

**The following sections are approved as part of the SIP, but not IBR'd:**

## **REGULATION I – ARTICLE 3: GENERAL PROVISIONS**

### **3.01 DUTIES AND POWERS OF THE CONTROL OFFICER** Adopted 03/13/68 (12) Revised 08/08/91 (702), 02/10/94 (777), 09/09/99 (895)

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

*State adopted: 9/9/99; EPA effective: 9/30/04*

### **SECTION 3.05 INVESTIGATIONS BY THE CONTROL OFFICER**

(a) For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the Control Officer or a duly authorized representative shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse access to the Control Officer or a duly authorized representative who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.

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

*State adopted: 2/10/94; EPA effective: 9/30/04*

### **SECTION 3.07 COMPLIANCE TESTS**

(a) Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection Agency approved methods unless specific methods have been adopted by the Board. Where there is no federally approved or Board approved method, testing shall be performed in accordance with a method approved in writing by the Control Officer.

(b) The owner or operator of a source shall notify the Agency in writing at least 2 weeks prior to any compliance test and provide the Agency an opportunity to review the test plan and to observe the test.

(c) The owner or operator of any source required to perform a compliance test shall submit a report to the Agency no later than 60 days after the test. The report shall include:

- (1) A description of the source and the sampling location;
- (2) The time and date of the test;
- (3) A summary of results, reported in units and for averaging periods consistent with the applicable emission standard;
- (4) A description of the test methods and quality assurance procedures employed;
- (5) The amount of fuel burned or raw material processed by the source during the test;
- (6) The operating parameters of the source and control equipment during the test;
- (7) Field data and example calculations; and
- (8) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

*State adopted: 2/9/95; EPA effective: 9/30/04*

### **SECTION 3.09 VIOLATIONS – NOTICE**

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

(b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.

(c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

*State adopted: 8/8/91; EPA effective: 9/30/04*

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

Revised 11/10/71 (135), 05/10/84 (556), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 09/10/92 (734), 07/08/93 (756), 09/08/94 (798), 09/14/95 (821), 09/12/96 (839), 09/11/97 (856), 09/10/98 (870), 09/09/99 (895), 07/13/00 (925), 09/13/01 (954), 09/26/02 (978)

(a) Any person who violates any of the provisions of Chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$13,977.00 per day for each violation.

**(b)** Any person who fails to take action as specified by an order issued pursuant to Chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$13,977.00 for each day of continued noncompliance.

**(c)** Within 15 days after receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Any such request must contain the following:

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

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

**(d)** Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to Chapter 43.21B RCW and Chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition on the application for relief from penalty.

**(e)** A civil penalty shall become due and payable on the later of:

- (1)** 30 days after receipt of the notice imposing the penalty;
- (2)** 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or
- (3)** 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

**(f)** If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

**(g)** Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

**(h)** To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in

## RCW 60.36.050

*State adopted: 9/26/02; EPA effective: 9/30/04*

### **SECTION 3.13 CRIMINAL PENALTIES**

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

(b) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(c) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

*State adopted: 8/8/91; EPA effective: 9/30/04*

### **SECTION 3.15 ADDITIONAL ENFORCEMENT**

(a) Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of Chapter 70.94 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of Chapter 70.94 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

*State adopted: 8/8/91; EPA effective: 9/30/04*

**SECTION 3.17 APPEAL OF ORDERS** Adopted 03/13/68 (12)

Revised 07/09/69 (25), 11/10/71 (135), 11/12/87 (616), Revised/Renumbered 08/08/91 (702), Revised 10/08/98 (872)

(a) Any order of the Board or Control Officer may be appealed to the Pollution Control Hearings Board if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt of the order. This is the exclusive means of appeal of such an order.

(b) The Control Officer may stay the effectiveness of an order during the pendency of such an appeal. At any time during the pendency of such an appeal of such an order to the Hearings Board, the appellant may apply to the Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC for a stay of the order or for the removal thereof.

(c) Upon failure to comply with any final order of the Board or Control Officer, the attorney for the Agency, upon request of the Board or Control Officer, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary

*State adopted: 10/8/98; EPA effective: 9/30/04*

**SECTION 3.19 CONFIDENTIAL INFORMATION**

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter 70.94 RCW, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this section: Provided further, that emission data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

*State adopted: 8/8/91; EPA effective: 9/30/04*

**SECTION 3.21 SEPARABILITY**

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

*State adopted: 8/8/91; EPA effective: 9/30/04*