

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/24/2024 2:24 PM  
BY ERIN L. LENNON  
CLERK

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 PUYALLUP TRIBE  
OF INDIANS' PETITION FOR REVIEW**

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## I. INTRODUCTION

Petitioner Puyallup Tribe of Indians (“Tribe”) fails to meet this Court’s RAP 13.4(b) criteria and its petition should be denied. The Tribe’s petition requests this Court to accept legally and factually erroneous assertions regarding Respondent Puget Sound Clean Air Agency’s (“Agency”) highly technical and well-reasoned air permitting decision called a Notice of Construction Order of Approval (“NOC” “OOA”) issued to Respondent Puget Sound Energy (“PSE”).<sup>1</sup> The Tribe contends, without textual basis in the Washington Clean Air Act, RCW 70A.15 (“CAA”)<sup>2</sup> or support in the record below, that the Court of Appeals (“COA”) erred in affirming the Pollution Control Hearings Board’s (“PCHB”) upholding of a technical analysis prepared by the Agency and included in the OOA applying the CAA’s Best Available Control Technology (“BACT”) standard to PSE’s proposed emission units.

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<sup>1</sup> The Agency incorporates by reference PSE’s opposition to the Tribe’s petition.

<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 and PCHB decisions cited herein refer to RCW 70.94. Appendix PSCAA-1 contains cross-references to CAA provisions cited herein. Citation to pages in the COA’s December 26, 2023 Opinion are from Tribe Appendix (“A-...”).

The Tribe is incorrect on all counts. The Agency exercised its technical expertise and discretion and applied the requirements of BACT consistent with the provisions of the CAA; then the PCHB and C●A applied the well-established, basic rules of appellate review and rejected the Tribe's assertions. The Tribe further attempts to generate a RAP 13.4(b) "conflict" through an assertion that the C●A created new "doctrines" under the CAA. But the C●A did not create some sort of extra-judicial doctrines: it simply carefully considered and rejected the Tribe's assertions. Because mere assertions as to how one party wishes the CAA should work in a particular case does not create an issue of substantial public interest and because no conflict with this Court's precedent exists, this Court should deny the Tribe's petition.

## **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. Where a local air authority exists, it "shall carry out the duties and exercise the powers provided in" the CAA, RCW 70A.15.1500, and has exclusive authority to implement the CAA in its jurisdiction, RCW 70A.15.2540. ●ne

of these duties is the issuance of permits, called NOC orders, for the construction or modification of a stationary source that creates, or increases, the amount of air contaminants emitted by a source. 70A.15.2210(1),(3), 70A.15.1030(17); Administrative Record (“AR”) 27289, 27418-27439 (Agency NOC regulations). The Agency’s NOC regulations, and Ecology NOC regulations from WAC 173-400 adopted therein, are included in Washington’s State Implementation Plan approved by 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, fn. 3 (9th Cir. 1994).

B. 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 located in its 4-county region. These sources range from smaller sources like gas stations to larger, complex sources like regional sewage treatment plants. AR 3144. In regulating the 3000-plus sources, the Agency routinely regulates hundreds of different types of: air contaminants and emission units (processes and equipment). AR 3145, 27494-96.

The Agency employs highly trained engineers to implement its NOC duties. AR 3144-46. The Agency issues approximately 180 NOC orders a year. *Id.* NOC applications can be hundreds

of pages long and can contain multiple, varied emission units with separate or integrated emission controls and complex emission calculations and air modeling. *Id.*

For every NOC application, Agency engineers review an applicant's submissions, applicable SEPA documents, and technical information related to the proposed equipment or processes. *Id.*, RCW 70A.15.2210(3). As part of NOC review, Agency engineers review an applicant's proposed emission units and identify what air contaminants may be emitted and what emission control technologies apply. *Id.* Specifically, Agency engineers must confirm BACT will be employed on applicable emission units<sup>3</sup> and that applicable Agency, state, and federal regulations and all federal air quality standards will be met. *Id.*; RCW 70A.15.2210(3), (10). BACT is expressed as "an emission limitation" determined on a "case-by-case basis." RCW 70A.15.1030(6); WAC 173-400-030(13). As part of BACT review for submitted NOC applications, Agency engineers annually review thousands of types of emission units. AR 3146.

If after final review and determination by an Agency professional engineer ("P.E.") that a NOC is approvable, an

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<sup>3</sup> Not all emission units must meet BACT: if an emission unit is "exempt," such as because it is small (*de minimis*), that unit may still be approved but BACT is not necessary. RCW 70A.15.2210(11)-(12); Agency Reg. I, § 6.03(c) (AR-27424-27436); RP 1846.

OOA is issued. *Id*; 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 . . . .”) If a NOC is not approvable, for example where an emission unit cannot satisfy BACT, an Order to Prevent Construction is issued. RCW 70A.15.2210(3).<sup>4</sup>

C. PSE’s NOC Application and the Agency’s BACT review for the proposed, non-exempt emission units.

PSE’s stated project purpose for its Tacoma facility is to produce liquefied natural gas (“LNG”) for use: as a maritime fuel for TOTE vessels; some peak-shaving needs; and some trucks or barges for regional markets. AR 22224-25. Waste gases will be sent to an on-site flare. AR 24171.

After conducting applicable SEPA process,<sup>5</sup> the Agency resumed review of PSE’s NOC application: reviewing application materials; conducting necessary BACT analyses; and analyzing applicable Agency, state and federal requirements.

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<sup>4</sup> See e.g. *Bernardo’s Aroma Rosteria v. PSCAA*, WL 1944718 (PCHB Aug. 27, 2004) at II, VII-VIII, XXVIII, XXXI and Order (PCHB upheld Agency’s Order to Prevent Construction where a source refused to install add-on control technology (an afterburner) to an emission unit (a roaster) where Agency determined the afterburner was BACT.)

<sup>5</sup> As part of this case, the PCHB and COA affirmed in full the Agency’s SEPA documents and process in this case. No petition related to SEPA was filed with this Court.

AR 3151-52. Contrary to the Tribe's assertions, all of PSE's proposed emission units (equipment and processes), including the flare, were common and familiar to the Agency's engineers. RP 1242-43, 1882-86, 2315-17, 2364-68. Following its regular practice, the Agency prepared a draft NOC ●●A and supporting engineering worksheet for public comment. AR 3151-52. The Draft ●●A 11386 included BACT emission limits for all non-exempt emissions units (vaporizer, flare, and fugitive emissions) and a condition requiring PSE's operations to be consistent with applicable SEPA documents. AR 22505-512 (Conditions 1, 5, 7-9, 12-20, 31-32, 41-42). The worksheet supporting the draft ●●A contained 20-plus pages of BACT analysis; demonstrated the Agency considered BACT limits identified or established previously by the Agency, Ecology, EPA and other air agencies; and determined that no criteria pollutants or toxic or hazardous air pollutants ("TAPs"/"HAPs") would exceed any applicable limit. AR 22522-543, 22563-69.

Specifically, the Agency determined BACT for the flare, setting emission limits for volatile organic compounds ("VOCs") (including a 99% destruction efficiency rate ("DRE")); sulfur dioxide ("SO<sub>2</sub>"); nitrogen oxides ("NO<sub>x</sub>"); carbon monoxide ("CO"); and particulate matter ("PM"). AR 22540. These BACT limits were consistent with many examples of BACT for combustion devices. AR 22527-32; 22540-41. For fugitive

emissions, BACT required use of a leak detection and repair (“LDAR”) program based on requirements from EPA and other agencies. AR 22532-43.

The Agency received thousands of comments on the draft NOC OOA and supporting worksheet. AR 22737. The Tribe submitted a comment letter but did not mention the two alternatives to the Agency’s BACT analysis it now raises: use of no flare at all (waste gas recovery, meaning trucking or piping waste gas off-site) and leakless/sealless components to reduce fugitive emissions. AR 1972-2066 (Tribe comment letter). The Tribe raised these two alternatives for the first time before the PCHB.<sup>6</sup>

The Agency issued the final OOA 11386 and supporting worksheet in December 2019; they contained the Agency’s final BACT conditions and analysis for the flare and fugitive emissions. AR 24170-78, 22834-55.<sup>7</sup>

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<sup>6</sup> The Tribe criticizes the Agency for not considering the Tribe’s BACT alternatives that the Tribe never raised to the Agency before OOA 11386 was issued. Petition at 9-10, 35. This Court has been reluctant to criticize or second guess a government entity for failing to consider arguments not presented to it in a timely manner. *King County v. WSBRB*, 122 Wn.2d 648, 668-71 (1993).

<sup>7</sup> See also AR 21265 (Table summarizing OOA 11386’s BACT determinations and related conditions); RP 2317-18, 1846-48, 1899-1904, 1936-46, 2365-69 (testimony explaining BACT

D. The PCHB's Final Order Addressing BACT.

In April 2021, the PCHB conducted its 5-day evidentiary hearing on NOC-related issues. AR 15712-14. Agency Director of Compliance Steven Van Slyke (a P.E.) and two Agency engineers, Carole Cenci (a P.E.) and Ralph Munoz, testified. AR 15719-20. The PCHB's review is *de novo*, WAC 371-08-485, which allows parties "to present all relevant evidence for the [PCHB] to make a decision" and "additional information gathered after the issuance of the Order . . . can be offered for the [PCHB's] consideration." *Port of Seattle v. PCHB*, 151 Wn.2d 568, 597 (2004); *BNSF v. Ecology*, WL 6737205 (PCHB Dec. 4, 2012) at 11. The Tribe had the burden of proof before the PCHB. WAC 371-08-485(3); *MYTAPN v. Ecology*, WL 3577478 (PCHB July 25, 2012) at 11. PCHB findings are based on a preponderance of the evidence. WAC 371-08-485(2).

The PCHB subsequently issued two final orders: a 99-page Findings of Fact, Conclusions of Law and Order on NOC Issues (AR 15712-15810) and an 81-page order on SEPA Issues (AR 15631-15711). The PCHB affirmed OOA 11386 with one addition, requiring a continuous emission monitor on the flare, AR 15810, and rejected all of the Tribe's BACT arguments: "While the Tribe would have preferred other BACT, [the  

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analysis and Agency's BACT-related experience); AR 22912-24106 (BACT exhibits).

Agency] considered reasonable alternatives, and the Board finds both the BACT and tBACT analysis and conditions sufficient” and “[t]he Board defers to [the Agency’s] engineering judgment and expertise in making this BACT determination and concludes [the Agency’s] BACT determination is reasonable.” AR 15800-01.

On all evidentiary-based issues before the COA and this Court, the PCHB expressly ruled that the Agency’s and PSE’s witnesses and evidence were more credible and persuasive than the Tribe’s witnesses and evidence. AR 15732, 15744, 15776, 15800. Before this Court, the PCHB is entitled to deference in all evidentiary determinations. *Port of Seattle, supra* at 594.

E. The COA’s Opinion Addressing BACT.

In an unpublished portion of its December 26, 2023 Opinion, the COA upheld in full the PCHB’s order upholding the Agency’s BACT analysis. The COA considered the CAA’s NOC and BACT provisions; held the Agency “considered its past BACT determinations, other Agency BACT determinations, and information submitted by PSE and its vendors in the NOC application;” and held BACT for the flare was reasonably determined to be 99% DRE and good combustion practices and BACT for fugitive emissions reasonably was a LDAR program. A-28-29, 32-33, 73-75, 79-83, 85-89. The COA also ruled that

the PCHB appropriately deferred to the Agency's expertise. A-73, 87-89.

Specific to the Tribe's petition, the COA identified and discussed key CAA provisions: RCW 70A.15.2210(10); 70A.15.1030(6) and (12); WAC 173-400-030(29); and considered guidance from EPA and Ecology and past PCHB BACT decisions. A-74-76. Based on a straightforward review of the above authorities, among others, the COA considered, but rejected, the Tribe's assertions the CAA's BACT requirement should be applied to a proposed facility, rather than a facility's emission units, such that the Agency was not required or authorized to re-design an application that meets the requirements of the CAA: "Based on the plain language of the statute and regulations, it is clear that if a proposed project meets the requirements, regardless of how the agency or another party might have designed its own facility, the agency has no choice but to issue an order of approval. Conversely, if the proposed project does not meet the requirements, the NOC application must be denied. There is nothing in the applicable statutory or regulatory scheme that authorizes or requires PSCAA to condition a project approval on major design changes when all criteria are met; indeed, it would necessitate an entirely new NOC application on the part of the applicant. Therefore, we hold that the PCHB did not erroneously interpret the law when it

stated that BACT and PSCAA's NOC permit review does not authorize or require re-design of a project." A-78-79.

The COA also reviewed the PCHB's consideration of the two BACT alternatives presented in the Tribe's petition: no flare at all (waste gas recovery) and leakless/sealless components for fugitive emissions. Regarding the Tribe's no flare idea, the COA considered all the evidence presented to the PCHB; noted the Tribe's argument ignored the full statutory definition of BACT and that the Tribe had conceded "there is no specific, legally-required methodology" for BACT determinations; and ruled: "The records shows that PSCAA considered the flare as an emissions unit, reviewed and compared BACT determinations made by other agencies for other facilities with flares, and based on its review, made BACT recommendations for the flare that were incorporated in the conditions in the NOC Order of Approval. Based on these facts, we hold that PSCAA did not err when it did not consider waste gas recovery and that PSCAA's BACT determination complied with statutory and regulatory requirements. Accordingly, the PCHB did not err when it affirmed PSCAA's BACT analysis as it pertained to the flare." A-79-83.

Regarding leakless/sealless components, the COA noted that the Tribe mis-cited case law in support of its argument and ruled that the PCHB's determination that the Agency's LDAR

program was BACT for fugitive emissions was supported by substantial evidence and properly given deference to the Agency's engineering judgment and technical expertise. A-85-87.

The Tribe moved for reconsideration and publication of the C●A's BACT opinion. The C●A rejected both requests.

### III. ARGUMENT

#### A. Applicable Burdens of Proof and Standards of Review Related to the Tribe's BACT Assertions.

Although the Tribe's petition fails to even mention the Washington Administrative Procedure Act, RCW 34.05 ("APA"), this Court reviews PCHB orders under the APA. *Port of Seattle, supra* at 588. Under the APA, the burden of demonstrating the invalidity of agency action rests with the Tribe. *Id.*; RCW 34.05.570(1)(a); *Wild Fish Conservancy v. WADFW*, 198 Wn.2d 846, 866 (2022). This Court reviews the Agency's action at the time the action was taken, RCW 34.05.570(1)(b); review of the facts is confined to the record before the PCHB, RCW 34.05.558; and this Court does not "undertake to exercise the discretion that the legislature has placed in the agency," RCW 34.05.574(1).

To prevail before the C●A, the Tribe had to demonstrate it was entitled to relief under one of the provisions in RCW

34.05.570(3). In reviewing challenged findings under the RCW 34.05.570(3)(e) substantial evidence standard, the Court “neither weigh[s] credibility nor substitute[s] [its] judgment for that of the agency” and “accord[s] substantial deference to agency decisions.” *Brighton v. WSDOT*, 109 Wn. App. 855, 862 (2001). Simply identifying contradictory evidence asks the Court to reweigh evidence and determine credibility, “which this Court will not do” under the substantial evidence standard. *Brooks v. Northwest Clean Air Agency (“NWCAA”)*, 14 Wn. App. 2d 1, 13 (2019). “[I]f there is room for two opinions, a court will not find arbitrary and capricious action even if the reviewing court believes the agency’s decision is wrong.” *Conservation NW v. Commissioner of Public Lands*, 199 Wn.2d 813, 834-35 (2022) (Court upheld agency under the APA where agency action was a “defensible exercise of discretion.”) Finally, an appeal cannot be granted simply because an appellant strongly opposes a project. *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805 (1990).

Before this Court and as the PCHB correctly noted,<sup>8</sup> the Agency is entitled to deference “with regard to its technical judgment, especially when they involve complex scientific issues;” in its interpretation (as an air authority) of the CAA and

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<sup>8</sup> AR 15731-32, 15750, 15779, 15792, 15800.

its implementing regulations; in its methodology choices; and in its emissions calculations and analysis. *PT Air Watchers v. Ecology*, 179 Wn.2d 919, 925, 929-30 (2014); *Ecology v. Tiger Oil Co.*, 166 Wn. App. 720, 757 (2012); and *Port of Seattle, supra* at 584, 593-95, 600 (Court “loath to override the judgment of both” [PCHB and Ecology], “whose combined expertise merits substantial deference”).

Indeed, evidence before the PCHB demonstrated the Agency’s extensive experience and expertise in: identifying and calculating air emissions including from the equipment and processes in this case; determining BACT; and establishing NOC conditions. AR 21252-59, 1844-48, 1863, 1882-86, 2315-17, 2364-68. The PCHB also has experience with reviewing BACT determinations. *See e.g. Mazdak v. NWCAA*, WL 5676900 (PCHB October 8, 2013) at 2-7 (NWCAA’s exercise of engineering judgment in determining BACT upheld); *MYTAPN v. Ecology*, WL 5906922 (PCHB November 15, 2012) at 7-9 (Ecology BACT determinations reviewed and upheld).

- B. The COA correctly rejected the Tribe’s disagreements with the Agency’s BACT determinations based upon a plain reading of the CAA’s requirements.

Where applicable NOC requirements are met, an COA “shall” be issued. RCW 70A.15.2210(3). Ecology WAC 173-400-113 (adopted by reference in Agency Regulation I, § 6.01)

states: a “permitting authority that is reviewing an application to establish a new source or modification... shall issue an order of approval if it determines that the proposed project satisfies” three requirements: (1) compliance with all applicable new source and emission standards; (2) employment of BACT for all emitted pollutants; and (3) allowable emissions will not cause or contribute to a violation of any national ambient air quality standard. RP 1828-30. If a NOC application does not meet (1)–(3) above, it “shall” be denied. RCW 70A.15.2210(3).

1. The Tribe’s Petition does not support review by this Court under RAP 13.4(b).

Essentially the Tribe’s petition presents five arguments (summarized on pages 13-14): the COA erroneously created two “new doctrines” under the Washington CAA (arguments (1) and (2)); the COA erroneously shifted the burden of proof to the Tribe (argument (4)); and the Tribe disagrees with the way the COA and PCHB upheld the Agency’s BACT determinations (arguments (3) and (5)). None of these arguments are accurate or persuasive and none support review under RAP 13.4(b).

2. The Tribe’s “new doctrine” assertions have no merit and mischaracterize the COA’s opinion (Tribe Arguments 1-2).

In Washington, BACT applies to a new “source,” which is in turn defined as “emission units” including fugitive emissions.

RCW 70A.15.2210(10) (NOC approval “shall include a determination that the new source will achieve [BACT].”) BACT “means an emission limitation based on the maximum degree of reduction for each air pollutant... emitted from...any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques...” RCW 70A.15.1030(6). "Source" means **all of the emissions units including quantifiable fugitive emissions**, that are located on one or more contiguous or adjacent properties, and are under the control of the same person... whose activities are ancillary to the production of a single product or functionally related group of products. RCW 70A.15.1030(22) (emphasis supplied).

The Agency followed its regular practice in determining BACT here, using its technical experience and professional judgment to apply the CAA’s definition of BACT to PSE’s proposed non-exempt emission units. RP 1830-32, 1846-50, 2473, AR 22834-55. As the COA correctly held, the Agency’s interpretation of CAA requirements is “accorded great weight.” A-89.

The Agency’s consistent application of BACT to “emission units” also is seen in the record. *See e.g.* AR 24170-78 (●●A 11386 conditions organized around emission units (BACT identified for “LNG vaporizer,” then “Enclosed Ground Flare,” then “Fugitive Emission Leaks”)); AR 22834-55 (same); AR 24065-68, 24138-44 (BACT organized around emission units in ●●As issued in 2016 and 2020). The PCHB stated BACT applies to emission units, AR 15795, and the C●A noted at A-82 that the EPA and Ecology’s guidance documents recognize that BACT applies to “emission units.”

Indeed, the Tribe’s petition gets this issue fundamentally wrong. ●ne, the Tribe admits there is no one required way for the Agency to determine BACT. Tribe’s C●A ●pen Brf. (June 16, 2022) at 48 (“...there is no specific, legally-required methodology for making [a BACT]...determination”). This admission is dispositive. The Agency is entitled to deference in methodology choice, *Tiger Oil, supra*, and the Tribe’s preference that a technical, fact-specific BACT analysis be conducted in a different way or reach a different result is simply insufficient to provide grounds for this Court’s review.

Two, the Tribe’s petition ignores the definition of “source” in RCW 70A.15.1030(22) all together. This failure severely undercuts the Tribe’s attempts at interpretation and certainly

does not support its contention that the COA erred in upholding the PCHB's and Agency's application of the CAA.

It also is unquestionably clear the COA did not create any new "doctrines" in its rejection of the Tribe's faulty interpretations of the CAA. When the Tribe's claim that BACT required the Agency to redesign PSE's facility, *i.e.* its assertion that BACT required the Agency to consider elimination of the flare and require gas to be shipped off-site, was raised for the first time at the PCHB, the Agency Director of Compliance explained that BACT review looks at proposed emission units and while BACT may require re-design of an emission unit, BACT does not authorize (or require) the Agency to redesign PSE's facility. RP 1846, 1944-46 ("[I]f the BACT determination says you need a better burner, that will be part of the review. But to redesign the process and tell somebody they need to collect a stream and find a use for it that is not identified, it's not consistent with the project proposal in front of us.").

This explanation is consistent with the CAA's definition of "source" as noted above and with RCW 70A.15.221(3) which states that if on the basis of proposed plans, specifications and other information, a new source is not in accord with the CAA, an agency "shall" deny approval and if a new source is in accord; an order of approval "shall" be issued. The explanation also is consistent with the CAA's prohibition that an "air authority" may

not “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.” RCW 70A.15.1030(12), 70A.15.2210(6); RP 1849-50 (specific vendor information cannot dictate BACT).

Thus, it is clear that the C●A did not adopt new doctrines undermining the Washington CAA as the Tribe suggests. Instead, the C●A considered the CAA’s provisions and determined, based on the record, that the Tribe’s alternatives raised for the first time at the PCHB were not reasonable and the Tribe’s attempt to support them based on a federal doctrine (that the Tribe admits in its petition, fn. 20, does not apply) did not support reversal of the PCHB. A-76-87. Rejecting the Tribe’s attempt to raise an inapplicable federal doctrine does not amount to the C●A creating new extra-judicial doctrine(s).

At 16, the Tribe cites *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801 (1992) claiming that the C●A inappropriately created an exception to BACT based on testimony from one Agency employee. But where an agency is applying statutory definitions, it is not applying a new “standard” offered only for purposes of litigation and *Cowiche Canyon* does not apply. *Port v. Sacks*, 19 Wn. App. 2d, 295, 310-12 (2021) (*Cowiche Canyon* held inapplicable where agency’s interpretation was consistent with statutory definition and agency

practice); *Friends of Columbia Gorge v. WSFPAB*, 129 Wn. App. 35, 47 (2005) (“statutory definitions control wherever they appear.”) Here, the Agency’s testimony explained the Agency’s long-standing practice of applying BACT to non-exempt emission units consistent with the CAA’s express definitions and provisions; thus, *Cowiche Canyon* neither applies nor supports further review under RAP 13.4(b).

*Bernardo’s*, a PCHB decision, also does not support the Tribe’s petition. It did not, as claimed by the Tribe at 24, involve the Agency redesigning a facility via BACT, but was a case where the source refused to employ BACT on an emission unit. See fn. 4 above. The PCHB in *Bernardo’s* properly upheld the Agency’s Order to Prevent Construction which was the Agency’s proper course: to deny the NOC because BACT was not met for the emission unit. *Id.*

The Tribe’s citation to *Brooks, supra*, also does not create a conflict with precedent. *Brooks* did not involve RCW 70A.15.2210, but another CAA provision, RCW 70A.15.2220, which regulates the replacement of existing control equipment, not issuance of a NOC order. 14 Wn. App. 2d at 3. *Brooks* did not address the CAA’s definition of BACT and the term involved

in *Brooks*, “emission control technology,” is not defined in the CAA. *Id* at 9.<sup>9</sup>

Moreover, none of the federal and non-Washington cases cited by the Tribe at 20-23 support its “redesign” arguments or create a conflict with precedent. *Sierra Club v. EPA*, 499 F.3d 653 (7<sup>th</sup> Cir. 2007); *Helping Hand Tools v. EPA*, 848 F.3d 1185 (9<sup>th</sup> Cir. 2016); and *Friends of Buckingham v. State Air Poll. Cont. Brd.*, 947 F.3d 68 (4<sup>th</sup> Cir. 2020) do not involve Washington law, thus, are inapplicable and do not support review under RAP 13.4(b).

3. The COA (and PCHB) properly rejected the Tribe’s BACT assertions based on the fact-specific record before it and properly applied APA burdens of proof (Tribe Arguments 3-5).

The Tribe asserts the Agency’s BACT analysis for the flare should have considered no flare at all (waste gas recovery) and “leakless/sealless” components for fugitive emissions and questions the flare’s 99% DRE BACT requirement. Petition at

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<sup>9</sup> *Brooks* noted at 12 that it was appropriate to accept the testimony of NWCAA’s engineer as to the meaning of “replace” in RCW 70A.15.2220: “Brooks first contends that this finding was not supported by substantial evidence because the PCHB based it on a single statement.... This does not matter. Brooks cites no authority for the proposition that one witness’s testimony is insufficient to support a finding of fact.”

4, 28, 34-35. The Tribe's petition also erroneously asserts the COA shifted the burden of proof to it.

These arguments do not support review under RAP 13.4(b). Regarding BACT for the flare, the Tribe failed to raise its alternative before OOA 11386 was issued by the Agency but then had the full opportunity to present it in the PCHB's *de novo* proceeding. Additionally, the Agency and PSE addressed all of the Tribe's criticisms demonstrating to the PCHB that: the 99% DRE limit was a recognized and achievable BACT limit for combustion devices (including a flare like PSE's); the Agency's BACT analysis was thorough and reasonable; and the Tribe's alternative was not BACT. RP 1523-25, 1936-40, 1971, 1982; AR 26195-200.<sup>10</sup> The COA (and PCHB) concluded that the Tribe did not meet its properly ascribed burden and merely continuing to disagree with the Agency's BACT determination neither supports the Tribe's claim that it did not properly have the burden of proof under the APA, nor satisfies any criteria under RAP 13.4(b).

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<sup>10</sup> The Tribe's claim at 30-31 that BACT was met by an internal PSE analysis not shared with the Agency holds no water. As described above, the Tribe did not raise its "no flare" concept until the PCHB proceeding and the PCHB (and the COA) upheld the Agency's BACT analyses based on the full record developed before the PCHB in its evidentiary proceeding.

Regarding BACT for fugitive emissions, again, the Tribe did not raise this idea before issuance of OOA 11386 but had full opportunity before the PCHB to support its assertion that “leakless/sealless” components are available as BACT.<sup>11</sup> Engineer Stobart, with decades of experience with LNG facilities, testified before the PCHB he had never seen leakless/sealless components used for LNG production or cryogenic valves. RP 2045-46. Both the COA (and PCHB) accepted this evidence and the Tribe’s continued disagreement does not mean the COA erroneously shifted any burdens nor meets any RAP 13.4(b) criteria.<sup>12</sup>

Non-Washington cases do not help the Tribe’s petition either as they are inapplicable and create no conflict with precedent. *Covington v. Great Basin Unified Air Pollution Control District*, 43 Cal.App.5th 867 (2019), does not stand for the premise that leakless/sealless components are BACT for fugitive emissions.

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<sup>11</sup> The Tribe also mentions TAPS at 3, 4 and 34. But as the COA affirmed (A-29-30, 87-88), TAPs were reviewed by the Agency and none were identified as being emitted in amounts anywhere near applicable limits. AR 22860-61, 22875-79, 22744, 22762, 22764-65.

<sup>12</sup> At 35-36, the Tribe incompletely cites testimony from the Agency explaining that a leak limit from Santa Barbara, California was not necessarily a BACT limit but could be a LAER (Lowest Achievable Emission Rate) limit. RP 1362-63. LAER is a technology standard more stringent than BACT and not applicable to PSE’s application. RCW 70A.15.1030(14).

*Covington* did not involve an air permit or BACT but ruled that under the California Environmental Quality Act that where an alternative use of leakless/sealless pumps at a geothermal facility was raised in comments on a draft environmental impact report (“EIR”), that alternative should have addressed in the Final EIR.

In *Utah Chapter of Sierra Club v. Air Quality Bd.*, 226 P.3d 719 (2009), a Utah court determined, based on the record before it, that an “Integrated Gasification Combine Cycle” process was “available” and should have been considered in a BACT analysis for a PSD application for a proposed coal-fired fluidized bed power plant. 226 P.3d at 719, 733-34. That type of permit, emission unit(s) and BACT technology are wholly different from the facts here.

#### IV. CONCLUSION

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

*I certify that this document contains 4,999 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

RESPECTFULLY SUBMITTED this 24th day of April  
2024.

PUGET SOUND CLEAN AIR AGENCY

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## 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 Petitioner Puyallup Tribe of Indians' Petition for Review, Supreme Court Case No. 1028938, to the following parties:

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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 24th day of April, 2024 at Seattle, Washington.

*s/Audrianna Garcia*

Audrianna Garcia

**PUGET SOUND CLEAN AIR AGENCY (“PSCAA”) APPENDIX TO  
APRIL 24, 2024 OPPOSITION TO PETITIONER PUYALLUP TRIBE OF  
INDIANS 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)

<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.15.1500</a>	70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations.
<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.15.2540</a>	70.94.230	Rules of authority supersede local rules, regulations, etc.—Exceptions.



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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="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> >	
1.07	Definitions	12/01/18	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 definition “toxic air pollutant (TAP) or toxic air contaminant.”
<b>Regulation I—Article 3: General Provisions</b>				
3.03(f)	General Regulatory Orders	02/01/12	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> >	
3.04	Reasonably Available Control Technology	07/01/12	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 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="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> >	
3.25	Federal Regulation Reference Date	11/01/19	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 173-400-025.
<b>Regulation I—Article 5: Registration</b>				
5.03	Applicability of Registration Program	11/01/16	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 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="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 5.05(b)(1) and (2).
<b>Regulation I—Article 6: New Source Review</b>				

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> >	

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
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="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> >	
12.03	Continuous Emission Monitoring Systems	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> >	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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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	Curtailement	12/1/12	5/29/13 78 FR 32131 (PDF) <a href="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="https://www.gpo.gov/fdsys/pkg/fr-2013-05-29/pdf/2013-12514.pdf#page=1">🔗</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="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="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="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="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="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="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  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="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  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.

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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.

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[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)  
<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) <<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

# PUGET SOUND CLEAN AIR AGENCY

April 24, 2024 - 2:24 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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This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Agency's Opposition to Tribes Petition for Review.pdf*

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