

RO-52 RESPONSE TO PUBLIC COMMENTS

NWCAA received a number of comments during the public comment period and subsequent hearing on RO-52. The comments received were reviewed and grouped by themes. Responses are provided below to grouped comments.

Comments: The incinerators should be shut down.

Response: RO-52 provides a facility-requested limit on carbon monoxide (CO) air emissions from the existing incinerators and requires continuous monitoring, recordkeeping and reporting to show whether or not the limit is being met. RO-52 does not approve, deny, nor modify ongoing operation of the existing incinerators. Therefore, no action that we could take with regard to RO-52, including denying the Order, could require the incinerators to shut down. No change made to RO-52.

Comments: Don't allow any physical changes to the incinerators.

Response: RO-52 does not authorize any physical changes to the incinerators. Therefore, no action that we could take with regard to RO-52, including denying the Order, could allow or require the incinerators to be physically modified. No change made to RO-52.

Comments: Require incinerators to comply with 40 CFR 60 Subpart LLLL.

Response: RO-52 does not address applicability of 40 CFR 60 Subpart LLLL. Therefore, no action that we could take with regard to RO-52, including denying the Order, would require compliance with this regulation. No change made to RO-52.

Separate from its action on RO-52, NWCAA is reviewing the applicability of 40 CFR 60 Subpart LLLL to the incinerators. We cannot comment further on this ongoing investigation. No change made to RO-52.

Comments: Require incinerators to stop operating until Post Point obtains a Title V Air Operating Permit (AOP). Fines should be imposed for every day of continuing operation without the AOP.

Response: Post Point has applied for a Title V Air Operating Permit in accordance with WAC 173-401. Post Point accordingly qualifies for the application shield provided by WAC 173-401-705(2), which allows continued operation until NWCAA issues the AOP. NWCAA does not have authority to levy fines for operating without the AOP in this scenario.

RO-52 does not approve, deny, nor modify ongoing operation of the existing incinerators, and NWCAA cannot require incinerator shutdown through the Order. Even if NWCAA denies RO-52, that action would not shut down the incinerators.

No change made to RO-52.

Comments: Concerns about PFAS, PFOA and air toxics emitted from the incinerators.

Response: RO-52 provides a facility-requested limit on CO air emissions from the existing incinerators and requires continuous monitoring, recordkeeping and reporting to show whether or not the limit is being met. RO-52 does not approve, deny, nor modify ongoing operation of the existing incinerators which received previous New Source Review construction permits from NWCAA. NWCAA cannot add new limits or testing for PFAS, PFOA, or air toxics to the Order as these are outside the scope of Order. Such limits and testing are specified in federal regulations which apply independently of RO-52. No change made to RO-52.

Comments: RO-52 shouldn't be issued before the Air Operating Permit.

Response: The Air Operating Permit (AOP) is issued under a different regulatory authority (WAC 173-401) from RO-52 and can legally be issued independently of RO-52. Post Point has applied for an AOP and is authorized to operate under an application shield, WAC 173-401-705(2), until NWCAA issues the AOP.

The AOP and RO-52 serve different purposes, which further supports why RO-52 can be issued before the AOP. The purpose of RO-52 is solely to provide a limit on the maximum amount of carbon monoxide that may be legally emitted from the existing incinerators. The purpose of the AOP is much broader. When issued, the AOP will house all air-related regulations, NSR permits, Orders (including RO-52), emission limits, monitoring, recordkeeping, and reporting in a single place.

No change made to RO-52.

Comments: SEPA review should be required

Response: NWCAA issues several different types of permits and Orders. We'll use the term "permit" and "Order" interchangeably in this response. Each permit type has its own requirements spelled out in the underlying regulations which authorize the permit. RO-52 is authorized by NWCAA Regulation 121 and WAC 173-400-091. Neither of these regulations require SEPA review.

SEPA review is instead required as part of the New Source Review permitting program, NWCAA Regulation 300. As RO-52 is not a New Source Review permit, no SEPA review is required.

No change made to RO-52.

Comments: RO-52 should require a new Best Available Control Technology (BACT) review; existing incinerator air pollution controls are inadequate; the facility is out compliance without an AOP and, as such, subject to “best air control technology.”

Response: NWCAA can’t require BACT under RO-52 because this type of permit doesn’t include BACT review.

NWCAA issues several different types of permits and Orders. We’ll use the term “permit” and “Order” interchangeably in this response. Each permit type has its own requirements spelled out in the underlying regulations which authorize the permit. RO-52 is issued under the authority in NWCAA Regulation 121 and WAC 173-400-091.

BACT and air pollution control technology review are required as part of the New Source Review permitting program, NWCAA Regulation 300. Permits and Orders issued under other regulatory authority, including WAC 173-401 (AOP permit), NWCAA Regulation 121 (RO-52), and WAC 173-400-091 (RO-52) don’t authorize BACT review nor air pollution control technology review in general. Hence, NWCAA cannot require BACT when issuing an AOP or when issuing RO-52.

Comments: Post Point is operating above its authorized sludge handling capacity and the thermal capacity to combust. Deny the Order.

Response: RO-52 does not authorize capacity. Therefore, no action that we could take with regard to RO-52, including denying the Order, could limit sludge handling capacity.

Comments: RO-52 should be denied based on the record of expenditures used to extend the life of the existing incinerators.

Response: A review of expenditures used to extend the life of the existing incinerators is outside of the scope of RO-52 and is not one of the criteria NWCAA is authorized to consider in deciding whether to issue RO-52. No action that we could take with regard to RO-52, including denying the Order, would require a review of expenditures.

Expenditures are a potential trigger for 40 CFR 60 Subpart LLLL applicability. Separately, NWCAA is reviewing 40 CFR 60 Subpart LLLL applicability to the existing incinerators. We cannot comment further on the ongoing investigation.

No change made to RO-52.

Comments: RO-52 is an inappropriate solution to PSD violations

Response: Prevention of Significant Deterioration (PSD) applies to new major sources of air pollution and to major modifications at sources of air pollution. Under this program, a source must have the potential to emit 250 tons of CO per year to be considered “major” and hence subject to PSD.

Post Point has conducted annual CO testing for many years. Recent tests show higher CO values than historical. Each test is only a snapshot of emissions during the test, and each test is only a few hours

long. Post Point asserts that upon review, recent tests are not representative of day-to-day CO emissions in between the tests, and that in-between test CO emissions are lower. In the absence of additional data, annual CO emissions can be estimated by multiplying the hourly test emissions by the number of hours of operation. Depending on which test one uses, this could result in a calculated, on-paper, estimate in excess of 250 tons/yr of potential CO emissions. NWCAA did not allege a PSD violation in the notices of violation issued to Post Point in part because of the uncertainty about annual CO emissions. RO-52 will address PSD in the future by:

- Requiring continuous monitoring which will allow us to know what CO emissions are during all hours of operation, not just during annual tests.
- Requiring Post Point to use the continuous monitors to calculate emissions for each calendar month and total up the emissions for each 12-month period.
- Limiting CO emissions to 90 tons in any 12-month period, which is well below the PSD triggering threshold.
- Keep records which NWCAA will review during onsite inspections and report to NWCAA if emissions exceed 90% of the CO limit.

No change made to RO-52.

Comments: RO-52 should require continuous CO compliance on a rolling 24-hour averaging basis, not a longer averaging basis.

Response: The limit in RO-52 was written on a 12-month averaging basis to address alleged Violation 3 in NOV 4706, which states “Post Point-reported actual emissions in 2020, 2021, 2022, and 2023 have exceeded certified potential emissions submitted to NWCAA in the Title V permit application...”. Since the alleged exceedance is on a 12-month basis, the limit in RO-52 must be on the same basis.

The commenter may be referring to the CO limit in 40 CFR 60 Subpart LLLL, Table 2, which is on a 24-hour averaging basis. The applicability (and enforceability) of 40 CFR 60 Subpart LLLL is independent of RO-52 and not addressed in RO-52. NWCAA is reviewing 40 CFR 60 Subpart LLLL applicability to the existing incinerators separately from RO-52.

No change made to RO-52.

Comments: RO-52 should list a 100 tpy facility-wide limit and not a 90 tpy CO limit for the incinerators.

Response: We looked at the potential emissions of CO from all of the equipment at Post Point, including the equipment on the water side of the plant. We found that in total, based on conservative calculations, all of the equipment other than the incinerators could emit less than 10 tons/yr of CO. As the incinerators emit the bulk of the CO and the incinerators are the source of variability in potential CO emissions, we’ve written RO-52 to focus on the incinerators and included a reduced limit of 90 tons/yr of CO for just the incinerators. The net effect is the same as if we’d written a permit that required a 100 ton/yr CO limit facility wide (incinerators + all other equipment).

No change made to RO-52.

Comments: Why doesn't the Order list consequences for failing to meet the limit? What happens if the facility exceeds the limit?

Response: Once the Order is issued, if the facility exceeds the limit, NWCAA would use the authority in our existing rules, in particular NWCAA 131, to enforce the limit. This is a standard practice for NWCAA Orders and permits.

No change made to RO-52.

Comments: There is no approved AOP or site monitoring plan and so approval of this order is not timely.

Response: As discussed above, RO-52 can be issued before the AOP. And, once it's issued, it will be incorporated into the AOP.

The Site Monitoring Plan is awaiting EPA approval. The facility has applied to EPA but hasn't yet received approval. RO-52 is independent of the Site Monitoring Plan and can be issued regardless of whether or not the Plan has been approved. Once the Plan is approved, it too will be incorporated into the AOP.

No change made to RO-52.

Comments: The Order should require a secondary disposal method for sludge while the City install necessary air pollution controls and comes into compliance with the requirements of 40 CFR 60 Subpart LLLL, PSD, and AOP regulations.

Response: NWCAA does not have the authority under RO-52 to require a secondary disposal method for sludge. No action that we could take with regard to RO-52, including denying the Order, could require the use of a secondary disposal method for sludge. See comment response above regarding 40 CFR 60 Subpart LLLL, PSD, and the AOP.

No change made to RO-52.

Comments: The incinerators are no longer needed as landfilling is available

Response: NWCAA does not have the authority under RO-52 to require landfilling of sewage sludge. No change made to RO-52.

Comments: The location of the CO continuous emission monitors is inappropriately downstream of dilution air.

The incinerators were approved and installed with shaft cooling air as an integral part of their design, and NWCAA does not have authority to require re-design under RO-52. Given that the shaft cooling air can't be removed from the system, the next question is whether measurements should be taken before

the shaft cooling air mixes with the incinerator furnace gas. RO-52 allows measurement after the cooling air mixes with the furnace air for several reasons including:

- The location of the monitors was scrutinized to ensure they read accurately. Siting criteria are part of the requirements listed in Condition 3 of RO-52. Installing the monitors upstream (before) the shaft cooling air mixes with the furnace air would not meet these siting criteria.
- The RO-52 limit is on a mass (tons) basis. While dilution air can affect the concentration of CO in the gas stream, it won't affect the mass of CO calculated when both concentration and gas flow are measured in the same location, as in this system. To explain further, the mass of CO emissions isn't directly measured; it's calculated using the measured CO concentration and measured gas flow. If both measurements are taken in the same location, air dilution effects at that location will be cancelled out in the calculation.

No change made to RO-52.

Comments: Fines are appropriate and late

Response: NWCAA is actively working to resolve all allegations cited in NOVs and cannot comment further on the ongoing investigation. This comment cannot be addressed through any action that NWCAA could take on RO-52. No change made to RO-52.

Comments: Deny RO-52 due to lack of timely regulatory oversight on NOVs that were issued.

Response: NWCAA is actively working to resolve all allegations that were previously cited in NOVs as a separate matter. NWCAA is legally obligated to follow prescriptive regulations for permit review, issuance, and denial. The applicable regulations don't allow for denial on the basis requested in this comment. No change made to RO-52.

Comments: The issuance of this permit is not in the Public's interest

Response: NWCAA is legally obligated to follow prescriptive regulations for permit review, issuance, and denial. If the requirements outlined in the regulations are met, NWCAA is obligated to issue a permit. This comment does not provide sufficient basis for NWCAA to deny RO-52. No change made to RO-52.

Comments: Can regulators assure the public that the emissions of mercury, dioxins, furans and other pollutants reveal near 100% compliance?

Response: The incinerators are tested annually for mercury, dioxins, furans, and other pollutants. Test results are available for review at NWCAA. NWCAA's authority with regard to RO-52 is limited and does not extend to any pollutants other than CO. No action that we could take on RO-52, including denying the Order, could provide the assurance requested. No change made to RO-52.

Comments: The incinerators are operating at capacity and overfeeding results in CO.

Response: RO-52 requires continuous monitoring of CO concentrations and incinerator gas flow. This is an increase in monitoring as CO was previously monitored through annual testing. Any spikes or longer-term increases in CO will be captured using the continuous monitoring system and must be accounted for in the annual emissions which are limited through RO-52. NWCAA cannot address sludge operating capacity directly through RO-52.

Comments: Facility should install and maintain on their webpage continuous access to a “Dashboard View” of continuous monitor’s readings and results in real time.

Response: NWCAA does not have authority under RO-52 to require Post Point to install and maintain an online, publicly accessible, dashboard of real-time monitoring results. No change made to RO-52.

Comments: RO-52 monitoring is inconsistent with OAC 442(b) Conditions 7 & 8

Response: This comment cited OAC 442(b), but we believe it intended to cite OAC 442(a) as OAC 442(b) does not include Conditions 7 or 8. OAC 442(a), which included Conditions 7 and 8, is no longer active. The current OAC is OAC 442(c). The requirements that were listed in Conditions 7 and 8 in OAC 442(a) are not part of OAC 442(c). There is no inconsistency in monitoring between RO-52 and OAC 442(c). No change made to RO-52.

Comments: The record shows Title V violations including a lack of soils and air modeling that show environmental impacts caused by the uniquely short 35’ stacks.

Response: RO-52 provides a facility-requested limit on CO air emissions from the existing incinerators and requires continuous monitoring, recordkeeping and reporting to show whether or not the limit is being met. RO-52 does not approve, deny, nor modify ongoing operation of the existing incinerators nor the existing incinerator exhaust stacks. RO-52 is processed under the authority of NWCAA Regulation 121 and WAC 173-400-091. Neither of these regulations require soils or air modeling to show environmental impacts. No action that we could take with regard to RO-52, including denying the Order, would require this analysis. No change made to RO-52.

Comment: Public Hearing was not adequate to meet the Public Participation requirements in the Clean Air Act. A new hearing should be held.

Response: The hearing was held in accordance with all applicable requirements to gather public testimony with regard to RO-52. Verbal testimony was collected, transcribed, and reviewed along with the written public comments received during the public comment period. Comment response is provided in this document. A new hearing will not be held on RO-52.

Comment: NWCAA Board is composed of mayors/owners of the generators and so any enforcement is a conflict of interest for the agency's leadership

Response: The make-up of the governing body (Board of Directors) of all Washington air pollution control authorities, including NWCAA, is specified in the Washington Clean Air Act, RCW 70A.15.2000. In accordance with the RCW, NWCAA's Board is comprised of representatives from each county in its jurisdiction as well as the largest city in each county.

NWCAA's Board members are kept abreast of ongoing enforcement by staff. However, they do not approve, nor disapprove, individual enforcement actions. Enforcement decisions are made by staff based on written policies, procedures, and guidance that were previously approved by the Board.

While Board members don't approve individual enforcement decisions, conflicts of interest can still exist on other matters and were considered in the Washington Clean Air Act, RCW 70A.15.200(6):

"Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action."

In addition to being addressed in the Washington Clean Air Act, conflicts of interest are further addressed in NWCAA's Business Rules which Board members rely on to guide their actions.

No change made to RO-52.