNNN, OOOOO, QQQQQ, SSSSS, TTTTT, VVVVV, WWWW, XXXXX, ZZZZZ, AAAAA, DDDDD, EEEEE, and HHHHH; 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, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022

## **SECTION 105 - SEPARABILITY**

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

## **SECTION 106 - PUBLIC RECORDS**

106.1 AUTHORITY AND PURPOSE.

- (A) The Northwest Clean Air Agency (NWCAA) will make available for inspection and copying nonexempt public records in accordance with the Public Records Act, chapter 42.56 RCW. The Public Records Act defines public records to include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the agency.
- (B) The purpose of this section is to establish the procedures the NWCAA will follow in order to provide full access to nonexempt public records. These sections provide information to persons wishing to request access to public records of the NWCAA and establish processes for both requesters and NWCAA staff that are designed to best assist members of the public in obtaining records.

106.2 AGENCY CONTACT INFORMATION

- (A) Any person wishing to request access to public records of the NWCAA, or seeking assistance in making such a request should contact the Public Records Officer of the NWCAA:

Public Records Officer  
Northwest Clean Air Agency  
1600 S Second St  
Mount Vernon, WA 98273-5202  
Phone: 360-428-1617  
Facsimile: 360-428-1620  
Email: PublicInformationRequests@nwcleanairwa.gov

Requests may be submitted on the NWCAA website at [www.nwcleanairwa.gov](http://www.nwcleanairwa.gov).

- (B) Duties of Public Records Officer. The Public Records Officer will oversee compliance with this section but another NWCAA staff member may process the request. Therefore, any reference to the Public Records Officer in this section may refer to the Public Records Officer or designee.

### 106.3 AVAILABILITY OF PUBLIC RECORDS.

- (A) Public records are available for inspection Monday through Friday during the hours of 8:30 a.m. to 4:00 p.m., excluding legal holidays. Records must be inspected at the NWCAA office. Arrangements to inspect records should be made in advance with the Public Records Officer.
- (B) The NWCAA finds that maintaining an index is unduly burdensome and would interfere with agency operations due to the agency's small size and the high volume and types of public records generated and received by the agency.
- (C) The NWCAA will maintain its records in a reasonably organized manner. The NWCAA will take reasonable actions to protect records from damage and disorganization.
- (D) Making a Request for Public Records. Any person wishing to inspect or to have copies made of public records should make this request in writing by letter, email sent to [PublicInformationRequests@nwcleanairwa.gov](mailto:PublicInformationRequests@nwcleanairwa.gov), or through the NWCAA website at [www.nwcleanairwa.gov](http://www.nwcleanairwa.gov).
  - (1) The request should include the following information:
    - (a) Name of requester;
    - (b) Address of requester;
    - (c) Other contact information, including telephone number and email address;
    - (d) Identification of the information or records sought adequate to locate the records; and

- (e) The date and time of day of the request.
- (2) The Public Records Officer may accept requests for public records by telephone or in person. The Public Records Officer will confirm receipt of the request and summarize the request in writing.
- (3) If requesters refuse to identify themselves or provide sufficient contact information, the NWCAA will respond to the extent feasible and consistent with the law.

#### 106.4 PROCESSING OF PUBLIC RECORDS REQUESTS

- (A) The Public Records Officer will provide the fullest assistance to requesters and prevent excessive interference with other essential functions of the NWCAA.
- (B) Within 5 business days of receipt of a request, the Public Records Officer will do one or more of the following:
  - (1) Make the records available for inspection.
  - (2) Provide a copy of the record.
    - (a) If photocopies or scanned copies are requested, the Public Records Officer will notify the requester with an estimated cost of the copies and make arrangements for payment.
    - (b) If the records are available on the NWCAA website, the Public Records Officer will provide an internet address to the specific records requested.
  - (3) Provide a reasonable estimate of when records or an installment of records will be available.
  - (4) Ask the requester to provide clarification for a request that is unclear. If the requester fails to respond to a request for clarification and the entire request is unclear, the NWCAA need not respond to it. The NWCAA will respond to those portions of a request that are clear.
  - (5) Deny the request.
- (C) If the NWCAA does not respond within 5 business days of receipt of the request, the requester should contact the Public Records Officer to determine the reason for the failure to respond.
- (D) The NWCAA will notify the requester when records are available for inspection and provide space to review documents. No member of the public may remove a document from the designated reviewing area or from the file. The requester shall indicate which documents he or she wishes the NWCAA to copy.

- (E) The Public Records Officer will evaluate the request according to the nature and volume of the request. The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.
- (F) When the request is for a large number of records, the Public Records Officer may provide access for inspection or send copies in installments.
- (G) If, after the NWCAA has informed the requester that it has provided all available records, the NWCAA becomes aware of additional responsive documents existing at the time of the request, the Public Records Officer will promptly inform the requester of the additional documents and provide them on an expedited basis.
- (H) When the requester either withdraws the request, fails to clarify an unclear request, fails to pay the deposit, fails to make final payment for the requested copies, or fails to inspect or claim the requested records within 30 days after notification, the Public Records Officer may close the request and refile the records.

106.5 COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

- (A) There is no fee for inspecting public records or for the NWCAA’s time spent locating public documents and making them available. There is no fee for providing electronic records if they already exist in an electronic format.
- (B) The NWCAA is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: the NWCAA does not have the resources to conduct a study to determine actual copying costs for all its records and to conduct such a study would interfere with other essential agency functions. Therefore, in order to timely implement a fee schedule consistent with the public records act, it is more cost efficient, expeditious and in the public interest for the NWCAA to adopt the state legislature's approved fees and costs for most of the NWCAA records, as authorized in RCW 42.56.120 and as published in NWCAA 106.5(C).
- (C) The costs for copying and conveying records are as follows:

<b>Public Records Fee Schedule</b>	
15 cents / standard page	Photocopies provided by NWCAA staff using agency equipment - no fee for first 100 pages per request
10 cents / standard page	Scanned documents provided by NWCAA staff using agency equipment (if the documents are not already in electronic format) – no fee for first 100 pages per request
Actual cost	Digital storage media or devices
Actual cost	Any container or envelope used to mail copies



REGULATION OF THE NORTHWEST CLEAN AIR AGENCY

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Actual cost	Postage or delivery charges
Actual cost	Copying or scanning charged by an outside vendor
Actual cost	Expertise to prepare data compilations or provide customized electronic access services
Actual cost	Retrieving documents out of storage
Other	Other charges allowed in RCW 42.56.120

- (D) Payment may be made with a credit card on-line, cash, check, or money order made out to the Treasurer of the NWCAA.

106.6 EXEMPT RECORDS

- (A) The Public Records Act provides that some records are exempt in whole or in part from public inspection and copying. In addition to the list of exemptions in RCW 42.56.050, RCW 42.56.210 through RCW 42.56.400, and WAC 44-14-060, common exemptions include:

- (1) Confidential business information. The owner or operator of a source may certify that a record or information provided to the agency is confidential because it relates to a process or production unique to the owner or operator or is likely to affect adversely the competitive position if released. Emission and ambient air quality data are excluded from any confidential claim. (RCW 70.94.205)
- (2) Attorney-client communications. Communication between an attorney, who is acting as counsel or advisor, and NWCAA staff is confidential unless a member of the public is copied on that communication (RCW 5.60.060(2)(a))
- (3) Preliminary drafts, notes, recommendations, and intra-agency memorandums (RCW 42.56.280)
- (4) List of individuals (private or natural persons) for commercial purpose. The NWCAA is prohibited by statute from disclosing lists of individuals for commercial purposes (RCW 42.56.070(8))
- (5) Investigative records and information pertaining to ongoing investigations where premature disclosure could jeopardize effective law enforcement or any person's right to privacy. (RCW 42.56.240(1))
- (6) Identity of persons who file a complaint with the NWCAA if disclosure would endanger any person's life, physical safety or property. If at the time a complaint is filed, the complainant indicates a desire for nondisclosure, such desire shall govern (RCW 42.56.240(2))

- (B) For records or portions of records that are withheld, the Public Records Officer will document the applicable exemption and provide a brief

written explanation as to why the record or portion of the record is being withheld.

- (C) In the event that the requested public records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer may, prior to providing the public records, give notice to such others whose rights may be affected by the disclosure.

#### 106.7 REVIEW OF DENIALS OF PUBLIC RECORD

- (A) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the Control Officer of the NWCAA for a review of that decision. The petition shall include a copy of the written statement by the Public Records Officer denying the request.
- (B) The Control Officer or designee will either affirm or reverse the denial within 10 business days following the NWCAA's receipt of the petition.
- (C) Any person may petition the Skagit County Superior Court for a review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of 10 business days after the initial denial regardless of any internal appeal process.

PASSED: August 9, 1978 AMENDED: November 8, 2007, September 13, 2018

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

- 110.1 The Control Officer and/or his qualified agents may make any reasonable investigation or study which is necessary for the purpose of standards or any amendments thereto on reducing the amount or kind of contaminant.
- 110.2 When investigating conditions specific to the control, recovery or release of air contaminants, the Control Officer or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property, except non-multiple unit private dwellings housing two families or less.
- 110.3 If an authorized employee of the NWCAA, during the course of an inspection desires to obtain a sample of air contaminant, he shall notify the owner or lessee of the time and place of obtaining a sample so the owner or lessee has the opportunity to take a similar sample at the same time and place. A receipt shall be given to the owner or lessee for the sample obtained.

PASSED: January 8, 1969

**SECTION 111 - INTERFERENCE OR OBSTRUCTION**

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

PASSED: January 8, 1969

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

112.1 No person shall willfully make a false or misleading oral statement to the NWCAA Board, Control Officer, or their duly authorized representatives as to any matter within the jurisdiction of the Board.

112.2 No person shall reproduce or alter or cause to be reproduced or altered any order, registration certificate, or other paper issued by the NWCAA if the purpose of such reproduction or alteration is to evade or violate any provision or Regulation of the NWCAA, or any other law.

PASSED: January 8, 1969 AMENDED: February 14, 1973, November 12, 1999

**SECTION 113 - SERVICE OF NOTICE**

113.1 Service of any written notice required by the Regulation of the NWCAA shall be made on the owner, operator or his registered agent, as follows:

113.11 Either by mailing the notice certified mail, with return receipt requested; or

113.12 By personal service.

113.2 Any individual, owner, operator, or registered agent of any business, corporation or government coming under the Regulations of the NWCAA may be required to submit evidence that said person is authorized to sign and execute documents on behalf of said corporation, business or government.

PASSED: January 8, 1969 AMENDED: February 14, 1973, November 8, 2007

**SECTION 114 - CONFIDENTIAL INFORMATION**

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

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

PASSED: January 8, 1969 AMENDED: October 1, 1969, January 8, 1970, February 14, 1973, July 11, 1973, April 14, 1993, March 13, 1997, November 8, 2007

## **SECTION 120 - HEARINGS**

120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.

120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

120.13 Every party shall have the right to cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.

120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70.94 and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1977, April 14, 1993, November 8, 2007

### **SECTION 121 - ORDERS**

- 121.1 The NWCAA may issue such orders as may be necessary to effectuate and enforce the purposes of chapter 70.94 RCW or the rules adopted thereunder.
- 121.2 If the NWCAA has reason to believe that any provision of chapter 70.94 RCW or the rules adopted thereunder has been violated, the NWCAA may, in addition to any other remedy of law, issue an order that requires corrective action be taken within a reasonable time. Such compliance orders may include dates by which the violation or violations shall cease and may set time schedules for necessary action in preventing, abating, or controlling the emissions.
- 121.3 Orders of approval related to the establishment of a source are addressed under NWCAA 300, in lieu of the requirements in this section.
- 121.4 General Orders of Approval are issued under WAC 173-400-560, as adopted in NWCAA 104.1, in lieu of the requirements in this section.
- 121.5 Any order issued under this section that includes an action listed in NWCAA 305.2(A) is subject to the public involvement provisions of NWCAA 305.
- 121.6 For regulatory orders related to a RACT determination, a fee shall be assessed in accordance with NWCAA 309.7. For all other orders issued under NWCAA 121, the NWCAA shall assess a fee as specified in NWCAA 324.7 to cover the costs of processing and issuing such order.
- 121.7 When an applicant requests a regulatory order to limit the potential to emit of any air contaminant or contaminants pursuant to WAC 173-400-091, as adopted in NWCAA 104.1, or requests a modification to such an order, the NWCAA shall issue such order consistent with the requirements of WAC 173-400-091 as adopted in NWCAA 104.1 in addition to the requirements of this Regulation.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 8, 2007, March 14, 2013

### **SECTION 123 – APPEAL OF ORDERS**

- 123.1 Any order issued by the NWCAA shall become final unless, no later than thirty (30) days after the date that the order is served, any person appeals the order to the Pollution Control Hearings Board as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order.

123.2 Any order issued by the NWCAA under appeal in accordance with chapter 43.21B RCW shall remain in effect during the pendency of such appeal unless the Control Officer, at his/her discretion, issues a stay of the original order. At any time during the pendency of an appeal of such an order to the Pollution Control Hearings Board, the appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 15, 1988, November 8, 2007, March 14, 2013

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

124.1 Any order, registration certificate or other certificate required to be obtained by the Regulations of the NWCAA shall be available on the premises designated on the order or certificate.

124.2 In the event that the NWCAA requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Board or the Control Officer.

PASSED: January 8, 1969 AMENDED: February 14, 1973

**SECTION 131 - NOTICE TO VIOLATORS**

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

131.2 The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond shall constitute a prima facie violation of this Regulation and the NWCAA may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

PASSED: January 8, 1969 AMENDED: February 14, 1973, March 13, 1997, July 14, 2005, November 8, 2007, March 14, 2013

**SECTION 132 - CRIMINAL PENALTY**

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

PASSED: January 6, 1969 AMENDED: April 14, 1993, October 13, 1994, March 13, 1997, November 8, 2007, August 13, 2015

**SECTION 133 - CIVIL PENALTY**

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

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

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

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

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

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

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

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

133.4 In addition to other penalties, persons knowingly under-reporting emissions or other information used to set fees, persons required to pay emission or permit fees who are more than 90 days late with such payments, or persons failing to file a relocation notice to relocate into NWCAA jurisdiction with required registration fee under NWCAA 514.3 may be assessed a penalty equal to 3 times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against



the same person within 5 years from the date of said suspension. After 5 years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015, February 10, 2022

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

134.1 Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provisions of the Regulation of the NWCAA, or any rule, regulation or order issued by the Board or the Control Officer or his authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the Superior Court of the County wherein the violation is alleged to be occurring or to have occurred, for a restraining order or a temporary or permanent injunction or another appropriate order.

PASSED: January 8, 1969 AMENDED: October 1, 1969, February 14, 1973, February 10, 1993

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

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

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, November 8, 2007

### **SECTION 140 - REPORTING BY GOVERNMENT AGENCIES**

140.1 State and Federal agencies, within the jurisdiction of the NWCAA, which are required by State and Federal law to abide by the Regulation of the NWCAA shall notify the NWCAA, prior to construction of any facility which has the potential to create air pollution, the name and location of the agency involved, the nature of the construction and the type and quantity of equipment involved and the type and quantity of pollutants involved.

140.2 All governmental agencies which lie wholly or partially within the jurisdiction of the NWCAA, including but not limited to city and county planning agencies which recommend or adopt land-use and zoning regulations including the issuance of variances such as conditional or special use permits for the construction of any facilities which they have reason to believe may emit air pollutants; shall notify the NWCAA of any such action or construction prior to recommending or adopting of such regulations or the issuance of any such permits.

PASSED: February 14, 1973 AMENDED: August 9, 1978, April 14, 1993

**SECTION 150 - POLLUTANT DISCLOSURE - REPORTING BY AIR CONTAMINANT SOURCES**

150.1 Every person operating a registered air contaminant source or a Chapter 401 source, as defined in WAC 173-401-200, shall file annually and on forms furnished by the NWCAA a report setting forth:

- (A) The nature of the enterprise.
- (B) A list of process materials which are potentially significant sources of emissions used in, and incidental to, its manufacturing processes, including by-products and waste products.
- (C) The estimated calendar year emissions which may include each criteria air pollutant, hazardous air pollutant, toxic air pollutant, and volatile organic compounds (VOC). Every person filing an annual emissions inventory shall retain at the facility the calculations, associated production data, and emission factors used to obtain the estimates.

150.2 Annual calendar year emission reports shall be submitted to the NWCAA by no later than April 15 of the following year unless otherwise specified by NWCAA. If the emission report is not submitted by the required date and the emissions are used to determine fees as described in NWCAA 322.4 and 320.3, potential to emit may be used to determine said fees.

150.3 Every person operating any source or sources which directly or indirectly emits or contributes air contaminants within the jurisdictional area of the NWCAA may be required to report to the Control Officer, at a time or times selected by the Control Officer, production rates, sales or other data (including quantities of products used or any other information) as may be required to estimate the emissions from the various air contaminant sources.

PASSED: February 14, 1973 AMENDED: September 8, 1993, December 8, 1993, November 12, 1999, November 8, 2007, February 10, 2022

**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 43.2 1C.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, May 14, 2020