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Supreme Court No. 1028938  
[Court of Appeals No. 56938-8-II]  
[Pierce County Superior Court No. 21-2-08733-9]

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SUPREME COURT  
STATE OF WASHINGTON

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ADVOCATES FOR A CLEANER TACOMA, SIERRA  
CLUB; WASHINGTON ENVIRONMENTAL COUNCIL;  
WASHINGTON PHYSICIANS FOR SOCIAL  
RESPONSIBILITY; and STAND.EARTH,  
Petitioners,

v.

PUGET SOUND CLEAN AIR AGENCY;  
PUGET SOUND ENERGY, INC.,  
Respondents.

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**PUGET SOUND CLEAN AIR AGENCY'S  
OPPOSITION TO PETITIONER ADVOCATES FOR  
A CLEANER TACOMA'S PETITION FOR REVIEW**

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Jennifer A. Dold, WSBA #23822  
PUGET SOUND CLEAN AIR AGENCY  
1904 Third Avenue, Suite 105  
Seattle, WA 98101-3317  
(206) 343-8800  
Office ID: OC533705

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## I. INTRODUCTION

The petition filed by Advocates for a Cleaner Tacoma (“ACT”) identifies no conflict with this Court’s precedent and no issue of “substantial public interest,” therefore RAP 13.4(b) is not met and the petition should be rejected. Indeed, the specific *ultra vires* claim raised by ACT has no merit and has been rejected seven times by decision-makers in this case, including by this Court’s Commissioner on June 22, 2021.

In its December 26, 2023 published opinion,<sup>1</sup> the Court of Appeals (“COA”) applied the basic rules of statutory interpretation to reject ACT’s *ultra vires* claim and hold the Washington Clean Air Act, RCW 70A.15 (“CAA”),<sup>2</sup> expressly allows for the procedure used by Respondent Puget Sound Clean Air Agency (“Agency”)<sup>3</sup> to issue a Notice of

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<sup>1</sup> Before the COA, the Puyallup Tribe of Indians (“Tribe”), another party, presented the *ultra vires* claim and the COA’s Opinion refers to the Tribe asserting it. Citations to the COA’s Opinion are from ACT’s Appendix (“A-....”).

<sup>2</sup> In 2020, the CAA was re-codified from 70.94 to 70A.15 RCW. No substantive changes were made related to this case, but many Court decisions and Pollution Control Hearings Board (“PCHB”) orders cited herein refer to RCW 70.94. Agency Appendix PSCAA-1 contains a cross-reference of CAA provisions cited herein.

<sup>3</sup> The Agency incorporates by reference Respondent Puget Sound Energy’s (“PSE”) opposition to ACT’s petition.

Construction Order of Approval (“NOC”) (“OOA”),<sup>4</sup> the order that is the subject here. Because ACT’s petition, claiming that only a board of directors of a local air authority may issue an order approving or denying a NOC, is unsupported by any credible or persuasive reading of the CAA and ACT fails to meet any RAP 13.4(b) criteria, ACT’s petition should be denied.

## II. STATEMENT OF THE CASE

### A. The Agency is a Local Air Authority Tasked with Implementing the CAA in its 4-County Region.

The Agency is a multi-county local air authority with jurisdiction to implement the CAA in King, Kitsap, Pierce and Snohomish Counties.<sup>5</sup> Where a local air authority, like the Agency, exists, it “shall carry out the duties and exercise the powers provided in” the CAA, RCW 70A.15.1500, and it has exclusive authority to enforce the CAA in its jurisdiction, RCW 70A.15.2540. Administrative Record (“AR”) 3143. The

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<sup>4</sup> Under the CAA, NOC approval is required for “the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted.” RCW 70A.15.1030(17); 70A.15.2210(1).

<sup>5</sup> King, Pierce and Snohomish Counties created the Agency in 1967; Kitsap County joined in 1970, creating the multi-county authority that exists today. AR 27291-96 (Agency Resolutions 1, 101).

Agency's NOC regulations, and the Department of Ecology ("Ecology") regulations from WAC 173-400 incorporated therein, are included in Washington's State Implementation Plan approved by the Environmental Protection Agency ("EPA") and have the force of federal law. Report of Proceedings ("RP") 1827-1832; PSCAA-2-14; *Trs. for Alaska v. Fink*, 17 F.3d 1209, 1210 fn.3 (9th Cir. 1994).

- B. Consistent with the CAA, the Agency's Control Officer and Staff have Issued NOC Orders for Decades.

The CAA contains a two-part structure for local air authorities: a governing board of directors ("board" or "Board") sets the overall policy and direction for an air authority and an Air Pollution Control Officer ("Control Officer," titled Executive Director at the Agency) and technical staff carry out an air authority's regulatory responsibilities and other programs. RCW 70A.15.2000, .2300; Amicus Brief of Local Air Agencies (Aug. 29, 2022) ("Amicus") at 1.

The composition of boards of local air authorities is defined in RCW 70A.15.2000-.2020 and depends upon whether an authority is single-county or multi-county. Consistent with RCW 70A.15.2000, the Agency's Board is comprised of eight elected officials (one from King, Kitsap, Pierce and Snohomish Counties and one from the city having the most population in

each county: Seattle, Bremerton, Tacoma and Everett) and a ninth member representing the public. It is undisputed that the CAA contains no technical or air experience-based requirements for board members of a multi-county authority.

Air authority boards “shall exercise all powers of the authority except as otherwise provided;” “shall meet at least ten times a year;” and members can earn no more than \$1,000 a year for serving on the board, plus expenses. RCW 70A.15.2030. These minimal time and pay requirements demonstrate that the CAA does not intend, and certainly does not require, board members (elected or employed by other jurisdictions) to also serve as staff. *Jeffers v. Seattle*, 23 Wn. App. 301, 309-10 (1979) (Court determined investigations could be delegated to staff where pension board only met “monthly” and were “otherwise employed.”)

Since 1967, the CAA has stated that local air authorities “shall appoint” a “control officer whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution.” RCW 70A.15.2300.<sup>6</sup> From its earliest days, the

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<sup>6</sup> RCW 70A.15.2300 was first adopted in 1957 to allow any city, town, or local air district that had adopted air pollution prevention regulations to appoint a control officer. AR 27299

Agency has complied with the language of RCW 70A.15.2300 and had a Control Officer. AR 27402 (Resolution 4 (1968)). Consistent with the language of RCW 70A.15.2300, in 1968, the Agency's Board also recognized in regulation its Control Officer's authority: "The Board shall appoint a Control Officer competent in the field of air pollution control who shall observe and enforce the provisions of this Regulation and all orders, ordinances, resolutions, or rules and regulations of this Authority pertaining to the control and prevention of air pollution." AR 27305-15 (Regulation I, §3.01). This included the Agency's NOC requirements in Regulation I, Article 6. *Id.* AR 27325-29. In 1991 and 1994, the Agency's Board amended Regulation I, §3.01, both times expressly referencing Regulations I-III (including its NOC requirements.) AR 27346-47, 27356-57.<sup>7</sup>

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(1957 c 232 §17). RCW 70A.15.2300 was amended in 1967 to state that air authorities "shall appoint a control officer who shall observe and enforce all the provisions of this chapter," AR 27300-01 (1967 c 238 §30), and in 1991 to require control officers to be full-time, AR 27298 (1991 c 199 §707).

<sup>7</sup> Agency Regulation I, §3.01 parallels RCW 70A.15.2300, while adding specific reference to Agency regulations. *Washington Spirits v. WSLCB*, 182 Wn.2d 342, 351 (2015) (Court upheld rule that "closely tracks the statutory language and is consistent with the purpose and intent of the statute it implements.")

From the Agency's inception, the Agency's Board also has articulated its Control Officer's responsibilities through resolutions. Citing RCW 70A.15.2300, in 1972 and continuing through present day, the Agency's Board explicitly directs its Control Officer to "review and approve notices of construction and orders related thereto." AR 27406-07 (Resolution 137 (1972));<sup>8</sup> AR 27411-13 (Resolution 805 (1994), §1(3): Control Officer has authority to "issue orders of approval for establishing or constructing new sources pursuant to RCW 70.94.152"); AR 27415-17 (Resolution 1175 (2009), §1(3) (same). Additionally, these resolutions expressly state that the Control Officer can delegate to staff, via written authorization, all of the "above" functions, which includes NOC authority. AR 27417 (Resolution 1175, §1.21); AR 27413 (Resolution

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<sup>8</sup> The first version of Agency Regulation I in 1968 included §6.07 which provided that the Board or the Agency Control Officer had the power to review and issue NOC Orders. AR 27288-89, 27305, 27326-27 (Reg. I, §6.07(a), (c)). From 1968 to 1988, the Control Officer and the Board separately approved different NOC orders, with the majority being issued by the Control Officer. AR 27289. Regulation I, §6.07 was in effect until 2004 when Article 6 was amended to incorporate certain Ecology WAC provisions, *id.*, and the Agency's Board has had no role in NOC review for decades, AR 3163. ACT, at page 18, mischaracterizes the joint NOC authority (between Agency Staff and the Board) that the Agency Board recognized in the past.

805, §1.22). Pursuant to the above express authority and given the technical nature and complexity of NOC review as described below, the Agency's Control Officer has delegated issuance of NOC orders to engineering staff. AR 1218-25. But as discussed next, issuance of a NOC order is specifically constrained by the CAA's and Agency's regulatory requirements.<sup>9</sup>

C. NOC Review is a Complex, Technical Process Requiring Expertise and Extensive Knowledge of Air Contaminants, Processes, and Equipment.

The Agency currently regulates approximately 3000 registered sources. AR 3144. These sources range from smaller sources like gas stations to larger, complex sources like regional sewage treatment plants. *Id.* In regulating the 3000-plus sources, the Agency regulates hundreds of different types of: air contaminants, processes and equipment. AR 3145, 27494-96.

The Agency employs highly trained engineers to implement its NOC obligations. AR 3144-46. The Agency issues approximately 180 NOC orders a year. *Id.* NOC applications can be: complex (i.e., multiple, varied emission units with separate or integrated emission control measures); hundreds of

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<sup>9</sup> The COA described Agency Regulation I, Article 6 as “a comprehensive framework” for “review of new sources.” A-9.

pages long; and contain complex emission calculations and modeling. *Id.*

For every NOC application, engineers review the applicant's submission, applicable State Environmental Policy Act, RCW 43.21C ("SEPA") documents, and technical information related to proposed equipment or processes. *Id.*, RCW 70A.15.2210(3). If after 30 days, an application is incomplete, further information and/or analysis is requested. *Id.*, AR 3144-46.

As part of NOC review, Agency engineers identify what air contaminants may be emitted and what emission control technologies apply. *Id.* For NOC approval, Agency engineers must confirm that Best Available Control Technology ("BACT") will be employed on non-exempt emissions units and that applicable Agency, state, and federal regulations and all federal air quality standards will be met. *Id.*; RCW 70A.15.2210(3), (10), (22). BACT is "an emission limitation" determined on a "case-by-case basis taking into account energy, environmental, and economic impacts and other costs." RCW 70A.15.1030(6).

If after final review and determination by an Agency professional engineer ("P.E.") that a NOC is approvable, an OOA is issued. AR 3146; RCW 70A.15.2210(3) (every NOC OOA "must be reviewed prior to issuance by a professional



engineer or staff under the supervision of a professional engineer . . . .”) A licensed P.E. cannot allow another person or entity to change a decision because it could be considered the “unlicensed practice” of “professional engineering.” RCW 18.43.020; .105; RCW 18.235.010; .020, .130.

D. All Local Air Authorities have Staff, not Their Boards, Issue NOC Orders.

All Washington air authorities are required to issue NOC orders as described above. As confirmed in the Amicus submitted to the COA by the six other Washington local air authorities, all have staff, not their boards, issue NOC orders. Amicus at pages 2-6; AR 3163, 27508-09, 27511-13.

E. Agency NOC Review of PSE’s Application and Issuance of OOA 11386.

In this case, Agency engineers performed their typical review of PSE’s NOC application: reviewing all application materials; completing the applicable SEPA review;<sup>10</sup> conducting necessary BACT analyses; and analyzing applicable Agency, state and federal requirements. AR 3151-52. All of PSE’s proposed equipment, processes, and associated

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<sup>10</sup> ACT challenged this SEPA review before the PCHB and the COA. Both rejected all presented SEPA arguments and no party has filed a petition challenging the SEPA review before this Court.

emissions, were common and familiar to the Agency's engineers. RP 1242-43, 1882-86, 2315-17, 2364.

The Agency issued final OOA 11386 in December 2019. AR 24170-78. It contained 46 conditions, including BACT limits and a condition requiring PSE's operations to comply with applicable SEPA documents. *Id.*

F. The multiple *Ultra Vires* orders in this case and the COA's Opinion.

After ACT appealed OOA 11386 to the PCHB, it filed a stay motion raising the *ultra vires* claim. The PCHB denied the stay motion; noting that it previously had rejected the *ultra vires* claim based upon 70A.15.2300 and 70A.15.2210. AR 3317-18. Pursuant to RCW 43.21B.320(5), ACT appealed the PCHB's stay denial to superior court (while the PCHB hearing remained set for spring 2021); then to the COA; then to the Washington Supreme Court. All rejected the *ultra vires* claim and declined to grant the requested relief. PSCAA-15-25. In its transfer denial, this Court's Commissioner noted that ACT failed to even cite RCW 70A.15.2300, "which is the foundation of which multiple decisions to deny a stay were grounded." PSCAA-24.

The PCHB subsequently addressed, and dismissed again, the *ultra vires* claim in its Order on Motion to Dismiss and for Partial Summary Judgment. A-117-124; AR 12668-75. The

PCHB cited *Inland Foundry v. SCPCA*, WL 461727 (PCHB June 10, 1999) and *Inland Foundry v. SCPCA*, 98 Wn. App. 1019 (1999) (unpublished). These 1999 cases rejected the argument that a “quorum of” an air authority’s board must issue a NOC order and noted that pursuant to RCW 70A.15.2300, the board has a statutory duty to appoint a Control Officer, whose responsibilities include enforcing the authority’s program(s). 98 Wn. App. at 2.

Consistent with *Inland Foundry*, the COA in its opinion upheld the PCHB’s rejection of ACT’s *ultra vires* claim. A-17. The COA reviewed the claim *de novo* and applied the basic rules of statutory interpretation: reviewing and considering the plain language of the CAA as discerned by its context and text and the statutory scheme as a whole; “reading” all provisions in harmony and ensuring no portion of a statute is rendered meaningless; and avoiding absurd results. A-5. Regarding review of the Agency’s regulations, the COA’s inquiry was “whether the rules are reasonably consistent with the statutes they purport to implement.” A-6.

The COA considered key provisions of the CAA and determined that the CAA expressly provided the Agency’s Control Officer the authority to issue NOC orders: “[r]eading RCW 70A.15.2030, RCW 70A.15.2040, RCW 70A.15.2210(3), and RCW 70A.15.2300 together, the statutes can be reasonably

interpreted as RCW 70A.15.2300 is the “except as otherwise provided” in RCW 70A.15.2030, and the control officer may be delegated the responsibility to “observe and enforce the provisions of this chapter,” including the responsibility of “issu[ing] an order of approval for the establishment of the new source,” as well as promulgating rules and regulations to implement the WCAA.” A-12-13. The COA concluded that to accept ACT’s reading, the COA would have to render language in RCW 70A.15.2300 meaningless. A-13. The COA also rejected the argument that the Control Officer could not delegate NOC Order issuance to engineering staff, ruling that RCW 70A.15.2300 provides such authority; that the Agency Board provided the Control Officer express authority to delegate NOC issuance to staff; and given the lack of expertise and limited duties required of Board members by the CAA and the level of engineering and technical expertise required to process the high volume of NOC applications. A-15-16.

### **III. ARGUMENT**

- A. The COA properly reviewed the CAA as a whole, giving effect to all its provisions and proper weight to the Agency’s interpretation of the CAA and its implementing regulations.

This Court “. . . glean[s] legislative intent from ‘the text of the statutory provision in question, as well as “the context of the statute in which that provision is found, related provisions,

and the statutory scheme as a whole” . . . “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”” *Freedom Foundation v. Teamsters Local 117*, 197 Wn.2d 116, 127 (2021). *Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d, 1, 11-12 (2002) (Court does not zero in on one word or section in a statute); *ITT Rayonier v. Dalman*, 122 Wn.2d 801, 807 (1993) (“statutory provisions must be read in their entirety and construed together, not piecemeal”). This Court accords deference to the Agency’s interpretation of the CAA and its implementing regulations. *PT Air Watchers v. Ecology*, 179 Wn.2d 919, 925, 929 (2014).

ACT’s petition proffers a series of erroneous assertions that were correctly rejected by the COA. ACT erroneously asserts that the CAA provides no explicit authorization for the Agency’s Control Officer to enforce the CAA’s NOC provisions or the Agency’s regulations and resolutions. It claims, without relevant legal authority, that NOC issuance should be a policy or political decision. It erroneously claims the Control Officer cannot delegate decision-making to Agency engineering staff as part of the Agency’s NOC program. And it tries to wrap the above erroneous assertions into “conflicts” with precedent, and thus an issue of public interest, in a failed

attempt to demonstrate basis for review under RAP 13.4(b).  
ACT's arguments all are without merit.

1. RCW 70A.15.2300 directly authorizes the Agency's process for issuing NOC orders and all of ACT's delegation arguments fail here as they failed before the COA.

ACT's petition flatly fails due to its fundamental disregard of this case's key provision: RCW 70A.15.2300, which expressly states that an air authority's Control Officer shall "observe and enforce" provisions of the CAA and "all" implementing "regulations" and "resolutions."<sup>11</sup> By its plain words, RCW 70A.15.2300 directly provides the Agency's Control Officer the authority to observe and enforce provisions of the CAA and all Agency regulations and resolutions adopted thereto, which includes the authority to review and approve NOC orders pursuant to Agency Regulation I, Art. 6 (Agency's NOC program).<sup>12</sup> Thus, as held by the COA (A-11-13), RCW 70A.15.2300 expressly allows the Control Officer to issue NOC orders.<sup>13</sup>

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<sup>11</sup> ACT's petition ignores RCW 70A.15.2300 until page 20.

<sup>12</sup> The CAA prohibits all persons from violating an air authority's rules, regulations and resolutions in addition to the CAA. RCW 70A.15.1070.

<sup>13</sup> ACT erroneously claims at 21-22 that the COA found delegation "implicit" in the CAA. This is incorrect. The COA ruled that RCW 70A.15.2300 "expressly" provides authority to the Agency's Control Officer. A-13.

RCW 70A.15.2300's clear authority has been recognized by the Agency's Board since 1968, in both regulation and resolution. *See* §II(B). And the Agency's Board has, in writing, authorized the Agency's Control Officer to delegate to staff the function of reviewing and issuing NOC orders. *Id.*

Thus, based on the above, there is no basis for ACT's claim that RCW 70A.15.2300 does not expressly allow the Agency's Control Officer or assigned staff to issue a NOC order. *See Municipality of Metropolitan Seattle v. Division 587*, 118 Wn.2d 639, 648 (1992) (delegation is constitutional where it defines who does what and there are procedural safeguards). And not surprisingly, Washington courts are hesitant to read into an act a legislative intent that unreasonably restricts a director from utilizing staff in reaching the decisions they are required to make by statute. *Pierce v. Lake Stevens School Dist. No. 4*, 84 Wn.2d 772, 784 (1974); *Lake Wash. School Dist. No. 414 v. Lake Wash. Educ. Ass'n*, 109 Wn.2d 427, 435 (1987) (delegations upheld).

ACT weakly argues at 23 that RCW 70A.15.2300's use of the terms "observe and enforce" does not mean issue a NOC order. But as ACT notes (*citing* Black's Law Dictionary 11th ed. 2019), "enforce" means to "give force or effect to (a law, etc.); to compel obedience to." By any fair use of this definition, the Agency's Control Officer can compel a source's

obedience to the CAA and the Agency's NOC requirements. *Swinomish Tribal v. Island Cty.*, 87 Wn. App. 552 (1997) also does not support ACT's assertion that 70A.15.2300 cannot encompass NOC issuance. *Swinomish* did not limit the plain meaning of "enforce" but rejected the argument that issuing a sewer permit was an "official law enforcement duty" that would exempt a county from civil liability under the Indian Graves Records Act and concluded the term "official law enforcement duties" is narrow, encompassing those "duties related to preserving the peace." *Swinomish, supra* at 559-60. RCW 70A.15.2300 does not contain the phrase "official law enforcement duty" or concern a county's police powers; thus, no conflict with *Swinomish* exists.

Moreover, ACT's key cases do not demonstrate a "conflict" with precedent: *Rettkowski v. Ecology*, 122 Wn.2d 219 (1993); *Noe v. Edmonds School District*, 83 Wn.2d 97 (1973); *In re Puget Sound Pilots Ass'n*, 63 Wn.2d 142 (1963); and *Lutz v. Longview*, 83 Wn.2d 566 (1974). In *Rettkowski*, *Noe* and *Pilots*, the courts expressly determined that no specific legislative authorization supported the taken agency actions. 122 Wn.2d at 226, 236-238; 83 Wn.2d at 103; 63 Wn.2d at 147. In contrast, RCW 70A.15.2300 explicitly provides specific authorization to the Agency's Control Officer.



Likewise, the *Lutz* case is inapplicable and creates no conflict with precedent. *Lutz* involved an “act of rezoning” land which is a legislative act, 83 Wn.2d at 568, 570, and which is drastically different from issuance of an air permit to a source on land already zoned industrial, AR 22210. *Lutz* also found “a clear separation of functions and powers between the planning body and the municipal legislative body . . .” which contrasts sharply with RCW 70A.15.2300’s existence here. *Id.* at 569-70.

2. Issuing a NOC Order is not a “policy” or “political” decision warranting review under RAP 13.4.

In an attempt to create an issue of substantial public interest, ACT mischaracterizes *Weyerhaeuser v. SWAPCA*, 91 Wn.2d 77 (1978), claiming that *Weyerhaeuser* held that NOC “permitting” pursuant to RCW 70A.15.2210(3) “is a discretionary act” and “requires [the] balancing of competing interests.” ACT at 5, 31 *citing* 91 Wn.2d at 85. That is not what *Weyerhaeuser* held. The portion of *Weyerhaeuser* ACT relies upon is a discussion of the CAA’s public policy for purposes of applying the clearly erroneous standard of review to an appealed NOC order. 91 Wn.2d at 84–85. This language does not transform a NOC order into a discretionary, policy-

based decision and does not sanction the use of CAA policy statements in place of detailed regulatory permitting criteria.

As demonstrated above, issuance of a NOC order is not a legislative, discretionary or policy decision. Under the CAA, if a NOC application meets the technical requirements (BACT, compliance with federal, state and Agency standards), a NOC order “shall” be issued; if an application does not, it “shall” be denied. RCW 70A.15.2210(3). While an air authority exercises its engineering judgment, for example, in determining BACT, there is no provision in the CAA (as ACT wishes) allowing a NOC application to be denied for political or policy reasons.<sup>14</sup> *See also Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805 (1990) (appeal cannot be granted simply because appellant strongly opposes a project.)

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<sup>14</sup> At page 32 fn.5, ACT appears to argue that SEPA provides another way to characterize NOC permitting as discretionary. This is inaccurate. SEPA does not permit the imposition of *ad hoc* conditions, but requires conditions “be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency....” RCW 43.21C.060. Additionally, under SEPA, a “responsible official” makes SEPA determinations, not an air authority board. WAC 197-11-788.

3. ACT's Statutory "Interpretation" of RCW 70A.15.2210 Proffers Fictional Distinctions between RCW 70A.15.2210 and other provisions in the CAA.

ACT's petition is based on the fundamentally incorrect notion that RCW 70A.15.2210(3) requires air authority boards, and boards alone, to make a "final decision" whether to issue a NOC order. ACT at 14-16. Indeed, ACT's entire argument that OOA 11386 is *ultra vires* rests on its singular interpretation of the word "board" in RCW 70A.15.2210 and the presumption that because the word "board" is used in RCW 70A.15.2210 it can only refer to the "board" itself and not an authority acting through its Control Officer and staff.<sup>15</sup> But ACT's arguments ignore the plain language of RCW 70A.15.2300; misconstrues RCW 70A.15.2210 and other CAA provisions; and mis-cites legislative history.

ACT's argument first is sunk by its failure to recognize the plain language of RCW 70A.15.2300 and its role within the CAA. As the COA correctly concluded (and ACT concedes at page 24), there is no conflict between RCW 70A.15.2300 and

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<sup>15</sup> ACT's argument appears to be premised on the incorrect notion that an air authority board's powers cannot be constrained in any way. But RCW 70A.15.2030 expressly states that a board exercises all powers of the authority "except as otherwise provided." As the COA correctly noted at A-12, RCW 70A.15.2300 is an "otherwise provided."

70A.15.2210; the provisions can be read compatibly to give both effect. A-12-13. RCW 70A.15.2300 is a clear, broad authority-granting provision that works in tandem with dozens of the CAA's provisions, including RCW 70A.15.2210. Indeed, *Weyerhaeuser* read the two provisions together holding that under RCW 70A.15.2300, the air authority was required to comply with the requirements of 70A.15.2210 (as phrased at the time). *Weyerhaeuser, supra* at 84. And nothing in either provision prevents both an air authority board and its Control Officer from issuing NOC orders. *See* fn. 8 above.

Additionally, ACT's selective interpretation of RCW 70A.15.2300 would require this Court to render meaningless the words "all" and "resolutions or rules and regulations" from RCW 70A.15.2300. As the COA recognized (A-13), this the Court cannot do. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 312 (2011).

Likewise, the distinctions advanced by ACT at 24-25 between more recent and specific and general statutes are not implicated. As noted above, RCW 70A.15.2300 and 70A.15.2210 are not in conflict and interact compatibly. ACT also argues that RCW 70A.15.2210 controls because it is more recent. This is incorrect. One, as described above (and as ACT concedes), there is no conflict. *Anderson v. Dep't of Corr.*, 159 Wn.2d 849, 861 (2007) (more recent statute prevails with a

more general predecessor only where two statutes irreconcilably conflict). Two, ACT's argument appears to be based on the erroneous belief that RCW 70A.15.2210 was adopted earlier than pertinent provisions of RCW 70A.15.2300. But the 1967 legislation both amended RCW 70A.15.2300 to allow the newly created local air agencies to appoint a control officer and adopted RCW 70A.15.2210. Laws of 1967, ch. 238, §29 (new source review), §30 (amending control officer provision). PSCAA-26-30. Thus, neither provision is newer and both must be construed together.

ACT's precarious interpretation of "board" in RCW 70A.15.2210(3) fails for additional reasons. First, it does not account for the use of "board" elsewhere in RCW 70A.15.2210: in subsection (9) and subsection (10)'s reference to subsection (3). RCW 70A.15.2210(9) states the requirement that the "board" must notify applicants within thirty (30) days of receipt whether a NOC application is "complete" and subsection (10)'s cross-reference to subsection (3) would mean the "board" would have to decide BACT for every emission unit in every NOC application. As the COA concluded in construing the CAA's provisions, it "borders on absurd" to say that the Legislature would require the Agency's Board, with no technical expertise, to issue hundreds of completeness and BACT determinations annually, especially in light of the

CAA's limited meeting requirements. A-16; *see also* Amicus at 8-9, 13-14.

Second, ACT claims at 15-18 that RCW 70A.15.2210(3) and 70A.15.2220 establish different permitting standards for new versus existing sources because RCW 70A.15.2220 uses the term "permitting authority," but RCW 70A.15.2210 does not. This contrived argument misunderstands that both provisions apply to existing sources: if an existing source wants to modify creating new emissions, RCW 70A.15.2210 (and BACT) applies. If an existing source wants to replace air control equipment creating no new emissions, RCW 70A.15.2220 (and Reasonably Available Control Technology ("RACT")) applies.<sup>16</sup>

Third, there is no textual basis for ACT's interpretation at 17 that the language in RCW 70A.15.2210(3) that every NOC must be "reviewed" by a professional engineer prior to issuance exists only to compensate for a board's "non-technical composition." Indeed, the COA noted (A-16) that ACT's interpretation, which amounts to an argument that a board should be required to sign NOC orders which it may not

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<sup>16</sup> At 17, ACT incorrectly asserts: "Approval orders for existing sources do not explicitly require technical review, because the authority itself may issue them and hence staff can conduct the necessary review." But RACT is a technical review. RCW 70A.15.1030(20).

understand, amounted to an interpretation of the CAA that places form over substance and was unpersuasive. Moreover, ACT's interpretation ignores that under separate statutory requirements a licensed P.E. cannot lawfully allow another person to override their engineering judgment, RCW 18.43, 18.235, and thus would directly conflict with these statutes. *Vasquez v. DLI*, 44 Wn. App. 379, 383 (1986) (Court's interpretation based on "common sense interpretation" and consistency with federal rule).

Fourth, no conflict exists with other CAA provisions cited by ACT: RCW 70A.15.2260, 70A.15.3080 and 70A.15.5100. None concern the type of delegation authority at issue here which the COA correctly held is authorized by the plain language of RCW 70A.15.2300. Furthermore, none of these provisions conflict with and all can be harmonized with RCW 70A.15.2300.

ACT claims at 15 that RCW 70A.15.2310 (variance procedure) and RCW 70A.15.1630 (authorization for an air authority to borrow money from local jurisdictions) prove that "board" in RCW 70A.15.2210(3) only means "board." But these provisions do not concern issuance of NOC orders, which the COA correctly held specifically fall within the plain language of RCW 70A.15.2300. Moreover, variances are fundamentally different from NOC orders. Variance decisions

(which statutorily can only last a year) are made by the Agency Board because they sanction a complete departure from otherwise applicable permitting criteria. This stands in sharp contrast to the standard NOC order process, which is bound by the CAA's specific and technical regulatory standards.

At 17, ACT claims a general conflict of interest provision in RCW 70A.15.2000(6) is "a recognition that board members would sometimes make" individual project decisions. This point has nothing to do with the plain language of RCW 70A.15.2300, which the COA determined expressly authorizes the Agency's actions here.

- B. The COA correctly determined the Agency's Control Officer appropriately delegated NOC order issuance to engineering staff.

As demonstrated in §§II(B) and III(A) above and as held by the COA (A-14-17), delegation to staff to issue NOC orders is expressly authorized by RCW 70A.15.2300 and the Agency's Board and is constrained by the technical requirements for NOC issuance. Thus, this delegation falls solidly within this Court's delegation caselaw discussed herein. *See e.g. Jeffers; Municipality of Metropolitan Seattle; Pierce County; Lake Washington, supra.*



#### IV. CONCLUSION

Because ACT's petition fails to meet any RAP 13.4(b) criteria, the Agency respectfully requests the Court deny ACT's petition.

*I certify that this document contains 4,997 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

RESPECTFULLY SUBMITTED this 22nd day of April  
2024.

PUGET SOUND CLEAN AIR AGENCY

*s/ Jennifer A. Dold*  
Jennifer A. Dold, WSBA #23822  
1904 Third Avenue, Suite 105  
Seattle, WA 98101-3317  
(206) 343-8800  
*Attorney for Puget Sound Clean Air  
Agency*

## CERTIFICATE OF SERVICE

On said day below I electronically served a true and accurate copy of the Puget Sound Clean Air Agency's Opposition to Advocates for a Cleaner Tacoma's Petition for Review, Supreme Court Case No. 1028938, to the following parties:

***Attorneys for  
Advocates for a  
Cleaner Tacoma;  
Sierra Club; WA  
Environmental  
Council; WA  
Physicians for Social  
Responsibility; and  
Stand.Earth***

Via Email (By Agreement)  
jhasselman@earthjustice.org  
jparekh@earthjustice.org

Jan Hasselman  
Jaimini Parekh  
Earthjustice  
810 Third Ave, Ste 610  
Seattle, WA 98104

***Attorneys for Puget  
Sound Energy***

Via Email (By Agreement)  
eanderson@vnf.com  
tak@vnf.com

Erin L. Anderson  
Tadas A. Kisielius  
Van Ness Feldman  
LLP  
1191 Second Ave,  
Suite 1800  
Seattle, WA 98101

***Attorney for Puget  
Sound Energy***

Thomas R. Wood  
Stoel Rives LLP  
760 SW Ninth Ave, Ste  
3000  
Portland, OR 97205

***Attorneys for Puget  
Sound Energy***

Joshua B. Frank  
Allison Watkins  
Mallick  
Baker Botts LLP  
700 K St N.W.  
Washington, DC  
20001

***Attorneys for The  
Puyallup Tribe of  
Indians***

Geoffrey J. Bridgman  
Nicholas G. Thomas  
Aaron P. Riensche  
Ogden Murphy  
Wallace PLLC  
901 Fifth Ave, Ste  
3500  
Seattle, WA 98164

Via Email (By Agreement)|  
tom.wood@stoel.com

Via Email (By Agreement)  
joshua.frank@bakerbotts.com  
allison.mallick@bakerbotts.com

Via Email (By Agreement)  
gbridgman@omwlaw.com  
nthomas@omwlaw.com  
ariensche@omwlaw.com

***Attorneys for The  
Puyallup Tribe of  
Indians***

Lisa A. Anderson  
Lois Boome  
Sam Stiltner  
Law Office of the  
Puyallup Tribe  
3009 E Portland Ave  
Tacoma, WA 98038

Via Email (By Agreement)|  
Lisa.Anderson@puyalluptribe-nsn.gov  
Lois.Boome@puyalluptribe-nsn.gov  
Sam.Stiltner@putalluptribe-nsn.gov

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 22<sup>nd</sup> day of April, 2024 at Seattle, Washington.

*s/Charlotte L. Allen*  
Charlotte L. Allen

**PUGET SOUND CLEAN AIR AGENCY (“PSCAA”) APPENDIX TO APRIL 22, 2024 OPPOSITION TO PETITIONER ADVOCATES FOR A CLEANER TACOMA’S PETITION FOR REVIEW**

<b>PSCAA- #</b>	<b>Description</b>
1	RCW Cross Reference Table
2-14	Copy of U.S. Environmental Protection Agency (“EPA”) webpage: Washington State Implementation Plan (“SIP”): EPA Approved Regulations (Table 7- Puget Sound Clean Air Agency): <a href="https://www.epa.gov/air-quality-implementation-plans/washington-sip-epa-approved-regulations-table-7-puget-sound-clean">https://www.epa.gov/air-quality-implementation-plans/washington-sip-epa-approved-regulations-table-7-puget-sound-clean</a> (Last visit April 18, 2024)
15-17	Copy of Thurston County Superior Court Order Denying Summary Judgment and Motion for Expedited Relief (November 2, 2020) (Case No. 20-2-01371-34)
18-19	Copy of Washington State Court of Appeals, Division Two Ruling denying Motion for Injunctive Relief (December 8, 2020) (Case No. 55448-8-II)
20	Copy of Washington State Court of Appeals, Division Two Order Denying Motion to Modify a Commissioner’s Ruling (January 15, 2021) (Case No. 55448-8-II)
21-25	Copy of Supreme Court of the State of Washington Ruling Denying Motion to Transfer Review (June 22, 2021) (Case No. 99794-2)
26-30	Copy of excerpt from Substitute Senate Bill No. 46, Laws of 1967, ch. 238, § 29 (new source review), § 30 (amending control officer provision)

<b>New Chapter 70A.15 RCW Sections</b>	<b>Old Chapter 70.94 RCW Sections</b>	<b>Washington Clean Air Act Section Title</b>
<a href="#">70A.15.1030</a>	70.94.030	Definitions
<a href="#">70A.15.1070</a>	70.94.040	Causing or permitting air pollution unlawful— Exception.
<a href="#">70A.15.1500</a>	70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations.
<a href="#">70A.15.1630</a>	70.94.096	Authorization to borrow money.
<a href="#">70A.15.2000</a>	70.94.100	Air pollution control authority—Board of directors—Composition—Term.
<a href="#">70A.15.2020</a>	70.94.120	City selection committees—Meetings, notice, recording officer—Alternative mail balloting— Notice.
<a href="#">70A.15.2030</a>	70.94.130	Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.
<a href="#">70A.15.2040</a>	70.94.141	Air pollution control authority—Powers and duties of activated authority.
<a href="#">70A.15.2210</a>	70.94.152	Notice may be required of construction of proposed new contaminant source—Submission of plans— Approval, disapproval—Emission control—"De minimis new sources" defined.
<a href="#">70A.15.2220</a>	70.94.153	Existing stationary source—Replacement or substantial alteration of emission control technology.
<a href="#">70A.15.2260</a>	70.64.161	Operating permits for air contaminant sources— Generally—Fees, report to legislature.
<a href="#">70A.15.2300</a>	70.94.170	Air pollution control authority control officer.
<a href="#">70A.15.2310</a>	70.94.181	Variances—Application for—Considerations— Limitations—Renewals—Review.
<a href="#">70A.15.2540</a>	70.94.230	Rules of authority supersede local rules, regulations, etc.—Exceptions.
<a href="#">70A.15.3080</a>	70.94.395	Air contaminant sources—Regulation by department; authorities may be more stringent— Hearing—Standards.
<a href="#">70A.15.5100</a>	70.94.6530	Delegation of permit issuance and enforcement to political subdivisions.



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# Washington SIP: EPA Approved Regulations (Table 7 – Puget Sound Clean Air Agency)

Latest EPA Action: April 22, 2020

Note: The official SIPs are contained in regulations promulgated in the Federal Register and codified in the U.S. Code of Federal Regulations (CFR) <https://www.ecfr.gov/>. EPA's web-versions of the approved SIPs are for reference. While we make every effort to maintain the accuracy of the files accessible here, inconsistencies may occur. Please contact us if you find any errors in these files.

[View Full Text of EPA Approved Rules](#)

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction <https://epa.gov/air-quality-implementation-plans/washington-sip-epa-approved-regulations-table-3-energy-facilities>; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173-405, 173-410, and 173-415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173-400-700.]

**40 CFR part 52.2470(c)**

**Table 7 - Additional Regulations Approved for the Puget Sound Clean Air Agency (PSCAA) Jurisdiction**

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Puget Sound Clean Air Agency Regulations				
Regulation I—Article 1: Policy, Short Title, and Definitions				
1.01	Policy	11/1/99	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a>	Replaces WAC 173-400-010.
1.03	Name of Agency	11/1/99	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a>	

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
1.05	Short Title	11/1/99	8/31/04 69 FR 53007 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
1.07	Definitions	12/01/18	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except the definition “toxic air pollutant (TAP) or toxic air contaminant.”
Regulation I—Article 3: General Provisions				
3.03(f)	General Regulatory Orders	02/01/12	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
3.04	Reasonably Available Control Technology	07/01/12	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 3.04(e). Replaces WAC 173-400-040(1)(c).
3.06	Credible Evidence	11/14/98	8/31/04 69 FR 53007 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
3.25	Federal Regulation Reference Date	11/01/19	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-025.
Regulation I—Article 5: Registration				
5.03	Applicability of Registration Program	11/01/16	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 5.03(a)(8)(Q) and 5.03(b)(5).
5.05	Registration Requirements	02/01/17	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 5.05(b)(1) and (2).
Regulation I—Article 6: New Source Review				



State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
6.01	Components of New Source Review Program	08/01/18	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">☑</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except the parenthetical in 6.01(b) which states “as delegated by agreement with the US Environmental Protection Agency, Region 10.” See subheading below for revised Chapter 173-400 WAC provisions incorporated by reference.
6.03	Notice of Construction	11/01/15	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">☑</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 6.03(b)(10). Section 6.03 replaces WAC 173-400-110, except WAC 173-400-110(1)(c)(i) and (1)(d) which are incorporated by reference.
6.09	Notice of Completion	05/01/04	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">☑</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
6.10	Work Done without an Approval	09/01/01	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">☑</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
<b>Regulation I—Article 7: Operating Permits</b>				
7.09	General Reporting Requirements for Operating Permits	02/01/17	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">☑</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Excluding toxic air pollutants.
<b>Regulation I—Article 8: Outdoor Burning</b>				
8.04	General Conditions for Outdoor Burning	1/1/01	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">☑</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
8.05	Agricultural Burning	1/1/01	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
8.06	Outdoor Burning Ozone Contingency Measure	1/23/03	8/5/04 69 FR 47364 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1</a> >	
8.09	Description of King County No-Burn Area	1/1/01	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
8.10	Description of Pierce County No-Burn Area	1/1/01	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
8.11	Description of Snohomish County No-Burn Area	1/1/01	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
8.12	Description of Kitsap County No-Burn Area	11/30/02	8/31/04 69 FR 53007 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
<b>Regulation I—Article 9: Emission Standards</b>				
9.03	Emission of Air Contaminant: Visual Standard	05/01/04	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 9.03(e). Replaces WAC 173-400-040(2).
9.04	Opacity Standards for Equipment with Continuous Opacity Monitoring Systems	05/01/04	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except 9.04(d)(2) and 9.04(f).
9.05	Refuse Burning	1/13/94	6/29/95 60 FR 33734 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	

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9.07	Sulfur Dioxide Emission Standard	5/19/94	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-040(7).
9.08	Fuel Oil Standards	05/01/04	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Approved only as it applies to the regulation of criteria pollutants.
9.09	Particulate Matter Emission Standards	6/1/98	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-050(1)&(3) and 173-400-060.
9.11(a)	Emission of Air Contaminant: Detriment to Person or Property	04/17/99	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-040(6).
9.13	Emission of Air Contaminant: Concealment and Masking Restricted	06/09/88	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-040(8).
9.15	Fugitive Dust Control Measures	4/17/99	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-040(9)(a).
9.16	Spray-Coating Operations	12/02/10	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
9.18	Crushing Operations	03/02/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
9.20	Maintenance of Equipment	6/9/88	8/29/94  59 FR 44324 (pdf) < <a href="https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf">https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf</a> > (6.2 MB)	
Regulation I—Article 12: Standards of Performance for Continuous Emission Monitoring Systems				

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12.01	Applicability	6/1/98	8/31/04 69 FR 53007 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
12.03	Continuous Emission Monitoring Systems	11/01/15	4/22/20 85 FR 22357 (PDF) <a href="#">↗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Replaces WAC 173-400-105(7).
<b>Regulation I—Article 13: Solid Fuel Burning Device Standards</b>				
13.01	Policy and Purpose	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.02	Definitions	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.03	Opacity Standards	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.04	Prohibited Fuel Types	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.05	Curtailment	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.06	Emission Performance Standards	12/01/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
13.07	Contingency Plan	12/01/12	5/29/13 78 FR 32131 (PDF) <a href="#">↗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1</a> >	
<b>Regulation II—Article 1: Purpose, Policy, Short Title, and Definitions</b>				

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1.01	Purpose	11/1/99	8/31/04 69 FR 53007 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
1.02	Policy	11/1/99	8/31/04 69 FR 53007 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
1.03	Short Title	11/1/99	8/31/04 69 FR 53007 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
1.04	General Definitions	12/11/80	2/28/83 48 FR 8273 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1983-02-28/pdf/fr-1983-02-28.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1983-02-28/pdf/fr-1983-02-28.pdf#page=1</a> >	
1.05	Special Definitions	9/1/03	9/17/13 78 FR 57073 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-09-17/pdf/2013-22478.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-09-17/pdf/2013-22478.pdf#page=1</a> >	
<b>Regulation II—Article 2: Gasoline Marketing Emission Standards</b>				
2.01	Definitions	8/13/99	8/31/04 69 FR 53007 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
2.03	Petroleum Refineries	7/15/91	8/29/94 <a href="#">📄</a> 59 FR 44324 (pdf) < <a href="https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf">https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf</a> > (6.2 MB)	
2.05	Gasoline Loading Terminals	1/13/94	6/29/95 60 FR 33734 (PDF) <a href="#">📄</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	
2.06	Bulk Gasoline Plants	7/15/91	8/29/94 <a href="#">📄</a> 59 FR 44324 (pdf) < <a href="https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf">https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf</a> > (6.2 MB)	

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2.07	Gasoline Stations	1/10/00	8/31/04 69 FR 53007 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
2.08	Gasoline Transport Tanks	8/13/99	8/31/04 69 FR 53007 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
2.09	Oxygenated Gasoline Carbon Monoxide Contingency Measure and Fee Schedule	1/23/03	8/5/04 69 FR 47364 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1</a> >	
2.10	Gasoline Station Ozone Contingency Measure	1/23/03	8/5/04 69 FR 47364 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-05/pdf/04-17796.pdf#page=1</a> >	
<b>Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards</b>				
3.01	Cutback Asphalt Paving	7/15/91	8/29/94  59 FR 44324 (pdf) < <a href="https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf">https://www.epa.gov/system/files/documents/2024-04/59-fr-44324-1994.pdf</a> > (6.2 MB)	
3.02	Volatile Organic Compound Storage Tanks	8/13/99	8/31/04 69 FR 53007 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2004-08-31/pdf/04-19818.pdf#page=1</a> >	
3.03	Can and Paper Coating Operations	3/17/94	6/29/95 60 FR 33734 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	
3.04	Motor Vehicle and Mobile Equipment Coating Operations	9/1/03	9/17/13 78 FR 57073 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-09-17/pdf/2013-22478.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-2013-09-17/pdf/2013-22478.pdf#page=1</a> >	
3.05	Graphic Arts Systems	1/13/94	6/29/95 60 FR 33734 (PDF) <a href="#">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	

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3.08	Polyester, Vinylester, Gelcoat, and Resin Operations	1/13/94	6/29/95 60 FR 33734 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	
3.09	Aerospace Component Coating Operations	1/13/94	6/29/95 60 FR 33734 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-29/pdf/95-15956.pdf#page=1</a> >	
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173-400—Regulations Incorporated by Reference in Regulation I, Section 6.01				
173-400-030	Definitions	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: 173-400-030(91).
173-400-081	Startup and Shutdown	04/01/11	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-110	New Source Review (NSR) for Sources and Portable Sources	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	173-400-110(1)(c)(i) and 173-400-110(1)(d) only.
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: 173-400-111(3)(h);—The part of 173-400-111(8)(a)(v) that says, “and 173-460-040;”; 173-400-111(9).
173-400-112	Requirements for New Sources in Nonattainment Areas	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-113	Requirements for New Sources in Attainment or Unclassifiable Areas	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: 173-400-113(3), second sentence.

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173-400-117	Special Protection Requirements for Federal Class I Areas	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-171	Public Notice and Opportunity for Public Comment	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: —The part of 173-400-171(3)(b) that says, “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”; 173-400-171(12).
173-400-200	Creditable Stack Height and Dispersion Techniques	02/10/05	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-560	General Order of Approval	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: — The part of 173-400-560(1)(f) that says, “173-460 WAC”.
173-400-800	Major Stationary Source and Major Modification in a Nonattainment Area	4/01/11	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	EPA did not review WAC 173-400-800 through 860 for consistency with the August 24, 2016 PM <sub>2.5</sub> implementation rule (81 FR 58010); nor does PSCAA have an obligation to submit rule revisions to address the 2016 PM <sub>2.5</sub> implementation rule at this time.




State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173-400-810	Major Stationary Source and Major Modification Definitions	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-830	Permitting Requirements	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-840	Emission Offset Requirements	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	07/01/16	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-860	Public Involvement Procedures	4/01/11	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173-400—General Regulations for Air Pollution Sources				
173-400-020	Applicability	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	
173-400-040	General Standards for Maximum Emissions	09/16/18	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> <https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1>	173-400-040(1)(a) & (b), 173-400-040(4); and 173-400-040(9) (b) only.

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173-400-070	Emission Standards for Certain Source Categories	03/22/91	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1</a> >	Except (7).
173-400-091	Voluntary Limits on Emissions	04/01/11	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	9/20/93 version continues to be approved under the authority of CAA Section 112(l) with respect to Section 112 hazardous air pollutants. See 60 FR 28726 (June 2, 1995).
173-400-105	Records, Monitoring and Reporting	11/25/18	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	Except: 173-400-105(7).
173-400-107	Excess Emissions	9/20/93	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1</a> >	
173-400-118	Designation of Class I, II, and III Areas	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-131	Issuance of Emission Reduction Credits	04/01/11	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-136	Use of Emission Reduction Credits (ERC)	12/29/12	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-151	Retrofit Requirements for Visibility Protection	02/10/05	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a> < <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1</a> >	
173-400-161	Compliance Schedules	3/22/91	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a> < <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1</a> >	

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173-400-175	Public Information	02/10/05	4/22/20 85 FR 22357 (PDF) <a href="https://www.govinfo.gov/content/pkg/fr-2020-04-22/pdf/2020-08124.pdf#page=1">🔗</a>	
173-400-190	Requirements for Nonattainment Areas	3/22/91	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a>	
173-400-205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a>	
173-400-210	Emission Requirements of Prior Jurisdictions	3/22/91	6/2/95 60 FR 28726 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-1995-06-02/pdf/95-13516.pdf#page=1">🔗</a>	

## Full Text of Approved Rules

Note: Strikeout text denotes sections not *incorporated by reference* by EPA.

-  Table 7 - Additional Regulations Approved for the Puget Sound Clean Air Agency (PSCAA) Jurisdiction (pdf) <https://www.epa.gov/sites/default/files/2017-02/documents/sip-wa-approved-regulations-pscaa-table7.pdf> (5.8 MB)  
Full text of EPA-approved regulations for 40 CFR part 52.2470(c) Table 7.

[Air Quality Implementation Plans Home](https://www.epa.gov/air-quality-implementation-plans) <<https://www.epa.gov/air-quality-implementation-plans>>

[About Air Quality Implementation Plans](https://www.epa.gov/air-quality-implementation-plans/about-air-quality-implementation-plans) <<https://www.epa.gov/air-quality-implementation-plans/about-air-quality-implementation-plans>>

[Approved Air Quality Implementation Plans](https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans) <<https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans>>

[Develop an Air Quality SIP](https://www.epa.gov/air-quality-implementation-plans/develop-air-quality-sip) <<https://www.epa.gov/air-quality-implementation-plans/develop-air-quality-sip>>

[Find a Regional Contact for Air Quality SIPs/FIPS/TIPS](https://www.epa.gov/air-quality-implementation-plans/find-regional-contact-air-quality-sipsfipstips) <<https://www.epa.gov/air-quality-implementation-plans/find-regional-contact-air-quality-sipsfipstips>>

[Tools for SIP Status](https://www.epa.gov/air-quality-implementation-plans/tools-state-implementation-plan-sip-status) <<https://www.epa.gov/air-quality-implementation-plans/tools-state-implementation-plan-sip-status>>

Contact Us <<https://epa.gov/air-quality-implementation-plans/forms/contact-us-about-air-quality-implementation-plans>> to ask a question, provide feedback, or report a problem.

LAST UPDATED ON APRIL 17, 2024

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SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF THURSTON

ADVOCATES FOR A CLEANER TACOMA;  
SIERRA CLUB; WASHINGTON  
ENVIRONMENTAL COUNCIL;  
WASHINGTON PHYSICIANS FOR SOCIAL  
RESPONSIBILITY; STAND.EARTH and  
THE PUYALLUP TRIBE OF INDIANS,

Petitioners,

vs.

PUGET SOUND CLEAN AIR AGENCY and  
PUGET SOUND ENERGY, and  
WASHINGTON POLLUTION CONTROL  
HEARINGS BOARD,

Respondents.

No. 20-2-01371-34

**ORDER DENYING SUMMARY  
JUDGMENT AND MOTION FOR  
EXPEDITED RELIEF**

This matter comes before the Court on Petitioners' Motion for Expedited Relief Under RCW 43.21B.320(5), and for Summary Judgment. This matter was originally scheduled to be heard with telephonic oral argument on October 30, 2020. Due to technical issues, however, the Court was unable to conduct the hearing at that time. After preparing for that hearing, the Court determined that oral argument would not actually assist the Court in reaching a decision. As a result, the Court rules on that motion without oral argument as follows:

Order Denying Summary  
Judgment and Motion for  
Expedited Relief – Page 1

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W.  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

1 The Court DENIES Petitioners' Motion for Expedited Relief Under RCW 43.21B.320(5),  
2 and for Summary Judgment. As an initial matter, issues surrounding the appropriateness of this  
3 Court ruling on this matter on this record, as well as issues regarding presumptions and shifting  
4 burdens, do not prevent the Court from ruling on this Motion. The ultimate issue here is purely  
5 legal in nature, involving statutory construction. Thus, there is no need for the Court to examine  
6 the entire voluminous record underlying the issuance of any order. Nor is there any need to  
7 parse the shifting burden for a stay under RCW 43.21B.320(3) too finely because even if the  
8 Petitioners were able to satisfy their *prima facie* burden to obtain a stay, that *prima facie*  
9 showing would be overcome by Respondents establishing a substantial probability of success on  
10 the merits. Given that the issue here is whether Respondents had the statutory authority to  
11 engage in the conduct at issue, those two steps effectively require the resolution of the same  
12 question: Whose proffered statutory construction is correct?  
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15 The Court is persuaded by the plain text of the statutes at issue that Respondents'  
16 proffered statutory construction is correct. RCW 70.94.170 permits the process for the issuance  
17 of orders at issue here. Respondents efforts to depart from the plain meaning of this statute run  
18 afoul of the rule that there is no role for interpreting a statute when it is plain on its  
19 face. Petitioners' efforts to attack the process engaged in here as *ultra vires* are not supported by  
20 the law.  
21

22 While there may be other legal issues with the project at issue here, the issue before the  
23 Court on this Motion is narrow, and the Court DENIES that Motion.  
24  
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26

1 To the extent this Order does not comport with the needs of the parties from a record  
2 perspective, they shall confer with one another and submit a proposed form of order through the  
3 Court's ex parte process (if agreed) or note it for presentation (if not agreed).  
4

5 DATED this 2<sup>nd</sup> day of November, 2020.



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8 Judge Chris Lanese  
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# Washington State Court of Appeals Division Two

**Attention:**  
The Court Of Appeals  
Division 2 will be  
moving to 909 A  
Street, Suite 200,  
Tacoma, WA 98402  
on January 1, 2021.

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

December 8, 2020

Jan Erik Hasselman  
Earthjustice  
810 3rd Ave Ste 610  
Seattle, WA 98104-1645  
jhasselman@earthjustice.org

Eric D. 'Knoll' Lowney  
Smith & Lowney PLLC  
2317 E John St  
Seattle, WA 98112-5412  
knoll@smithandlowney.com

Meredith Crafton  
Smith & Lowney, PLLC  
2317 E John St  
Seattle, WA 98112-5412  
meredith.a.crafton@gmail.com

Marc Zemel  
Smith & Lowney PLLC  
2317 E John St  
Seattle, WA 98112-5412  
marc@smithandlowney.com

Jaimini Parekh  
Attorney at Law  
810 3rd Ave Ste 610  
Seattle, WA 98104-1645  
jparekh@earthjustice.org

Alyssa Lee Englebrecht  
Smith & Lowney, PLLC  
2317 E John St  
Seattle, WA 98112-5412  
alyssa@smithandlowney.com

Samuel Judge Stiltner  
Puyallup Tribe Legal Dept  
3009 E Portland Ave  
Tacoma, WA 98404-4926  
sam.stiltner@puyalluptribe-nsn.gov

Savannah Lee Rose  
Attorney at Law  
5101 25th Ave NE Apt B323  
Seattle, WA 98105-3273  
savannahrose.wa@gmail.com

Lisa Ann Harbison Anderson  
Puyallup Indian Tribe  
3009 E Portland Ave  
Tacoma, WA 98404-4926  
lisa.anderson@puyalluptribe-nsn.gov

Geoffrey Julian Mars Bridgman  
Ogden Murphy Wallace, P.L.L.C.  
901 5th Ave Ste 3500  
Seattle, WA 98164-2059  
gbridgman@omwlaw.com

Brian Epley  
Ogden Murphy Wallace, PLLC  
901 5th Ave Ste 3500  
Seattle, WA 98164-2059  
bepley@omwlaw.com

Nicholas Thomas  
Ogden Murphy Wallace PLLC  
901 5th Ave Ste 3500  
Seattle, WA 98164-2059  
nthomas@omwlaw.com

Lois Boome  
Attorney at Law  
3009 E Portland Ave  
Tacoma, WA 98404-4926  
Lois.Boome@PuyallupTribe-nsn.gov

Andrew Seth Fuller  
Ogden Murphy Wallace, P.L.L.C.  
901 5th Ave Ste 3500  
Seattle, WA 98164-2059  
afuller@omwlaw.com

Thomas R Wood  
Stoel Rives LLP  
760 SW 9th Ave Ste 3000  
Portland, OR 97205-2584  
tom.wood@stoel.com

Erin Lisa Anderson  
Van Ness Feldman, LLP  
719 2nd Ave Ste 1150  
Seattle, WA 98104-1700  
eanderson@vnf.com

Sara Anne Leverette  
Van Ness Feldman LLP  
719 2nd Ave Ste 1150  
Seattle, WA 98104-1700  
sal@vnf.com

Tadas A Kisielius  
Van Ness Feldman LLP  
719 2nd Ave Ste 1150  
Seattle, WA 98104-1700  
tak@vnf.com

Jennifer Elias  
Puget Sound Clean Air Agency  
1904 3rd Ave Ste 105  
Seattle, WA 98101-3317  
JenniferE@psccleanair.org

Jennifer A. Dold  
Puget Sound Clean Air Agency  
1904 3rd Ave Ste 105  
Seattle, WA 98101-3317  
jenniferd@psccleanair.org

CASE #: 55448-8-II

Advocates for a Cleaner Tacoma, et al., Petitioners v. Puget Sound Clean Air, Respondents

Counsel:

On the above date, this court entered the following notation ruling:

**A RULING BY COMMISSIONER SCHMIDT:**

The overlength reply is accepted for filing. The motion for injunctive relief is denied. Appellants have not shown a sufficient likelihood of success on the merits of their claim that the Order of Approval is ultra vires to warrant this court issuing an order under RAP 8.3 to compel the PCHB to issue a stay of the Order of Approval under RCW 43.21B.320. The superior court's order denying the stay is appealable to the extent permitting under chapter 34.05 RCW. RCW 43.21B.320(5). The motion to accelerate review is granted. The designation of clerk's papers and statement of arrangements are due within 20 days. The brief of Appellants is due within 30 days of the filing of the clerk's papers. The briefs of Respondents are due within 30 days of the filing of the Appellants' brief. Any reply brief is due 20 days from the filing of the Respondents' briefs. The appeal will be set for consideration as soon as feasible thereafter.

Very truly yours,



Derek M. Byrne  
Court Clerk



January 15, 2021

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

ADVOCATES FOR A CLEANER TACOMA;  
SIERRA CLUB; WASHINGTON ENVIRONMENTAL  
COUNCEL; WASHINGTON PHYSICIANS FOR  
SOCIAL RESPONSIBILITY; STAND.EARTH: and  
THE PUYALLUP TRIBE OF INDIANS, a  
federally recognized Indian Tribe,

Appellants,

v.

PUGET SHOULD CLEAN AIR AGENCY;  
PUGET SOUND ENERGY, INC.,

Respondents..

No. 55448-8-II

ORDER DENYING  
MOTION TO MODIFY

Appellants move to modify a commissioner's ruling dated December 8, 2020, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. SUTTON, WORSWICK, MAXA

**FOR THE COURT:**

  
\_\_\_\_\_  
SUTTON, A.C.J.

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

ADVOCATES FOR A CLEANER  
TACOMA, et al.,

Petitioners,

v.

PUGET SOUND CLEAN AIR  
AGENCY, et al.,

Respondents.

No. 99794-2

Court of Appeals No. 55448-8-II

**RULING DENYING MOTION TO  
TRANSFER REVIEW**

A coalition of appellants, including the Puyallup Tribe of Indians (collectively petitioners), seek transfer of review of a Thurston County Superior Court order denying petitioners' motions for summary judgment and injunctive relief from Division Two of the Court of Appeals to this court pursuant to RAP 4.4. For reasons explained below, direct review in this court is not justified; therefore, the motion to transfer review is denied.

Respondent Puget Sound Energy applied for permits required to build and operate a liquefied natural gas facility on land leased from the Port of Tacoma. The Puget Sound Clean Air Agency issued the permit at issue in December 2019, after public comment and a hearing. A little over a week later, petitioners appealed the permit administratively to the Pollution Control Hearings Board (PCHB).

In January 2020 petitioners moved in the PCHB for a stay of the permit, arguing among other things that they were likely to succeed on their claim that the plain language of former RCW 70.94.152(3)<sup>1</sup> required the agency's appointed board to sign the order approving the permit, and that allowing a staff engineer to sign the order rendered the order ultra vires and invalid.

In March 2020 the PCHB issued an order denying the stay, reasoning the highly technical and complex task of permit approval by board technical staff was permissible under former RCW 70.94.170<sup>2</sup> and the board's rules and regulations, and therefore petitioners failed to show a likelihood of success on the merits.

Two weeks later, petitioners, relying on RCW 43.21B.320, sought judicial review of the PCHB order denying a stay in the Thurston County Superior Court, seeking also expedited review, vacation of the board's order, and a stay pending resolution of petitioners' PCHB appeal. Then, in September 2020 petitioners filed a motion for summary judgment in the superior court.

In November 2020 the superior court denied petitioners' motion for summary judgment and its motion for expedited relief. Among other things, the court concluded that even if petitioners satisfied their prima facie burden for a stay, it was overcome by respondents' ability to show their likelihood of success on the merits. In reaching this conclusion, the court reasoned petitioners' ultra vires argument conflicted with the plain meaning of former RCW 70.94.170.

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<sup>1</sup> Now codified as RCW 70A.15.2210(3).

<sup>2</sup> That provision, now codified as RCW 70A.15.2300, states:

Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a full time control officer, whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution.

Petitioners promptly filed a notice of appeal in Division Two of the Court of Appeals. They also moved in the Court of Appeals for injunctive relief and accelerated review. Commissioner Eric Schmidt denied injunctive relief, reasoning that petitioners had not shown they were likely to succeed on the merits, but he granted the motion for accelerated review, stating that the case would be set on the earliest available hearing date. A panel of judges denied petitioners' motion to modify the commissioner's ruling, but petitioners did not seek discretionary review of that interlocutory decision. RAP 13.3(a)(2), (c), (e); RAP 13.5(a); RAP 17.7.

Meanwhile, proceedings continued on petitioners' appeal in the PCHB. In October 2020 the PCHB issued a letter indicating it was going to dismiss petitioners' ultra vires claim on the merits. It denied petitioners' second motion for a stay in February 2021. On March 26, 2021, the PCHB issued a decision and order dismissing the ultra vires claim and certain other claims but preserving certain remaining issues for further hearing and decision. That hearing was conducted, and a PCHB decision and order on the remaining issues is currently pending.

On May 20, 2021, petitioners moved to transfer to this court review of the superior court decision denying its motions for summary judgment and for expedited relief. Respondents oppose transfer. The opposing parties argued their respective positions at a videoconference hearing on June 17, 2021.

“The Supreme Court, to promote the orderly administration of justice may, on its own initiative, upon certification by the Court of Appeals, or on motion of a party, transfer a case from the Court of Appeals to the Supreme Court.” RAP 4.4. When deciding whether to transfer a pending appeal or motion for discretionary review from the Court of Appeals to this court, it is helpful to consider the direct review criteria listed under RAP 4.2(a). Petitioners specifically argue review in this court is justified

because the case involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” RAP 4.2(a)(4).<sup>3</sup>

The construction and operation of an LNG facility and its effect on the environment and the community, including the Puyallup Tribe, is an important issue generally, but I am not persuaded the more narrow issues presently before the Court of Appeals are so “fundamental and urgent” that they require immediate review and expedited determination in this court. The matter as presented in the Court of Appeals is largely interlocutory in nature, turning on the meaning of former RCW 70.94.152 and former RCW 7.94.170. In their motion to transfer review, petitioners do not even cite the latter statute, which is the foundation on which multiple decisions to deny a stay were grounded.<sup>4</sup>

Meanwhile, the administrative appeal on the merits of petitioners’ challenge to the permitting process has already been heard by the PCHB and a final decision and order is pending. Petitioners can still seek judicial review if they are aggrieved by that decision, which petitioners conceded at oral argument. To pull the instant appeal out of the Court of Appeals when there is still potential for judicial review of a final PCHB decision on the merits will not “promote the orderly administration of justice” for purposes of RAP 4.4, but will more likely add a layer of confusion to an already complex case.

It is useful to note also that the Court of Appeals is an error correcting court, and Division Two regularly decides complex administrative law cases. If the Court of Appeals was concerned that this largely interlocutory matter implicates issues worthy

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<sup>3</sup> Respondent faults petitioners for citing RAP 4.2(a) since petitioner did not seek direct review in this court. Respondent has a point, but nonetheless it is appropriate to consider RAP 4.2(a) factors when determining whether review should be transferred.

<sup>4</sup> Petitioners express unhappiness that despite granting their motion for accelerated review, the Court of Appeals has not yet heard argument on their case. This is not the place to second guess how that court manages its docket. The delay in hearing argument is not a basis for transferring this matter.

of this court's consideration in the first instance, it would have certified it for transfer to this court. *See* RCW 2.06.030; RAP 4.4; *Turner, et al. v. Dep't of Soc. & Health Servs., et al.*, No. 99243-6 (direct appeal accepted for transfer after certification by Court of Appeals). It did not.

In sum, although administrative approval of an LNG project is an important matter generally, and the Puyallup Tribe's strongly stated concerns about the project are noted, this primarily interlocutory case is appropriate for resolution in the Court of Appeals in the first instance. The resulting decision in that court may further clarify the issues in the event any of the parties seek further review in this court.

The motion to transfer review is denied.

A handwritten signature in black ink that reads "Michael E. Johnston". The signature is written in a cursive style with a horizontal line underneath the name.

COMMISSIONER

June 22, 2021

the operation of the remainder of this 1967 amendatory act in its application to the agencies concerned.

**Severability.**

Sec. 27. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected.

**Repeal.**

Sec. 28. The following acts and parts of acts are each hereby repealed:

(1) (a) Sections .02.07, .03.08, .04.08, .04.10, .04.11, .04.12, .04.13, .04.15 and .17.58, chapter 79, Laws of 1947; and

(b) Section 16, chapter 197, Laws of 1961.

(2) RCW 48.02.070, 48.03.080, 48.04.080, 48.04.100, 48.04.110, 48.04.120, 48.04.130, 48.04.150, 48.17.580 and 48.44.190.

**Effective date.**

Sec. 29. This act shall take effect on July 1, 1967.

Passed the Senate March 9, 1967.

Passed the House March 8, 1967.

Approved by the Governor March 21, 1967.

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## CHAPTER 238.

[Substitute Senate Bill No. 46.]

### WASHINGTON CLEAN AIR ACT.

AN ACT relating to air pollution; amending section 3, chapter 232, Laws of 1957 and RCW 70.94.030; amending section 4, chapter 232, Laws of 1957 and RCW 70.94.040; amending section 7, chapter 232, Laws of 1957 and RCW 70.94.070; amending section 10, chapter 232, Laws of 1957 and RCW 70.94.100; amending section 11, chapter 232, Laws of 1957, as amended by section 1, chapter 27, Laws of 1963 and RCW 70.94.110; amending section 12, chapter 232, Laws of 1957 and RCW 70.94.120; amending section 13, chapter 232, Laws of 1957 and RCW 70.94.130; amending section 17, chapter 232, Laws of 1957 and RCW 70.94.170; amending section 20, chapter 232, Laws of 1957 and RCW 70.94.200; amending section 23, chapter 232, Laws of 1957 and RCW 70.94.230; amending section 24,

chapter 232, Laws of 1957 and RCW 70.94.240; amending section 25, chapter 232, Laws of 1957 and RCW 70.94.250; amending section 26, chapter 232, Laws of 1957 and RCW 70.94.260; amending section 1, chapter 188, Laws of 1961 and RCW 70.94.300; amending section 6, chapter 188, Laws of 1961 and RCW 70.94.350; amending section 8, chapter 188, Laws of 1961 and RCW 70.94.370; adding new sections to chapter 232, Laws of 1957, and to chapter 70.94 RCW; repealing section 1, chapter 232, Laws of 1957 and RCW 70.94.010; repealing section 2, chapter 232, Laws of 1957 and RCW 70.94.020; repealing section 6, chapter 232, Laws of 1957 and RCW 70.94.060; repealing section 3, chapter 27, Laws of 1963 and RCW 70.94.065; repealing section 8, chapter 232, Laws of 1957 and RCW 70.94.080; repealing section 9, chapter 232, Laws of 1957 and RCW 70.94.090; repealing section 14, chapter 232, Laws of 1957 and RCW 70.94.140; repealing section 15, chapter 232, Laws of 1957 and RCW 70.94.150; repealing section 16, chapter 232, Laws of 1957, as amended by section 2, chapter 27, Laws of 1963, and RCW 70.94.160; repealing section 18, chapter 232, Laws of 1957 and RCW 70.94.180; repealing section 19, chapter 232, Laws of 1957 and RCW 70.94.190; repealing section 21, chapter 232, Laws of 1957 and RCW 70.94.210; repealing section 22, chapter 232, Laws of 1957 and RCW 70.94.220; repealing section 4, chapter 188, Laws of 1961 and RCW 70.94.330; repealing section 7, chapter 188, Laws of 1961 and RCW 70.94.360; repealing section 9, chapter 188, Laws of 1961 and RCW 70.94.500; repealing section 27, chapter 232, Laws of 1957 and RCW 70.94.900; repealing section 10, chapter 188, Laws of 1961 and RCW 70.94.910; defining crimes; and prescribing penalties.

*Be it enacted by the Legislature of the State of Washington:*

Section 1. There is added to chapter 232, Laws of 1957 and to chapter 70.94 RCW a new section to read as follows:

It is hereby declared to be the public policy of the state to secure and maintain such levels of air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and facilitate the enjoyment of the natural attrac-

New section.

Washington  
Clean Air Act  
—Declaration  
of public  
policy.



Washington  
Clean Air Act.

board shall preclude a further registration with any other governing body or board or the state board.

New section.

Sec. 29. There is added to chapter 232, Laws of 1957 and to chapter 70.94 RCW a new section to read as follows:

Notice of new  
contaminant  
sources—Sub-  
mission of  
plans—Ems-  
sion control.

(1) The state board or the governing body or board of any authority or regional authority may require notice of the construction, installation or establishment of new air contaminant sources specified by class or classes in its ordinances, resolutions, rules or regulations relating to air pollution. The state board or the governing body or board may require such notice to be accompanied by a fee and determine the amount of such fee for such class or classes: *Provided*, That the amount of the fee may not exceed the cost of reviewing the plans, specifications and other information and administering such notice: *Provided further*, That any such notice given to either the governing body or board or to the state board shall preclude a further notice to be given to any other governing body or board or to the state board. Within thirty days of its receipt of such notice, the state board or the governing body or board may require, as a condition precedent to the construction, installation or establishment of the air contaminant source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accord with applicable rules and regulations in force pursuant to this chapter. If within thirty days of the receipt of plans, specifications or other information required pursuant to this section the state board or the governing body or board determines that the proposed construction, installation or establishment will not be in accord with this chapter or the applicable ordi-

nances, resolutions, rules and regulations adopted pursuant thereto, it shall issue an order for the prevention of the construction, installation or establishment of the air contaminant source or sources. Failure of such order to issue within the time prescribed herein shall be deemed a determination that the construction, installation or establishment may proceed: *Provided*, That it is in accordance with the plans, specifications or other information, if any, required to be submitted.

(2) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation or establishment of a new air contaminant source.

(3) Nothing in this section shall be construed to authorize the state board or the governing body or board to require the use of emission control equipment or other equipment, machinery or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(4) Any features, machines and devices constituting parts of or called for by plans, specifications or other information submitted pursuant to subsection (1) hereof shall be maintained in good working order.

(5) The absence of an ordinance, resolution, rule or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his obligation to comply with any emission control requirements or with any other provision of law.

Sec. 30. Section 17, chapter 232, Laws of 1957 and RCW 70.94.170 are each amended to read as follows:

RCW 70.94.170  
amended.

Any city, town, county, activated authority or activated regional authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of

Control officer.

Washington  
Clean Air Act.

air pollution shall appoint a control officer, who shall observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such city, town, county activated authority or activated regional authority pertaining to the control and prevention of air pollution.

New section.

Sec. 31. There is added to chapter 232, Laws of 1957, and to chapter 70.94 RCW a new section to read as follows:

Variations—  
Limitations—  
Renewals—  
Review.

(1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the state board where it has regulatory authority under sections 52, 53, 56 and 58 of this 1967 amendatory act, or the governing body or board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the state board or the governing body or board may require. The state board or the governing body or board may grant such variance, but only after public hearing or due notice, if it finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the state board or governing body or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) and for time periods and under conditions consistent

# PUGET SOUND CLEAN AIR AGENCY

April 22, 2024 - 2:09 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,893-8  
**Appellate Court Case Title:** Advocates for a Cleaner Tacoma et al. v. Puget Sound Clean Air et al.  
**Superior Court Case Number:** 21-2-08733-9

### The following documents have been uploaded:

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**Filing on Behalf of:** Jennifer A. Dold - Email: jenniferd@psccleanair.org (Alternate Email: CharlotteA@psccleanair.gov)

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