

## **Appendix B** **Legend for Comparison**

SIP-approved version = green box

Redline/Strikeout Comparison to September 11, 2016 version = red box\*

Analysis = black box

\* Formatting is not preserved from the original version.

### **TABLE 5 – ADDITIONAL REGULATIONS APPROVED FOR THE NORTHWEST CLEAN AIR AGENCY (NWCAA) JURISDICTION**

[Applicable in Island, Skagit and Whatcom counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of WAC 173-400-700, 173-405-012, 173-410-012, and 173-415-012]

#### **Northwest Clean Air Agency Regulations**

#### **GENERAL PROVISIONS**

##### **SECTION 100 - NAME OF AUTHORITY**

**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 Air Pollution Authority", and hereinafter may be cited as "NWAPA".

*State effective: 9/8/93, EPA effective: 4/24/95*

##### **SECTION 100 -- NAME OF ~~AUTHORITY~~ 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 Pollution Authority Agency", and hereinafter may be cited as "~~NWAPA~~ 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.

**TABLE 5 – ADDITIONAL REGULATIONS APPROVED FOR THE NORTHWEST CLEAN  
AIR AGENCY (NWCAA) JURISDICTION – page 1**

AMENDED: July 14, 2005

Analysis – EPA is proposing to approve the revised version of section 100.

### SECTION 101 - SHORT TITLE

**101.1** This Regulation may be known and cited as the "Regulation of the Northwest Air Pollution Authority".

*State effective: 9/8/93, EPA effective: 4/24/95*

### SECTION 101 - SHORT TITLE

**101.1** This Regulation may be known and cited as the "Regulation of the Northwest Clean Air ~~Pollution Authority~~Agency".

Analysis – EPA is proposing to approve the revised version of section 101.

### SECTION 102 - POLICY

Analysis – EPA is proposing to approve the revised section 102. Replaces WAC 173-400-010 in the SIP. Revisions to the subsections are shown below.

**102.1** It shall be the policy of the NWAPA 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.

102.1 ~~It shall be the policy of the NWAPA~~ 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 NWAPA 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.

102.2- In order to carry out the requirements of the Washington Clean Air Act and to provide uniform administration and enforcement, the [NWAPA/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 Authority is concerned with the interrelationship of land use, activities of people, and industries since each of these contribute to the overall air pollution problem. The ongoing program carried out by the Authority 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 Authority 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.

### 102.3 Guidelines

In carrying out its responsibilities for air pollution control the ~~Authority~~NWCAA is concerned with the interrelationship of land use, activities of people, and industries since each of these ~~contribute~~contributes to the overall air pollution problem. The ongoing program carried out by the ~~Authority~~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 ~~Authority~~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 Authority 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.

102.4 –Minimal Degradation Guidelines.—

It shall be the policy of the [Authority](#) [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:

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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 authority's jurisdiction below the air quality objectives even under the most adverse meteorological conditions. The Authority thus has a planning responsibility in terms of warning and insuring that incompatible land uses do not occur. It is the policy of the Authority 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.

### 102.5 Land Use Planning and Zoning

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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 [authority's NWCAA's](#) jurisdiction below the air quality objectives even under the most adverse meteorological conditions. The [Authority 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 [Authority NWCAA](#) to work with other agencies to assure that:

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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 Authority, 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.

*State effective: 9/8/93, EPA .effective: 4/24/95*

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It shall be the policy of the [AuthorityNWCAA](#), in order to minimize the population density problem to recommend that:

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**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.

**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 contaminant 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 this Authority 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 this Authority.

State effective: 9/8/93, EPA effective: 4/24/95

### SECTION 103 - DUTIES AND POWERS

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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 ~~this Authority~~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.

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Analysis –EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.



## SECTION 104 - ADOPTION OF STATE and FEDERAL LAWS and RULES

**104.1** All provisions of State Law as it now exists or may be hereafter amended, which is pertinent to the operation of the Authority is here by adopted by reference and made part of the Regulation of the Authority as of October 13, 1994. Specifically, there is adopted by reference the Washington State Clean Air Act (RCW 70.94), the Administrative Procedures Act (RCW 34.04) and RCW 43.21A and 43.21B and the following state rules: WAC 173-400, WAC 173-401, WAC 173-405, WAC 173-410, WAC 173-415, WAC 173-420, WAC 173-421, WAC 173-422, WAC 173-425, WAC 173-430, WAC 173-433, WAC 173-434, WAC 173-435, WAC 173-450, WAC 173-460, WAC 173-470, WAC 173-474, WAC 173-475, WAC 173-480, WAC 173-481, WAC 173-490, WAC 173-491, WAC 173-492, WAC 173-495, and WAC 173-802.

~~**104.2** All provisions of the following federal rules are hereby adopted by reference and made part of the Regulation of the Authority as of October 13, 1994: 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, B, C, Ca, Cb, D, Da, Db, Dc, E, Ea, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, AAA, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, B, C, D, E, F, H, J, K, L, M, N, O, P, Q, R, T, V, W, Y, BB, FF and 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, and Q.~~

*State effective: 11/13/94, EPA effective 12/26/95*

Analysis – EPA is proposing to remove this section from the SIP. With the exception of WAC 173-400, the WAC provisions cited above apply in NWCAA’s jurisdiction according to the terms of the state regulations and do not need to be included as part of the local agency SIP submission. With respect to clarifying these provision to the public outside the context of the SIP, we suggest the following alternative based on Spokane’s rules, “NWCAA implements and enforces the following Washington State WACs: ...”

With respect to WAC 173-400, the applicability section in 173-400-020 states, “(1) The provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW 70.94.141 and 70.94.331. (2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations.” Therefore, it is not necessary for NWCAA to submit its adoption or citation of WAC 173-400.

## SECTION 105 - SEPARABILITY

**105.1** If a section of the Regulation of this Authority 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 this Authority shall not be affected thereby.

*State effective: 9/8/93, EPA effective: 4/24/95*

105.1 If a section of the Regulation of ~~this Authority~~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 ~~this Authority~~the NWCAA shall not be affected thereby.

Analysis – EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.

## **SECTION 106 - PUBLIC RECORDS**

**106.1** The purpose of this section is to implement the requirements of RCW 42.17.250–42.17.320 (Public Disclosure Law--Public Records).

### **106.2** Definitions

**106.21** The terms "agency", "public record", and "writing" shall have the same meaning as stated in RCW 42.17.020.

### **106.3** Public records available

**106.31** All public records of the Authority are available for public inspection and copying at its office located at 302 Pine Street, #207, Mount Vernon, Washington 98273 pursuant to these rules subject to subsections 106.32, 106.33, and 106.34 of this section.

**106.32** Availability of public records is subject to exemptions and requirements of RCW42.17.310.

**106.33** When a public record includes information, the disclosure of which would lead to an unreasonable invasion of personal privacy, and the Authority becomes aware of this fact, the Authority shall delete such information before making the record available.

**106.34** Public records requested may not be readily available for immediate inspection. If the requested records are not readily available, the Authority shall notify the requester when such records will be available.

**106.4** Records Index. The Authority does not maintain an index of just the public records listed in RCW 42.17.260. The Authority's Board of Directors are of the opinion that the establishment of such an index would be unduly burdensome and interfere with the Authority's operation because a significant and integral portion of the Authority's records are exempt from public inspection and copying pursuant to RCW 42.17.310. The release of such records would be an unreasonable invasion of personal privacy or the violation of the confidentiality of records and information provisions of the State Clean Air Act (RCW 70.94.205).

The Authority is in substantive compliance with RCW 42.17.260 by making available for public inspection and copying public records listed in RCW 42.17.260 (2) (a), (b), (c), (d), (e), and (f). These include promulgated regulations of the Authority, final opinions made in adjudicated cases, minutes and resolutions of the Board of Directors, monthly activity reports, policy memorandums of the Control Officer, logs of Notice of Violations issued, upset, breakdown and startup reports, assessment of penalties, index of registered sources, annual emission inventories and summaries of ambient air monitoring data, annual state and federal grant applications, including the annual program plan, certification to operate, inspection reports for air pollution sources, variance and notice of construction records with confidential records and information deleted in accordance with RCW 70.94.205.

The Control Officer or designee shall assist any person to obtain public records requested from the Authority's record files.

**106.5** Request for public records.

**106.51** All requests for inspection or copying made in person at the Authority office shall be made on a form substantially as follows:

**106.52 REQUEST FOR PUBLIC RECORDS**

Date of Request: \_\_\_\_\_ Time: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone No: \_\_\_\_\_  
Description of Records Requested: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that lists of names obtained through this request for public records will not be used for political or commercial purposes.

Signature: \_\_\_\_\_

**FOR AUTHORITY USE:**

Number of Copies: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_  
Per Page Charge: \$ \_\_\_\_\_  
Total Charge: \$ \_\_\_\_\_

All requests made in person may be made at the Authority Office between the hours of 9:00 a.m. to 12:00 Noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. A request for inspection or copying of public records may be made by mail in a letter containing the following information:

- (a) The name and address of the person making the request and the organization the person represents.
- (b) The time of day and calendar date on which the person wishes to inspect the publish records.
- (c) A description of the public records requested.
- (d) A statement whether access to copying equipment is desired.
- (e) A phone number where the person can be reached in case the Control Officer or designee needs to contact the person for further description of the material or any other

reason.

(f) A statement that the record will not be used for commercial purposes.

All requests by mail must be received by the Authority at least three business days before the requested data of inspection to allow the Control Officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

The Authority may in its discretion fill requests made by telephone.

**106.6 Fees.** No fee shall be charged for the inspection of public records. For printed, typed and written material a maximum size of 8 1/2" by 14", the Authority shall charge a reasonable fee, determined from time to time by the Control Officer, for providing copies of public records and for use of the Authority's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the Authority for its actual costs incident to such copying. Copies of maps, photos, reports, and other nonstandard items shall be furnished at the regular price established by the Authority. When other special copy work for nonstandard items is requested, the fee charged will reflect the total cost, including the time of Authority personnel.

**106.7 Statement of reason for denial of public records request.** When the Authority refuses, in whole or part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

**106.8 Reviews of denials of public records request.**

**106.81** Any person who objects to the refusal of a written request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the Control Officer or designee which constituted or accompanied the refusal.

**106.82** Immediately after receiving a written request for review of a decision denying a public record, the Control Officer or designee denying the request shall refer it to the Employer Committee of the Authority Board of Directors. The committee shall promptly consider the matter and either affirm or reverse such refusal. The final decision shall be sent to the objecting persons.

**106.9 Protection of public records.** In order to adequately protect the public records of the Authority, the following guidelines shall be adhered to by any person inspecting such public records:

**106.91** No public records shall be removed from the Authority premises.

**106.92** Inspection of any public record shall be conducted in the presence of a designated Authority employee.

**106.93** No public records may be marked or defaced in any manner during inspection.

**106.94** Public records, which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by the Control Officer or designee.

**106.95** Access to file cabinets, shelves, vaults, and other storage areas is restricted to Authority personnel, unless other arrangements are made with the Control Officer or designee.

*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis –EPA is proposing to remove this provision from the SIP to rely on revised section 305.7 which mirrors and replaces the SIP-approved WAC 173-400-175 in NWCAA’s jurisdiction.

### **WAC 173-400-175 Public Information.**

All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of notice of construction applications, orders, and applications to modify orders.

### **305.7 Public Information**

All information, except information protected from disclosure under any applicable law including, but not limited to, NWCAA Section 114 and RCW 70.94.205, is available for public inspection at the NWCAA. This includes copies of Notice of Construction applications, Orders, and applications to modify Orders.

## **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 duty 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 Authority, 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.  
*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to approve and move this section to the ‘approved, but not incorporated by reference’ section of the SIP.

## **SECTION 111 - INTERFERENCE OR OBSTRUCTION**

**111.1** No person shall willfully interfere with or obstruct the Control Officer or any Authority employee and/or assigned agent in carrying out any lawful duty.  
*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to approve and move this section to the ‘approved, but not incorporated by reference’ section of the SIP.

## **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 Board 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 Authority if the purpose of such reproduction or alteration is to evade or violate any provision or Regulation of this Authority, or any other law.

*State effective: 9/8/93, EPA effective: 4/24/95*

**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 AuthorityNWCAA if the purpose of such reproduction or alteration is to evade or violate any provision or Regulation of ~~this Authority~~the NWCAA, or any other law.

Analysis –EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.

**SECTION 113 - SERVICE OF NOTICE**

**113.1** Service of any written notice required by the Regulation of this Authority shall be made on the owner or lessee of equipment, or his registered agent, as follows:

**113.11** Either by mailing the notice in a prepaid envelope directed to the owner or lessee of the equipment, or his registered agent, at the address listed on his application or order or registration certificate or at the address where the equipment is located, by United States Certified Mail, return receipt requested; or

**113.12** By leaving notice with the owner or lessee of the equipment, or his registered agent, or if the owner or lessee is not an individual, with a member of the partnership or other group concerned, or with a managing officer or the registered agent of the corporation under RCW 23A.08 or RCW23A.32 as now or hereafter amended for domestic and foreign corporations respectively.

**113.2** Service of any written notice required by the Regulations of this Authority shall be made on the Authority as follows:

**113.21** Either by mailing the notice in a prepaid envelope directed to the Authority at its office by United States Certified Mail, return receipt requested; or

**113.22** By leaving the notice at the Authority office with an employee of the Authority.

**113.3** Any individual, owner, lessee, managing officer or registered agent of any business, corporation or government agency coming under the Regulations of this Authority may be required to submit evidence that said person is authorized to sign and execute documents on behalf of said corporation, business or government agency.

*State effective: 9/8/95, EPA effective: 4/24/95*



SECTION 113 - SERVICE OF NOTICE

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

113.11 Either by mailing the notice ~~in a prepaid envelope directed to the owner or lessee of the equipment, or his registered agent, at the address listed on his application or order or registration certificate or at the address where the equipment is located, by United States Certified Mail,~~ certified mail, with return receipt requested; or

~~113.12 By leaving notice with the owner or lessee of the equipment, or his registered agent, or if the owner or lessee is not an individual, with a member of the partnership or other group concerned, or with a managing officer or the registered agent of the corporation under RCW 23A.08 or RCW23A.32 as now or hereafter amended for domestic and foreign corporations respectively.~~

~~113.12~~ By personal service.

113.2 ~~Service of any written notice required by the Regulations of this Authority shall be made on the Authority as follows:~~

~~113.21 Either by mailing the notice in a prepaid envelope directed to the Authority at its office by United States Certified Mail, return receipt requested; or~~

~~113.22 By leaving the notice at the Authority office with an employee of the Authority.~~

~~113.3~~ Any individual, owner, ~~lessee, managing officer~~operator, or registered agent of any business, corporation or government ~~agency~~ coming under the Regulations of ~~this Authority~~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 ~~agency.~~

Analysis – EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.

## 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 Authority pursuant to any sections in the State Act as now or hereafter amended, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position such owner or operator of such processes or production may so certify and request that such records or information be made available only for the confidential use of the Board, the Advisory Council, and Authority staff.

The Board shall give consideration to the request and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of the Regulation of this Authority and with State Laws, may grant the same. Nothing herein shall be construed to prevent the use of records or information by the Board, the Advisory Council, or staff 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 provision of this Section. No member of the Board, Advisory Council, or staff of the Authority shall have access to any confidential information in which they may, in the opinion of the Board, have a conflict of interest; 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 Authority.

*State effective: 9/8/93, EPA effective: 4/24/95*

## 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 ~~Authority pursuant to any sections in the State Act as now or hereafter amended~~ NWCAA, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position ~~such of such owner or operator if released to the public or to a competitor, and the~~ owner or operator of such processes or production ~~may so certify and request that~~ so certifies, such records or information ~~shall be made available~~ only for the confidential use of the ~~Board, the Advisory Council, and Authority staff.~~ NWCAA.

~~The Board shall give consideration to the request and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of the Regulation of this Authority and with State Laws, may grant the same.~~ **114.2** Nothing herein shall be construed to prevent the use of records or information by the ~~Board, the Advisory Council, or staff~~ NWCAA in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; ~~PROVIDED:~~ provided, that such analyses or summaries do not reveal any information otherwise confidential under the ~~provision of this Section.~~ ~~No member of the Board, Advisory Council, or staff of the Authority shall have access to any confidential information in which they may, in the opinion of the Board, have a conflict of interest;~~ ~~PROVIDED FURTHER,~~ 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 [AuthorityNWCAA](#).

Analysis – EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.

## **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 this Authority.

**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 the 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) or RCW 43.21A and 43.21B shall be pursuant to the provisions of RCW 34.04.100 as now or hereafter amended.

*State effective: 9/8/93, EPA effective: 4/24/95*

## 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 ~~this Authority~~ 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 ~~the~~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) ~~or RCW 43.21A and 43.21B~~ shall be pursuant to the provisions of RCW 34.~~04.100~~05 as now or hereafter amended.

**Analysis** – EPA is proposing to approve and move this revised section to the ‘approved, but not incorporated by reference’ section of the SIP.

## SECTION 122 - APPEALS FROM ORDERS OR VIOLATIONS

**122.1** Any order or notice of violation issued by the Board or Control Officer shall become final unless, no later than thirty (30) days after the date that notice and order are served, the person aggrieved by the order or notice of violation appeals to the Hearings Board as provided by State Law.

**122.2** Any order issued by the Board after a hearing shall become final unless no later than thirty (30) days after the issuance of such order, a petition requesting judicial review is filed in accordance with the provisions Chapter 34.04 RCW as now or hereafter amended. When such a petition is filed, the Superior Court shall initiate a hearing pursuant to RCW 34.04.130 within ninety (90) days after the receipt of the petition requesting judicial review. Every appeal from a decision of the Superior Court shall be heard by the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of broad public import requiring prompt and ultimate determination.

*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to remove this section from the SIP. NWCAA consolidated the former section 122 provisions into section 123. A redline / strikeout is included below.

## ~~SECTION 122~~ — ~~APPEALS FROM~~ 123 – APPEAL OF ORDERS OR VIOLATIONS

~~122~~123.1 — Any order ~~or notice of violation~~ issued by the ~~Board or Control Officer~~ NWCAA shall become final unless, no later than thirty (30) days after the date that ~~notice and the~~ order ~~are~~ is served, ~~the any~~ person ~~aggrieved by~~ appeals the order ~~or notice of violation~~ appeals to the Pollution Control Hearings Board as provided by ~~State Law, chapter 43.21B RCW. This is the exclusive means of appeal of such an order.~~

~~122~~123.2 — Any order issued by the ~~Board after a hearing shall become final unless no later than thirty (30) days after the issuance of such order, a petition requesting judicial review is filed~~ NWCAA under appeal in accordance with chapter 43.21B RCW shall remain in effect during the provisions Chapter 34.04 RCW as now or hereafter amended. When such a petition is filed, ~~pendency of such appeal unless~~ the Superior Court shall initiate a hearing pursuant to RCW 34.04.130 within ~~ninety (90) days after the receipt~~ Control Officer, at his/her discretion, issues a stay of the petition requesting judicial review. Every appeal from a decision ~~original order. At any time during the pendency of an appeal of such an order to the Superior Court shall be heard by~~ Pollution Control Hearings Board, the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of broad public import requiring prompt and ultimate determination appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

## **SECTION 123 - STATUS OF ORDERS ON APPEAL**

**123.1** An order of the Board or Control Officer issued under the Authority of Section 121 may be appealed. Such appeal must be filed with the Pollution Control Hearings Board and served on the Authority within 30 days after mailing of the order. This is the exclusive means of appeal of such an order.

**123.2** The order shall remain in effect during the pendency of such appeal unless the Board or Control Officer, at their discretion, issue an Order staying the effectiveness of the original order.

**123.3** The appellant may also apply to the Hearings Board at any time for a stay of such order.

**123.4** Such notice of appeal must contain the following information:

- (a) The appellant's name and address.
- (b) The date and docket number of the order, permit or license that is subject to the appeal.
- (c) Description of the substance of the order, permit or license that is the subject of the appeal.
- (d) A clear, separate and concise statement of each error alleged to have been committed.
- (e) A clear, separate and concise statement of facts upon which the appellant relies to sustain the statements of error.
- (f) A statement setting forth the relief sought.

**123.5** The Board or Control Officer may request attorney for the Authority to bring action in Superior Court, and attorney, upon request, shall bring an action in Superior Court of the county where the violation has occurred, or the violation may occur, to obtain any such relief as is necessary to insure compliance with said order, including injunctive relief. No bond shall be required from the Authority as a condition of granting any restraining order or temporary injunction.

*State effective: 9/8/93, EPA effective: 4/24/95*

~~SECTION 123 — STATUS— APPEAL OF ORDERS ON APPEAL~~

~~123.1 —AnAny order of the Board or Control Officer issued under the Authority of Section 121— may be appealed. Such appeal must be filed with the 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 and served on the Authority within 30 days after mailing of the order,as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order.—~~

~~123.2 —The orderAny 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 Board or— Control Officer, at theirhis/her discretion, issue an Order staying the effectiveness of issues a stay of the original order.~~

~~123.3 —The appellant may also apply to the Hearings Board atAt any time for a stayduring the pendency of such order.—~~

~~123.4 —Such notice ofan appeal must contain the following information:—~~

~~(a) —The appellant's name and address.—~~

~~(b) —The date and docket number of the of such an order, permit or license that is subject to the appeal.—~~

~~(c) —Description of the substance of the order, permit or license that is the subject of the appeal.—~~

~~(d) —A clear, separate and concise statement of each error alleged to have been committed.—~~

~~(e) —A clear, separate and concise statement of facts upon which the appellant relies to sustain the statements of error.—~~

~~(f) —A statement setting forth the relief sought.—~~

~~123.5 —The Board orPollution Control Hearings Board, the appellant may apply to the Pollution Control Officer may request attorney for the AuthorityHearings Board pursuant to chapter 43.21B RCW to bring action in Superior Court, and attorney, upon request, shall bring an action in Superior Court of the county where the violation has occurred, or the violation may occur, to obtain any such relief as is necessary to insure compliance with said order, including injunctive relief. No bond shall be required from the Authority as a condition of granting any restraining order or temporary injunctionstay or vacate the order.~~

Analysis – EPA is proposing to approve NWCAA’s consolidated section 123. Section 123 would replace WAC 173-400-250 in the approved, but not incorporated by reference section of the SIP.

WAC 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.

**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 this Authority shall be available on the premises designated on the order or certificate.

**124.2** In the event that the Authority 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.

*State effective: 9/8/93, EPA effective: 4/24/95*

**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 ~~this Authority~~ [the NWCAA](#) shall be available on the premises designated on the order or certificate.

**124.2** In the event that the ~~Authority~~ [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.

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP.

**SECTION 130 - CITATIONS - NOTICES**

**130.1** Whenever the Board or the Control Officer or his duly authorized agent has reason to believe that any provision relating to the control or prevention of air pollution has been violated, the Board or Control Officer or his duly authorized agent may cause written notice of this record to be served upon the alleged violator or violators. The notice shall specify the Regulation alleged to be violated, and the facts alleged to constitute a violation thereof.

*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to remove section 130 from the SIP. This section was eliminated to rely on the updated section 131.



## **SECTION 131 - VIOLATION - NOTICES**

**131.1** If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred or is occurring, the Board or Control Officer may, with or without notice as specified in Section 130, cause written notice of violation to be served upon the alleged violator and the facts alleged to constitute a violation thereof. Written notice shall be served at least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431.

**131.2** The Board or Control Officer upon issuance of notice of violation may do any or all of the following:

**131.21** Require that the alleged violator respond in writing or in person within ten (10) business days of the notice and specify the corrective Action being taken.

**131.22** Issue an order pursuant to Section 121 of this Regulation.

**131.23** Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.

**131.24** Hold a hearing pursuant to Section 120 of this Regulation.

**131.25** Require the alleged violator or violators appear before the Board.

**131.26** Avail itself of any other remedy provided by law.

**131.3** Failure to respond as required in Section 131.21 shall constitute a prima face violation of this Regulation and the Board or Control Officer may initiate action pursuant to Section 132, 133, 134, 135 of this Regulation.

**131.4** Any suspended civil penalty, issued under Section 133 of this Regulation, which is issued as part of a violation shall be applicable in future penalties against the same person for not more than two years from the date of the same suspension. After two years the suspended portion of the Penalty shall be considered void and of no force or effect, appeals notwithstanding.

*State effective: 9/8/93, EPA effective: 4/24/95*

**SECTION 131 — VIOLATION — NOTICES — NOTICE TO VIOLATORS**

~~131.1 If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred. At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, or is occurring, the Board, NWCAA 132 or Control Officer may, with or without notice as specified in Section 130, 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. Written, 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 be served at least thirty days offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431.~~

~~131.2 The Board or Control Officer, NWCAA, upon issuance of notice of violation, may do any or all of the following:~~

~~131.21 Require that require the alleged violator to respond in writing or in person within ten (10) business thirty (30) days of the notice and specify the corrective Action action being taken.~~

~~131.22 Issue an order pursuant to Section 121 of this Regulation.~~

~~131.23 Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.~~

~~131.24 Hold a hearing pursuant to Section 120 of this Regulation.~~

~~131.25 Require the alleged violator or violators appear before the Board.~~

~~131.26 Avail itself of any other remedy provided by law.~~

~~131.3 Failure to respond as required in Section 131.21 shall constitute a prima facie violation of this Regulation and the Board or Control Officer, NWCAA may initiate action pursuant to Section Sections 132, 133, 134, 135 of this Regulation.~~

~~131.4 Any suspended civil penalty, issued under Section 133 of this Regulation, which is issued as part of a violation shall be applicable in future penalties against the same person for not more than two years from the date of the same suspension. After two years the suspended portion of the Penalty shall be considered void and of no force or effect, appeals notwithstanding.~~

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP. Replaces WAC 173-400-230(1).

## **SECTION 132 - CRIMINAL PENALTY**

**132.1** Any person who knowingly violates any of the provisions of chapter 70.94 RCW or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWAPA, shall be guilty of a crime and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (10,000) per day per violation, or by imprisonment in the county jail for not more than one year, or by both.

**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 shall be guilty of a crime and shall, upon conviction thereof shall be punished by a maximum fine of not less than ten thousand dollars (\$10,000) per day per violation, or by imprisonment for not more than one year, 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, shall be guilty of a crime and shall, upon conviction thereof shall be punished by a maximum fine of not less than fifty thousand dollars, or by imprisonment for not more than one year, or both.

**132.4** Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a maximum fine or not less than five thousand dollars.

**132.5** Any person who knowingly renders inaccurate any required monitoring device or method as required by 40 CFR 70.11(a)(3)(iii) shall be guilty of a crime and upon conviction thereof shall be punished by a fine of not less than ten thousand dollars (\$10,000) per day per 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 a permit, as required by 40 CFR 70.11(a)(3)(iii) shall be guilty of a crime and upon conviction thereof shall be punished by a maximum fine of not less than ten thousand dollars (\$10,000).

*State effective: 11/13/94, EPA effective: 12/26/95*

SECTION 132 -- CRIMINAL PENALTY

132.1 -Any person who knowingly violates any of the provisions of ~~chapter~~Chapter 70.94 RCW ~~or 70.120 RCW~~as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the ~~NWAPA, shall be~~NWCAA, is guilty of a ~~crime~~gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ~~ten thousand dollars (\$10,000) per day per violation~~, or by imprisonment in the county jail for ~~not more than one year~~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~~Department of ~~ecology~~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~~is guilty of a ~~crime~~gross misdemeanor and shall, upon conviction ~~thereof shall~~, be punished by a ~~maximum~~ fine of not ~~less~~more than ~~ten thousand dollars (\$10,000) per day per violation~~, or by imprisonment for ~~not more than one year~~up to 364 days, or both.--

132.3 -Any person who knowingly releases into the ambient air any substance listed by the ~~department~~Department of ~~ecology~~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~~is guilty of a ~~crime~~class C felony and shall, upon conviction ~~thereof shall~~, be punished by a ~~maximum~~ fine of not less than ~~fifty thousand dollars~~\$50,000, or by imprisonment for not more than ~~one year~~five years, or both.--

132.4 -Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 ~~shall be~~as referenced in NWCAA 104.1 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a ~~maximum~~ fine ~~or of~~ not ~~less~~more than ~~five thousand dollars~~-\$5,000.

132.5 -Any person who knowingly renders inaccurate any required monitoring device or method ~~as required by 40 CFR~~chapter 70.11(a)(3)(iii) shall be94 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 ~~thereof shall~~, be punished by a fine of not less than ~~ten thousand dollars (\$10,000) per day~~ per for each separate violation--

132.6 -Any person who knowingly makes any false statement, representation, or certification in any form, in any notice or report required by ~~a permit,~~chapter 70.94 RCW as required by 40 CFR 70.11(a)(3)(iii) shall bereferenced 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 ~~thereof shall~~, be punished by a ~~maximum~~ fine of not less than ~~ten thousand dollars (\$10,000) per day~~ for each separate violation.

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP. Replaces WAC 173-400-240.

## **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, chapter 70.120 RCW, any of the rules in force under such chapters, including the Regulation of the Northwest Air Pollution Authority shall be liable for a civil penalty in an amount of not more than eleven thousand dollars (\$11,000) per day per violation. Each 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 eleven thousand dollars (\$11,000) for each day of continued noncompliance.

**133.2** 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 penalty shall become due and payable when the person incurring the same receives a notice in writing from the Control Officer of the Authority describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the Hearings Board. Within fifteen days after the notice is received, 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. If the amount of such penalty is not paid to the Authority within thirty (30) days after receipt of notice imposing the same and request for a hearing has not been made, the attorney for the Authority, upon the request of the Control Officer, shall bring an action to recover such penalty in the Superior Court of Skagit County or of the County in which the violation occurred. All penalties recovered under this section by the Board shall be paid unto the treasury of the Authority and credited to its funds.

To secure the penalty incurred under this Section, the Authority shall have a lien on any vessel used or operated in violation of this act which shall be enforced as provided in RCW 60.36.050.

**133.3** 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 this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

In addition to other penalties provided, 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.

*State effective: 11/13/94, EPA effective: 12/26/95*

**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,~~ chapter 70.12094 RCW, ~~or any of the rules in force under such chapters pursuant thereto,~~ including the Regulation of the ~~Northwest Air Pollution Authority shall be liable for~~ NWCAA may incur a civil penalty in an amount ~~of not more than eleven thousand dollars (\$11 to exceed \$19,000)~~ per day ~~perfor 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 ~~eleven thousand dollars (\$11\$19,000)~~ for each day of continued noncompliance.-

~~133.2 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 penalty shall become due and payable when the person incurring the same receives a notice in writing from the Control Officer of the Authority describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the Hearings Board. Within fifteen days after the notice is received~~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. ~~If the amount of such penalty is not paid to the Authority within thirty (30) days after receipt of notice imposing the same and request for a hearing has not been made, the attorney for the Authority, upon the request of the Control Officer, shall bring an action to recover such penalty in the Superior Court of Skagit County or of the County in which the violation occurred. All penalties recovered under this section by the Board shall be paid unto the treasury of the Authority and credited to its funds.-~~

~~To secure the-~~(B) ~~If such penalty incurred under this Section is not paid to the NWCAA within 30 days after such payment is due,~~ the ~~Authority shall have a lien on any vessel used~~Board or operatedControl Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in violation of this act which shall be enforcedSuperior Court.

(C) ~~Any judgment will bear interest as provided in RCW 60.36.050. by statute until satisfied.~~

133.3 -Penalties incurred but not paid shall accrue interest, beginning on the ~~ninety first~~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. If~~ penalties are appealed, interest shall not begin to accrue until the ~~thirty first~~31st 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~~State Office of the ~~economic~~Economic and ~~revenue forecast council.~~Revenue Forecast Council.

133.4 In addition to other penalties ~~provided,~~ 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~~90 days late with such payments, may be subject to a penalty equal to three

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

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP. Replaces WAC 173-400-230(2).

### **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 Regulations of this Authority, 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, any 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.

*State effective: 9/8/93, EPA effective: 4/24/95*

### **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 ~~Regulations~~Regulation of ~~this Authority~~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, ~~any~~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.

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP. Replaces WAC 173-400-230(4).

### **SECTION 135 - ADDITIONAL ENFORCEMENT - COMPLIANCE SCHEDULES**

**135.1** As an additional means of enforcing the Regulations of this Authority the Board or Control Officer 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 and/or violation issued pursuant thereto which make the practice unlawful for the purpose of securing any injunction or other relief from the Superior Court as provided in Section 134.

**135.2** Any assurance of discontinuance or other compliance schedule shall specify, if appropriate, the amount of time required within the overall time limit to accomplish each of the following:

**135.21** When plans for compliance will be filed with the Authority.

**135.22** When a notice of construction will be filed with the Authority.

**135.23** When the necessary equipment will be ordered and verification that an order has been placed and when delivery of the equipment is expected.

**135.24** When the equipment will be installed.

**135.25** When the equipment will be tested for compliance with the Regulations.

*State effective: 9/8/93, EPA effective: 4/24/95*

~~SECTION 135 – ADDITIONAL ENFORCEMENT – COMPLIANCE SCHEDULES – ASSURANCE OF DISCONTINUANCE~~

~~135.1 – As an additional means of enforcing the Regulations of this Authority the Board or Control Officer~~  
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 ~~and/or violation~~ issued ~~pursuant thereto~~ which ~~make~~makes the practice unlawful for the purpose of securing ~~any~~an injunction or other relief from the Superior Court as provided in Section 134.

~~135.2 – Any assurance of discontinuance or other compliance schedule shall specify, if appropriate, the amount of time required within the overall time limit to accomplish each of the following:~~

~~135.21 – When plans for compliance will be filed with the Authority.~~

~~135.22 – When a notice of construction will be filed with the Authority.~~

~~135.23 – When the necessary equipment will be ordered and verification that an order has been placed and when delivery of the equipment is expected.~~

~~135.24 – When the equipment will be installed.~~

~~135.25 – When the equipment will be tested for compliance with the Regulations.~~

Analysis – EPA is proposing to approve and move this revised section to the ‘approved but not incorporated by reference’ section of the SIP. Replaces WAC 173-400-230(3).



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

**140.1** State and Federal agencies, within the jurisdiction of the Authority, which are required by State and Federal law to abide by the Regulations of this Authority shall notify this Authority, 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 this Authority, 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 this Authority of any such action or construction prior to recommending or adopting of such regulations or the issuance of any such permits.

*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to remove this section from the SIP. NWCAA eliminated this section from its regulations because all new sources, whether government agencies or not, need to comply with section 300, New Source Review.

## **SECTION 145 - MOTOR VEHICLE OWNER RESPONSIBILITY**

**145.1** Whenever an act or omission is declared unlawful under this Regulation, with respect to the operation of a licensed motor vehicle, operating off the public roadways, if the operator of the vehicle is not the owner of such vehicle but is so operating or moving the same with the express consent or implied permission of the owner, then the operator and or owner shall both be subject to the provisions of this Regulation with the primary responsibility to be that of the owner.

**145.2** Whenever an act or omission is declared unlawful with respect to the operation of a non-highway mobile source if the operator of the vehicle is not the owner of such vehicle but is operating or moving the same with the express consent or implied permission of the owner, then the operator and/or owner shall both be subject to the provisions of this Regulation with the primary responsibility to be that of the owner.

*State effective: 9/8/93, EPA effective: 4/24/95*

Analysis – EPA is proposing to remove this section from the SIP. NWCAA eliminated section 145 because it is not a required SIP element.