

APPROVED BUT NOT INCORPORATED BY REFERENCE REGULATIONS

Washington Department of Ecology Regulations

173-400-220 Requirements for Board Members.

(1) Public Interest. A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) Disclosure. Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

(3) Define Significant Income. For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

State effective: 3/22/91; EPA effective: 6/2/95

173-400-230 Regulatory Actions.

Ecology may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

(1) Enforcement Actions by Ecology--Notice to Violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, ecology may require that the alleged violator or violators appear before it for the purpose of providing ecology information pertaining to the violation or the charges complained of. Every notice of

violation shall offer to the alleged violator an opportunity to meet with ecology prior to the commencement of enforcement action.

(2) Civil Penalties.

(a) 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 or 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in 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 issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first 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 thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(d) All penalties recovered under this section by ecology shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by ecology under subsection (a) of this section shall be reduced by the amount of the payment.

(e) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(f) Public or private entities that are recipients or potential recipients of ecology grants, whether for air quality related activities or not, may have such grants rescinded or withheld by ecology for failure to comply with provisions of this chapter.

(g) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of discontinuance. Personnel of ecology or an authority may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which 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 any order issued thereunder which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. 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 this chapter, the director, 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.

(5) Emergency episodes. Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter 70.94 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. Ecology may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

State effective: 3/20/93; EPA effective: 6/2/95

173-400-240 Criminal Penalties.

Persons in violation of Title 173 WAC may be subject to the provisions of RCW 70.94.430.

State effective: 3/22/91; EPA effective: 6/2/95

173-400-250 Appeals.

Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC.

State effective: 9/20/93; EPA effective: 6/2/95

173-400-260 Conflict of Interest.

All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest (Section 128).

State effective: 07/01/16; EPA effective: 11/07/16 (81 FR 69385, October 6, 2016)

WAC 173-433-200 Regulatory actions and penalties

A person in violation of this chapter may be subject to the provisions of WAC 173-400-230 Regulatory actions and WAC 173-400-240 Criminal penalties.

State effective: 10/18/90; EPA effective: 1/15/93

Benton Clean Air Agency – Regulation 1

Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)

[Statutory Authority: RCW 70.94.081, and RCW 70.94.141.]

RCW 70.94.081 deems Benton Clean Air Agency a municipal corporation with the following authorities:

- A. Right to perpetual succession;
- B. Adopt and use a seal;
- C. Sue and be sued in the name of the Agency in all courts and in ail proceedings;
- D. Receive, account for, and disburse funds;
- E. Employ personnel; and
- F. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.
- G. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW 70.94.081 and 70.94.141.

State/local effective: 12/11/14; EPA effective: 12/17/15

Section 2.02 Requirements for Board of Directors Members

[Statutory Authority: RCW 70.94.100)

- A. Public interest.
 - 1. A majority of the members of the Agency's Board of Directors (Board)
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- will represent the public interest.
- portion pursuant to the
2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders State and Federal Clean Air Acts.
 3. An elected public official and the Board will be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she will delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.
- B. Disclosure.
- in member
4. Each member of the Board will disclose any potential conflict of interest any matter prior to any action or consideration before the Board.
 5. The member will remove themselves from participation as a Board member in any action, including voting on the matter.
 6. The Board will, 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.
- C. **Definition of significant income:** For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government will not be considered in the determination of "significant portion of income."

State/local effective: 12/11/14; EPA effective: 12/17/15

Section 2.03 Powers and Duties of the Board of Directors

- A. Pursuant to the provisions of chapter 70.94 RCW, the Board will:
1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;
 2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and
 3. Appoint a Control Officer, in accordance with RCW 70.94.170, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, resolutions, or rules and regulations of the Agency pertinent to the orders, control and prevention of air pollution in Benton County.

B. Under RCW 70.94.141, the Board will have the power to:

1. Adopt, amend, and repeal its own rules and regulations, implementing chapter 70.94 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations procedures that are procedures of RCW chapter 34.08 RCW, Washington Administrative the Agency will be in accordance will also be adopted in accordance with the notice and adoption set forth in RCW 34.05.320, those provisions of RCW 34.05.325 not in conflict with chapter 42.30 RCW, and with the 34.05.340, 34.05.355 through 34.05.380, and with except that rules will not be published in the Code. Judicial review of rules adopted by with Part V of chapter 34.05 RCW;
 2. Hold hearings relating to any aspect of or matter in the administration of chapter 70.94 RCW not prohibited by the provisions of Chapter 62, Laws 1970 ex.sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;
 3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;
 4. Require access to records, books, files and other information specific to control, recovery or release of air contaminants into the atmosphere;
 5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
 6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;
 7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;
 8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;
 9. Collect and disseminate information and conduct educational and training programs relating to air pollution;
 10. Advise, consult, cooperate and contract with:
 - a. State agencies, departments, and educational institutions;
 - b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government; and
 - c. Industries, interested persons or groups.
 11. Consult, upon request, with any person proposing to construct, install, or
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otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and

12. Accept, receive, disburse and administer grants or other funds or gifts any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or law or regulation.

13. Exception to powers of the Agency: The Agency may not hold proceedings pursuant to the Administrative Procedures Act, RCW. Decisions and orders may be appealed to the Pollution Hearings Board as provided in WAC 173-400-250.

State/local effective: 12/11/14; EPA effective: 12/17/15

Section 2.04 Powers and Duties of the Control Officer

[Statutory Authority: RCW 70.94.141, RCW 70.94.170, RCW 70.94.200 RCW]

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 regulations
 the Agency
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- A. The Control Officer and duly authorized representatives of the Agency will and enforce applicable federal, state, and local air pollution laws and all orders, ordinances, resolutions, or rules and regulations of pertaining to the control and prevention of air pollution pursuant to down by the Board.
- B. The Control Officer, with the approval of the Board, will have the authority to appoint and remove such staff persons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.
- C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.
- D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.
- E. As authorized under RCW 70.94.200, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting person non-multiple unit private dwellings housing two (2) families or less. No person may refuse entry or access to the Control Officer or duly

authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.

- F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:
1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and
 2. Will give a receipt to the owner or operator for the sample obtained.
- G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

State/local effective: 12/11/14; EPA effective: 12/17/15

Section 2.05 Severability

[Statutory Authority: chapter 43.218 RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

State/local effective: 12/11/14; EPA effective: 12/17/15

Section 2.06 Confidentiality of Records and Information

[Statutory Authority: RCW 70.94.205]

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is 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 will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency 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 Agency will be correlated with applicable

emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

State/local effective: 12/11/14; EPA effective: 12/17/15

Olympic Region Clean Air Agency Regulations

Rule 8.1.6 Penalties

A person in violation of this Rule 8.1 may be subject to the provisions of Rule 2.5.

State effective: 5/22/10; EPA effective: 11/4/13

Spokane Regional Clean Air Agency Regulations

Section 8.11 Regulatory Actions and Penalties

A person in violation of this article may be subject to the provisions of Article II, Section 2.11 – Penalties.

State effective: 9/2/14; EPA effective: 10/28/15