

Attachment

Demonstration of Legal Authority

SWCAA requested initial delegations for NSPS and NESHAPs, which were approved by EPA and published in the Federal Register (FR). Initial delegations of several NESHAPs were included in 94 FR 19774 (August 18, 1994) and of several NSPS in FR Document No 94-22858 (September 15, 1994). This opinion should be considered an update of the prior opinions pursuant to 81 FR 26054 (April 29, 2016).

A. Introduction.

SWCAA is a local air pollution control agency in the State of Washington operating pursuant to Revised Code of Washington (RCW) chapter 70A.15, Washington's Clean Air Act. Specifically, chapter 70A.15 RCW grants SWCAA the authority and responsibility to regulate air quality within its jurisdiction: Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties. RCW 70A.15.2040. Pursuant to RCW 70A.15.2040(1), local air control agencies have the authority to promulgate rules and regulations to implement chapter 70A.15 RCW. Local air control agencies may implement and enforce state regulations adopted by Washington Department of Ecology pursuant to RCW 70A.15.3000 or may adopt their own regulations regarding emissions standards which must not be less stringent than the state regulations. RCW 70A.15.3050. SWCAA has promulgated its own regulations relating to air quality including emissions standards, and, as noted with more specificity below, SWCAA has also adopted by reference into its regulation (SWCAA 400) many provisions of the Washington Administrative Code (WAC) Title 173 pertaining to the regulation of air quality, and any WAC sections cited herein have been so adopted. Copies of all statutes and regulations cited herein are enclosed for your reference.

In this instance, SWCAA has, pursuant to its statutory powers, will be adopting by reference into SWCAA 400, the following:

- 40 CFR 62 Subpart HHH, as in effect as of August 15, 2000, under SWCAA 400-050(7) - note, already adopted on March 21, 2020
- 40 CFR 62 Subpart III, as in effect as of October 3, 2003, under SWCAA 400-050(5)(f)
- 40 CFR Subpart JJJ, as in effect as of January 31, 2003, under SWCAA 400-050(6)(j); and
- 40 CFR 62 Subpart LLL, as in effect as of June 18, 2016, under SWCAA 400-070(9)(b)

B. SWCAA's Legal Authority to Carry Out the Federal Plan.

The Washington Clean Air Act, chapter 70A.15 RCW, provides the necessary legal authority for SWCAA to fully administer and enforce the Federal Plan. SWCAA's legal authority in this regard includes the following specific powers, per 40 CFR 60.26(a)(1)–(4):

- 1) Adopt Emission Standards and Compliance Schedules applicable to designated facilities. SWCAA has the authority to adopt emissions standards and compliance schedules as to designated facilities as follows:
 - RCW 70A.15.2040(1) and SWCAA 400-280(1). Authority to adopt, amend and repeal its own rules and regulations to implement chapter 70A.15 RCW;
 - RCW 70A.15.2040(3), SWCAA 400-230(1), and SWCAA 400-280(3). General authority to issue orders to effectuate and enforce chapter 70A.15 RCW;

- RCW 70A.15.2240(2), SWCAA 400-050(6)(h), and SWCAA 400-161. Authority to issue compliance schedules setting forth timetables for the achievement of compliance for emissions sources either by permit or order; and
- RCW 70A.15.3050. Agency required to have requirements for emissions controls not less stringent than state law.

2) Enforce Applicable Laws, Regulations, Standards and Compliance Schedules, Injunctive Relief.

SWCAA has legal authority to enforce applicable laws, regulations, standards and compliance schedules, and the right to seek injunctive relief as follows:

- RCW 70A.15.2040(1) and (3) and SWCAA 400-230(f). Enforcement of compliance schedules established by permit or order;
- RCW 70A.15.2040(2), RCW 70A.15.2050, and SWCAA 400-280(2). Subpoena powers to compel attendance and production of evidence;
- RCW 70A.15.2520 and SWCAA 400-230(2). Notices of violation and orders to take necessary corrective action;
- RCW 70A.15.3140 and SWCAA 400-230(4). Right to obtain judicial injunctive relief, including restraining orders, as to acts or practices in violation of chapter 70A.15 RCW;
- RCW 70A.15.3150 and SWCAA 400-240. Right to seek criminal sanction;
- RCW 70A.15.3160 and SWCAA 400-230(2)(b). Imposition of civil penalties;

3) Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

SWCAA has the legal authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping, and to make inspections and conduct tests as follows:

- RCW 70A.15.2040(2), RCW 70A.15.2050, and SWCAA 400-280(2). Subpoena powers to compel attendance and production of evidence;
- RCW 70A.15.2040(3), SWCAA 400-230(1), and SWCAA 400-280(3). General authority to issue orders to effectuate and enforce chapter 70A.15 RCW;
- RCW 70A.15.2040(4) and SWCAA 400-280(4). Require access to books and records, files, and other information specific to the control, recovery, or release of air contaminants;
- RCW 70A.15.2200 and SWCAA 400-100. Sources subject to registration required to submit emission and other relevant information;
- RCW 70A.15.2210 and SWCAA 400-109, SWCAA 400-110, SWCAA 400-116, SWCAA 400-110, SWCAA 400-111, and SWCAA 400-112. Notice of construction of new contaminant source required, plan submission and approval;
- RCW 70A.15.2260(2) and chapter 173-401 WAC. Establish operating permit program satisfying FCAA requirements;
- RCW 70A.15.2260(6). Permit program applicants required to submit compliance plan;

- RCW 70A.15.2500, SWCAA 400-075(2) and (3), SWCAA 400-100(6), SWCAA 400-106, and SWCAA 400-280(4). Obtain access, conduct inspections and testing of sources as to air contaminants;
 - RCW 70A.15.2040(4), SWCAA 400-105, and SWCAA 400-265. Require records, monitoring, access, and reporting;
 - RCW 70A.15.2240(2), SWCAA 400-050(6)(h), and SWCAA 400-161. Authority to issue compliance schedules setting forth timetables for the achievement of compliance for emissions sources either by permit or order
 - WAC 173-401-615. Required recordkeeping;
 - WAC 173-401-620(2)(e) and SWCAA 400-265. Duty to provide information; and
 - WAC 173-401-630 and SWCAA 400-100(6). Inspection and entry, compliance schedule, and periodic compliance certifications.
- 4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.

SWCAA further has the legal authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports on the nature and amounts of emissions from such facilities as follows:

- RCW 70A.15.2040(3), SWCAA 400-230(1), and SWCAA 400-280(3). General authority to issue orders to effectuate and enforce chapter 70A.15 RCW;
- RCW 70A.15.2040(9) and SWCAA 400-280(9). Collect and disseminate data;
- RCW 70A.15.2200 and SWCAA 400-100. Sources subject to registration required to submit emission and other relevant information;
- RCW 70A.15.2210 and SWCAA 400-109, SWCAA 400-110, SWCAA 400-116, SWCAA 400-110, SWCAA 400-111, and SWCAA 400-112. Notice of construction of new contaminant source required, plan submission and approval;
- RCW 70A.15.2260(2) and chapter 173-401 WAC. Establish operating permit program satisfying FCAA requirements;
- RCW 70A.15.2040(4) and SWCAA 400-105. Emissions inventories; and
- RCW 42.56 and SWCAA 400-171(6). Public Records Act requiring SWCAA to make available for public inspection all records, subject only to very narrowly defined exceptions.

All the authorities identified above are contained in statutes and regulations which have been lawfully adopted as of the date of this letter and fully effective. In summary, based on all these authorities, SWCAA has the legal authority to receive delegation and to ensure that the Federal Plan will be implemented and enforced relative to the designated facilities.