

ARTICLE 3: GENERAL PROVISIONS

SECTION 3.01 DUTIES AND POWERS OF THE CONTROL OFFICER

Adopted 03/13/68 (12)
Revised 08/08/91 (702), 02/10/94 (777), 09/09/99 (895)

Pursuant to the provisions of the "Washington Clean Air Act" (Chapter 70.94 RCW), the Board has appointed a Control Officer whose sole responsibility is to observe and enforce the provisions of the Act and all orders, rules, and regulations pursuant thereto, including but not limited to Regulations I, II, and III of the Puget Sound Clean Air Agency. The Control Officer is empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Act.

SECTION 3.02 MEETINGS OF THE BOARD OF DIRECTORS

Adopted 09/10/98 (870), Revised 06/14/01 (946), 09/27/07 (1106)

- (a) **Regular Meetings.** The Agency Board of Directors shall meet at least ten (10) times per year. All Board of Director meetings are open to the public. Regular meetings of the Board are usually held on the fourth Thursday of each month at the Agency's offices. The Agency's offices are located at 1904 3rd Avenue, Suite 105, Seattle, WA 98101-3317. The Agency may be reached by telephone at (206) 343-8800 or 1-800-552-3565, or by facsimile at (206) 343-7522.

Notice of the meetings shall be published in the State Register, as well as in the local newspapers of general circulation of the largest city within each member county. The notices shall state the time, date, and place of each meeting. Notice shall be provided at least ten (10) days prior to each meeting. The agenda for any meeting may be obtained from the Agency's website or by contacting the Agency directly.

During any meeting, the Board may retire to Executive Session, at which time all members of the public shall be excluded from the meeting.

Written communications to the Board or individual Board members may be made by contacting the Agency at the above address and facsimile number.

- (b) **Special Meetings.** The Chair or majority of the members of the Board may call a special meeting at any time. Notice of such meetings shall be provided as required by the Open Public Meetings Act, chapter 42.30 RCW.
- (c) **Public Records.** All minutes and records of all regular and special Board meetings, including written communications provided to the Board, shall be available for public inspection and copying as provided in the Public Disclosure Law, chapter 42.17 RCW. Any person wishing to review or copy such records should contact the Agency's records administrator.

SECTION 3.03 GENERAL REGULATORY ORDERS Adopted 06/13/96 (832)
Revised 09/11/97 (856), 03/11/99 (882), 09/09/99 (895), 05/22/03 (992), 12/15/11 (1231)

- (a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter 70.94 RCW or the rules adopted thereunder. In addition, federally enforceable regulatory orders that limit the potential to emit any air contaminant(s) pursuant to WAC 173-400-091 and modifications to such orders are issued under Section 3.03(f) of this regulation.
- (b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:
 - (1) Public notice of the proposed regulatory order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:
 - (A) The name and address of the owner or operator and the source;
 - (B) A brief description of the purpose of the proposed regulatory order and the requirements included in the proposed regulatory order;
 - (C) The deadline for submitting written comments to the Agency; and
 - (D) The opportunity for a public hearing if the Agency determines that there is significant public interest in the proposed regulatory order.
 - (2) The initial public comment period shall be at least 30 days.
 - (3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.
- (c) **Board Action.** The Board shall only issue a regulatory order under this section after:
 - (1) The public comment period has ended;
 - (2) Any public hearing scheduled has been held; and
 - (3) The Board has considered all information and data related to the proposed regulatory order received by the Agency, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed regulatory order at a Board meeting. Unless otherwise ordered by the Board, a regulatory order issued under this section shall be effective on the date the Board approves the regulatory order.

- (d) **Appeals.** Regulatory orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.
- (e) **Fees.** When a regulatory order is requested by an applicant, the Agency shall assess a fee of \$4,000 to cover the costs of processing and issuing a regulatory order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.
- (f) When an applicant requests a federally enforceable regulatory order to limit the potential to emit any air contaminant or contaminants pursuant to WAC 173-400-091, or requests a modification to such an order, the Control Officer or a duly authorized representative may issue such order consistent with the requirements of WAC 173-400-091 and 173-400-171 and Section 3.03(e) above. Regulatory orders issued pursuant to this section are effective the day the Control Officer or representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

SECTION 3.04 REASONABLY AVAILABLE CONTROL TECHNOLOGY

Adopted 09/11/97 (856)
Revised 03/11/99 (882), 03/25/04 (1024), 05/24/12 (1241)

- (a) Reasonably Available Control Technology (RACT) is required for all existing sources.
- (b) RACT for each source category containing 3 or more sources shall be determined by rule by the Department of Ecology or the Agency, except as provided in Section 3.04(c) of this regulation.
- (c) Source-specific RACT determinations may be performed under any of the following circumstances:
 - (1) For replacement of existing control equipment under Article 6 of this regulation;
 - (2) When required by the federal Clean Air Act;
 - (3) For sources in source categories containing fewer than 3 sources;

- (4) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or
 - (5) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.
- (d) The Control Officer or a duly authorized representative shall have the authority to perform a RACT determination; to hire a consultant to perform relevant RACT analyses in whole or in part; or to order the owner or operator to perform RACT analyses and submit the results to the Agency.
- (e) The Agency shall assess a fee to be paid by any source included or covered in a RACT determination to cover the direct and indirect costs of developing, establishing or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be \$150 an hour. For categorical RACT determinations, the amount of the fees to be paid by a source shall not exceed a source's pro rata portion as determined by the Agency. In addition, where the Agency hires a consultant to prepare RACT analyses, in whole or in part, pursuant to Section 3.04(d), the source shall be responsible for the consultant's fees. Fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.
- (f) Where current controls are determined to be less than RACT, the Agency shall define RACT for that source or source category and issue a rule or a regulatory order under Section 3.03 of this regulation requiring the installation of RACT.
- (g) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of permit issuance or renewal.
- (h) Replacement of control equipment under Section 3.04(c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of RACT fees under this section.

SECTION 3.05 INVESTIGATIONS BY THE CONTROL OFFICER

Adopted 03/13/68 (12)
Revised 12/09/82 (531), 02/13/86 (597), 11/12/87 (616), 08/08/91 (702), 02/10/94 (777)

- (a) For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the Control Officer or a duly authorized representative shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private

dwelling housing two families or less. No person shall refuse access to the Control Officer or a duly authorized representative who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.

- (b) For the purpose of determining compliance with an emission standard, the Control Officer or a duly authorized representative shall have the authority to conduct testing of a source or to order the owner or operator of the source to have it tested and to report the results to the Agency. In the event the Agency conducts the test, the Agency shall provide the owner or operator an opportunity to observe the sampling and to obtain a sample at the same time.

SECTION 3.06 CREDIBLE EVIDENCE Adopted 10/08/98 (872)

For the purpose of establishing whether or not a person has violated or is in violation of any provision of chapter 70.94 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

SECTION 3.07 COMPLIANCE TESTS Adopted 02/10/94 (777)

Revised 02/09/95 (813), 03/23/06 (1063)

- (a) Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection Agency approved methods unless specific methods have been adopted by the Board. Where there is no federally approved or Board approved method, testing shall be performed in accordance with a method approved in writing by the Control Officer.
- (b) The owner or operator of a source shall notify the Agency in writing at least 21 days prior to any compliance test. Notification of a compliance test shall be submitted on forms provided by the Agency. Test notifications using the Agency forms do not constitute test plans. Compliance with this notification provision does not satisfy any obligation found in an order or other regulatory requirement to submit a test plan for Agency review. Notification under Section 3.07(b) of this regulation does not waive or modify test notification requirements found in other applicable regulations.
- (c) The owner or operator of any source required to perform a compliance test shall submit a report to the Agency no later than 60 days after the test. The report shall include:
 - (1) A description of the source and the sampling location;
 - (2) The time and date of the test;
 - (3) A summary of results, reported in units and for averaging periods consistent with the applicable emission standard;

- (4) A description of the test methods and quality assurance procedures employed;
- (5) The amount of fuel burned or raw material processed by the source during the test;
- (6) The operating parameters of the source and control equipment during the test;
- (7) Field data and example calculations; and
- (8) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

SECTION 3.09 VIOLATIONS – NOTICE Adopted 03/13/68 (12)

Revised 11/10/71 (135), 11/12/87 (616), 08/08/91 (702)

- (a) At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, the Board or Control Officer shall cause written notice to be served upon the alleged violator or violators. 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 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the Control Officer may require that the alleged violator or violators appear before the Board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.
- (b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.
- (c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

SECTION 3.11 CIVIL PENALTIES Adopted 07/09/69 (25)

Revised 11/10/71 (135), 05/10/84 (556), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 09/10/92 (734), 07/08/93 (756), 09/08/94 (798), 09/14/95 (821), 09/12/96 (839), 09/11/97 (856), 09/10/98 (870), 09/09/99 (895), 07/13/00 (925), 09/13/01 (954), 09/26/02 (978), 09/25/03 (1009), 09/23/04 (1036), 09/22/05 (1055), 10/26/06 (1082), 09/27/07 (1106), 09/25/08 (1131), 09/24/09 (1170), 09/23/10 (1196), 09/22/11 (1222), 09/27/12 (1253), 09/26/13 (1284), 09/25/14 (1309), 09/24/15 (1328), 09/22/16 (1350), 9/28/17 (1371), 09/27/18 (1394), 09/26/19 (1407), 09/24/20 (1423)

- (a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$20,541.00, per day for each violation.
- (b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$20,541.00, for each day of continued noncompliance.
- (c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a

mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

- (d) A mitigation request must contain the following:
- (1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;
 - (2) A copy of the Notice and Order of Civil Penalty involved;
 - (3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;
 - (4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;
 - (5) The relief sought, including the specific nature and extent; and
 - (6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

- (e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.
- (f) A civil penalty shall become due and payable on the later of:
- (1) 30 days after receipt of the notice imposing the penalty;
 - (2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or
 - (3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.
- (g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

- (h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.
- (i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

SECTION 3.13 CRIMINAL PENALTIES Adopted 03/13/68 (12)
Revised 10/10/73 (214), 05/10/84 (556), Revised/Renumbered 08/08/91 (702)

- (a) Any person who knowingly violates any of the provisions of Chapter 70.94 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.
- (b) 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 shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.
- (c) 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, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

SECTION 3.15 ADDITIONAL ENFORCEMENT Adopted 03/13/68 (12)
Revised/Renumbered 08/08/91 (702)

- (a) 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 provision of Chapter 70.94 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly 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.

- (b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of Chapter 70.94 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such 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 this chapter or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

SECTION 3.17 APPEAL OF ORDERS Adopted 03/13/68 (12)
Revised 07/09/69 (25), 11/10/71 (135), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 10/08/98 (872)

- (a) Any order of the Board or Control Officer may be appealed to the Pollution Control Hearings Board if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt of the order. This is the exclusive means of appeal of such an order.
- (b) The Control Officer may stay the effectiveness of an order during the pendency of such an appeal. At any time during the pendency of such an appeal of such an order to the Hearings Board, the appellant may apply to the Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC for a stay of the order or for the removal thereof.
- (c) Upon failure to comply with any final order of the Board or Control Officer, the attorney for the Agency, upon request of the Board or Control Officer, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary.

SECTION 3.19 CONFIDENTIAL INFORMATION Adopted 03/13/68 (12)
Revised 10/10/73 (214), 06/09/88 (621), Revised/Renumbered 08/08/91 (702)

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter 70.94 RCW, 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 Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis 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 Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

SECTION 3.21 SEPARABILITY Adopted 03/13/68 (12)
Revised/Renumbered 08/08/91 (702)

If any provision of Regulation I, II, or III is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provision of the Regulations shall not be affected thereby.

SECTION 3.23 ALTERNATE MEANS OF COMPLIANCE Adopted 12/09/93 (769)
Revised 09/12/96 (839)

Other emission reduction methods may be employed to achieve compliance with the emissions standards of Regulations I, II, and III if the owner or operator demonstrates to the satisfaction of the Control Officer that they are at least as effective as the required methods and they are included in a regulatory order issued under Section 3.03 or a permit issued under Article 6 or 7 of this Regulation.

SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Adopted 09/13/01 (954)
Revised 09/26/02 (978), 09/25/03 (1009), 09/23/04 (1036), 09/22/05 (1055), 10/26/06 (1082), 09/27/07 (1106), 09/25/08 (1131), 09/24/09 (1170), 09/23/10 (1196), 09/22/11 (1222), 09/27/12 (1253), 09/26/13 (1284), 09/25/14 (1309), 09/24/15 (1328), 09/22/16 (1350), 9/28/17 (1371), 09/27/18 (1394), 09/26/19 (1407), 09/24/20 (1423)

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, 2020.