

Laws Misinterpreted by YRCAA

RCW 70A.15.1070

Causing or permitting air pollution unlawful—Exception.

Except where specified in a variance permit, as provided in RCW 70A.15.2310, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder.

RCW 70A.15.2000

Air pollution control authority—Board of directors—Composition—Term.

(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

RCW 70A.15.3150

Penalties.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70A.15.2000 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars.

RCW 70A.15.4530

Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.

Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter **unless they have a substantial adverse effect on public health.** In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

RCW 70A.15.6200

Legislative declaration—Intent.

The legislature recognizes that:

Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

Acidification is cumulative; and

Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition.

WAC 173-400-040

General standards for maximum emissions.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC [173-400-113](#)(4).

WAC 173-400-075

Emission standards for sources emitting hazardous air pollutants.

National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices (in effect on the date in WAC [173-400-025](#)) are adopted. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.

The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 C.F.R. Parts 61, 62, 63 and 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 C.F.R. Parts 51, 60, 61, 62, 63 and 65, as applicable.

WAC 173-400-220

Requirements for board members.

Public interest. A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

Disclosure. Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

Define significant income. For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

WAC 173-400-260

Conflict of interest.

All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest (Section 128).

YRCAA Regulation 1

https://www.yakimacleanair.org/site/files/file_manager/page/shared/YRCAA%20Regulation%201-%202020%20FINAL.pdf

1.07 General Provisions

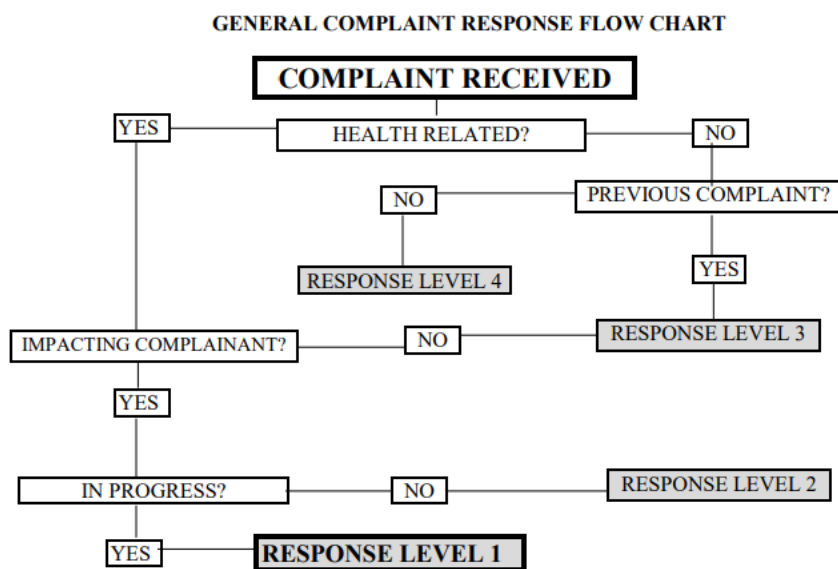
B. FALSE OR MISLEADING INFORMATION. 1. False Statements. No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

YRCAA Administrative Code B

5.6 Complaint Response The agency receives complaints about alleged air pollution violations routinely via voice mail, phone, e-mail, mail and in person. These complaint response guidelines are used to promote uniform complaint response and to help maximize complaint response efforts. The flow chart is used to channel generic types of complaints to pre-selected response levels. The general nature of the policy may cause some complaints to be assigned at an inappropriate response level. In these cases, professional judgment and initiative should be used to reassign the complaint to the appropriate level. Complaints involving other governmental agencies should be referred to the appropriate agency. Complaints involving imminent danger to life or health will be responded to immediately, regardless of the following guidance. 5.6.1 Receipt and Entry When staff receives a complaint, it will be immediately entered into a database and forwarded to the Complaint Manager. The Complaint Manager will determine if: a. It alleges an actual air pollution violation over which the agency has jurisdiction; b. The alleged violator is identified; c. The complainant is identified; d. The location of the alleged violation is

identified; and e. The date and time of the alleged violation is identified. 5.6.2 Invalid Complaints If the complainant did not or will not supply all the above information, the complaint will not be considered a valid complaint and no response action will be conducted, except to update the database with, “insufficient information to qualify as a valid complaint.”

5.6.3 Response Levels The complaint will be immediately forwarded to the Complaint Manager to determine the appropriate response level. The Complaint Manager will assign the complaint to appropriate staff for response. The following response levels will be used in conjunction with the complaint response flow chart. a. Level 1 Attempt same day site inspection. Request backup if not available for same day response. b. Level 2 Attempt inspection within 48 hours. Request backup if not available for 48 hour response. c. Level 3 Attempt site inspection within 7 days. Request backup if not available for 7 day response. d. Level 4 Site inspection not required. Correspond with the source to advise of the complaint, to inform of the applicable rules and to discuss the potential for enforcement action. A phone call or a fax may be helpful but, it should be followed up in writing.



1.6.4 Tracking The Administrative Assistant will track assignment, response and resolution of each complaint and update the database. a. Data Entry The complaint database will be updated as soon as possible after the response action is completed, no later than three working days. b. Review An updated copy of the complaint form will be forwarded to the Complaint Manager for review. The Complaint Manager will determine if the complaint was addressed adequately and either file the complaint or assign for further action. a. Enforcement Complaints resulting in Notices of Violation will be updated and copies maintained in the enforcement file. Any questions or problems will be referred to the Compliance Division Supervisor for resolution.

5.7.4 Off-Premises Observation

- a. Observations of areas surrounding the facility before entering may reveal a variety of signs of operational practices and pollutant emissions which can aid in the pre-entry evaluation. These include, but are not limited to:
 - i. Obvious vegetation damage near the facility;
 - ii. Odors downwind of the facility;
 - iii. Deposits on vehicles parked near the facility;
 - iv. Other signs of fugitive dust downwind of the facility;
 - v. Fugitive emissions near facility boundaries;
 - vi. Mud or dirt tracked onto public roads or streets; and
 - vii. Proximity of potential receptors.
- b. If odors are present, the weather conditions (including wind speed and direction) should be noted in the compliance evaluation report. Once inside the facility, olfactory fatigue may reduce the compliance evaluator's ability to detect these odors.
- c. In addition to observing the facility surroundings prior to entry, the compliance evaluator should also perform visible emission observations. Although some emission points may not be visible from a location outside the facility property lines, those that are should be read and recorded prior to entry.

5.8 Evidence is the data used by the Agency to support or establish the truth of an allegation. It can be any information or proof which clarifies or helps establish the truth. During the course of an inspection, compliance staff may make observations, conduct interviews, obtain statements, obtain or copy documents, take photographs and collect samples. All of these may become evidence. There are five different types of evidence:

- a. Testimonial Observations made from personal knowledge, derived from a person's sense of smell, touch, sight, taste or hearing;
- b. Direct The object, item or thing itself (e. g., physical material samples);
- c. Documentary A document having significance due to its content (e. g., reports, logs, notifications, manuals);
- d. Demonstrative Something other than the above which is prepared or selected to support, illustrate or otherwise make some fact clearer or easier to understand (e. g., photographs, diagrams, maps, summaries, video tapes); and
- e. Judicially Noticed Matters about which there could be no dispute and become evidence by virtue of their being officially noticed by an administrative or court judge (e. g., YRCAA regulations, scientifically accepted facts, geographic locations, matters of common knowledge).

5.8.1 Evidence Collection An inspection is the process whereby evidence is legally collected and documented. The Agency's case is dependent on the evidence gathered during an inspection. It is

imperative that sufficient evidence be gathered to support a finding and that all pertinent circumstances supporting a compliance determination be clearly documented in the body of an inspection report. Responsibilities in the collection of evidence include:

- a. Substantiating facts with items of evidence, including samples, photographs, copies of documents, statements from witnesses and personal observations;
- b. Collecting evidence in a manner that can be substantiated in legal proceedings;
- c. Documenting the collection of supporting evidence in a clear and detailed manner; and
- d. Maintaining the chain of custody and integrity of physical samples. The following sections are divided into the first four of five types of evidence discussed previously (judicially noticed evidence is only substantiated by courts of law). In each section the most common forms of evidence collection are addressed along with procedures for collection, preservation and documentation.

5.8.2 Testimonial

a. Employee Observations made by an employee during an inspection are the most common form of testimonial evidence. They are indirectly supported by the qualifications of the person making the observations. In some cases, Agency personnel may be considered expert witnesses based on individual education and experience. Quite often, the observations of the employee are the only evidence supporting an alleged violation, so it is imperative that all applicable observations be documented in the inspection report.

b. Statements On occasion it may be necessary to obtain a formal statement from a person or persons who may have first hand knowledge of relevant facts. A statement of fact is signed and dated by the person who can testify to those facts in court. The principal objective of obtaining a statement is to record in writing, clearly and concisely, relevant factual information so that it can be used as documentary support. The following are recommended procedures to follow when considering whether to take a statement:

i. Determine the need for a statement. Will it provide useful information? Is the person making the statement qualified to do so by personal knowledge?

ii. Determine the facts and record those which are relevant and which the person can verify under oath. Make sure all information is factual and first hand. Avoid taking statements that cannot be corroborated.

iii. The person preparing a statement should:

- 1. Use a simple narrative style;
- 2. Avoiding stilted language;
- 3. Narrate the facts in the words of the person making the statement;

4. Use the first person singular; and 5. Present the facts in chronological order including all relevant dates and times, unless the situation calls for other arrangements.

iv. YRCAA staff should:

1. Document why the person is qualified to make the statement;
2. Have the person sign and date the statement; and
3. Always provide a copy of the statement to the signer.

5.8.3 Direct The collection of material samples is often necessary to establish a "substance specific" violation (e. g. asbestos). The Agency's successful processing of enforcement actions is dependent on samples carefully collected, preserved and presented. The integrity of evidence must be established on all material objects collected, and records must support the integrity of the evidence. This section outlines the recommended procedures for collecting and handling samples.

a. Consent Samples may always be taken from public property but consent is required to collect samples from private property. As long as the employee is allowed to sample it is considered voluntary and consensual. Absence of an expressed denial constitutes consent. Expressed consent is not necessary.

b. Split Samples A portion of the recovered sample should be offered to a facility responsible person so they can conduct an independent analysis. Whenever a split sample is taken, Agency personnel should try to select homogeneous materials so the samples will be as similar as possible.

c. Equipment All sample containers must be clean prior to recovering a sample to eliminate cross contamination of the specimen. To ensure the accuracy of collection instruments or devices used to obtain a sample, the equipment must be properly calibrated before and after the sampling. Documentation of the calibration should be included in the inspection report.

d. Identification All evidence must be clearly identified and labeled or tagged to show:

- i. The date and time collected;
- ii. The name of the person collecting the evidence;
- iii. The name and address of the premises involved;
- iv. The specific location where the evidence was collected. Photo documentation, where possible, will strengthen the integrity of the evidence; and
- v. Identify the sample with a distinct numbering system.

e. Chain of Custody For the laboratory analysis of a sample to be admissible as evidence, a logical and documented connection must be shown between the samples taken and the analytical

results reported. This connection is shown by using the chain of custody procedures which document sample integrity from the time the sample was taken to the time it is analyzed. Agency personnel taking the samples are responsible for assuring that the chain of custody procedures are observed. Every person handling Agency samples or any other materials collected as evidence must follow the chain of custody requirements. Whenever possible, employees who collect the samples should deliver the samples to the laboratory and request the analysis themselves thus, limiting the number of persons handling the sample. To establish and maintain an effective chain of custody on evidence, the sample collector should follow four general rules:

- i. Evidence should be handled by as few persons as possible;
- ii. Evidence handling procedures must ensure the evidence is not contaminated or altered;
- iii. The names of all persons handling evidence, and the date and time of such handling, must be recorded to show continuous custody and control from collection to presentation. There should be no gaps in the accountability; and
- iv. Physical evidence must be secured in a locked area with limited accessibility to keep the evidence from being tampered with or lost.

f. Chain of Custody Form Records must support the integrity of the evidence. Every person handling the evidence must be identified to show continuity of custody. Persons completing the Chain of Custody must handle it as a legal document. When the sample is transferred from one person or agency to another, both the sample and the form become links in the chain of custody of evidence. The lower portion of the form is a record of transfer and receipt of the sample, and thus is a written account of all persons responsible for routing, processing and storing of the sample. The following entries on the form must be completed:

- i. Relinquished by - The person giving up the sample must sign the form.
- ii. Received by - The person receiving the sample must sign the form.
- iii. Firm/Agency - Name of the laboratory performing the analysis.
- iv. Date - Date the sample is submitted to the laboratory.
- v. Time - Time the sample is delivered to the laboratory.
- vi. Analysis - Type of analysis requested.

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5.8.4 Documentary Documentation is a general term referring to all print and mechanical media produced, copied or taken by Agency personnel to provide evidence of facility operating conditions. Types of documentation include inspection reports, checklists, drawings, flow sheets, maps, lab analyses of samples, chain of custody records, statements, copies of records, printed materials and photographs. Any documentation gathered or produced in the course of the inspection process may eventually become part of an enforcement proceeding. To this end, it is the employee's responsibility to produce documentation that is legible, concise, objective, accurate and complete. All documents taken or prepared by Agency personnel should be noted and related to specific inspection activities. (For example, photographs taken at a sampling site should be listed, described and related to the specific sample number.)

a. Photographs Clear photographs of relevant subjects provide an objective record of conditions at the time of inspection and therefore are valuable support to other evidence. To be admissible as evidence generally an employee must be able to testify that any given photograph "fairly and accurately represents" what he/she saw at the site on that date. When a situation arises that dictates the use of photographs, the employee should obtain consent to take photographs from the facility representative. As long as the employee is allowed to photograph it is considered voluntary and consensual. Absence of an expressed denial constitutes consent;

expressed consent is not necessary. The employee must be tactful in handling any concerns or objections about the use of a camera. If the facility representative denies the employee permission to take photographs, the employee should request the facility to provide a photographer. Photographs may always be taken from areas of public access (e.g., outside the fence, from the road, from the parking lot, etc.) as long as no equipment is used that might extend over or onto private property. Photographs are only as good as the documentation accompanying the photographs, because the employee must be able to convince a Hearings Board, a judge or a jury that the photographs fairly and accurately represent what the employee saw at a given facility on a given date. To build the documentation necessary for this purpose, the employee should enter notes about each photograph in the inspection report in its proper place in the chronology of the inspection, and in a separate photo record log. When taking a photograph, the employee should visualize how the photographs will look to the general public or in a courtroom. Evidence may be strengthened by photographs when the picture tells its story with a minimum of explanation. There are several guidelines that should be considered:

i. Direction It is helpful to photograph a subject from a point that will indicate direction and location of the subject;

ii. Center of Interest There should be only one major subject or center of interest in a scene. When taking photographs, the employee should eliminate or subordinate all secondary elements and focus on the main element. Be sure the subject actually fills the view finder;

iii. Simple Background The background should be kept simple, so as not to distract attention from the main subject;

iv. Scale If the subject is unknown or unfamiliar to viewers, the employee should include some familiar object to indicate comparative size (e.g., a person, a car, a pen);

v. Location or Context It is sometimes useful to photograph a subject from a point where the location of the subject will be clear in relation to other features;

vi. Motion If action or movement is implied by the photograph, more space should be allocated in the direction of the action than away from it;

vii. Tones Make sure the background is tonally distinct from the subject. Imagine how tones will look when reduced to gray; and

viii. Safety In areas where there is a danger of explosion, flash photographs should not be taken. If there is a danger of electrical shock, photographs should be taken from a distance known to be safe. A photo log should be maintained for all photographs taken during an inspection, and the entries made at the time the photographs are taken. These entries are to be numerically identified so that after the photos are downloaded to a file, they can be serially numbered corresponding to the logbook description. The log entries should include the name of the photographer, a description of film used (i.e., its ID number and ASA number), date,

location, a brief description of the subject being photographed and the registration number of the source or complaint number. If printed, prints should be numbered and identified corresponding to the photo log. Employees should not write on the front of the print.

b. Records Agency personnel are authorized to obtain copies of any facility records necessary to complete the inspection report. When employees are called to testify in court, they must be able to positively identify each particular document and state its source and the reason for its collection. The employee should initial, date, number and record the facility's name on each record, and reference these items in the field notes. Originals should be returned to the proper personnel or to their correct location.

c. Printed Material Brochures, literature, labels and other printed matter may provide important information regarding a facility's condition and operations. These materials may be collected as documentation, if, in the employee's judgment, they are relevant. All printed matter should be identified with the date, employee's initials and related sample numbers. Reference to these materials should be made in the field notes.

5.8.5 Demonstrative Schematic drawings, flow sheets, maps, charts and other graphic records can be useful as supporting documentation. They can provide graphic clarification of location relative to the overall facility, relative height and size of objects and other information which, in combination with samples, photographs and other documentation, can produce an accurate, complete evidence package. Drawings can provide graphic clarification of a site location relative to an overall facility and the parameters of an emission or contamination. A drawing can be entered directly into the inspection report itself; this integrates it clearly with other notes in chronological order. Drawings should be free of unnecessary details. Basic measurements and compass points should be included as necessary to provide a scale for interpretation. Some types of drawings are:

- a. General sketch of the facility;
- b. Sketch showing where photos and/or samples were taken;
- c. Sketch showing where potential violations are observed; and
- d. Sketch showing the layout of a particular part of a facility, which was the major focus of the inspection. Although, not as accurate or credible as a photograph, drawings and diagrams are good backup methods when photography cannot suffice. Sometimes a photograph would contain so much detail that the crucial features are not clear or would require too much explanation. In such cases a good, simple schematic drawing or diagram can be useful. The drawing should contain notations of the approximate dimensions of the subject. The level of accuracy of the drawing should also be noted (e.g., "estimated" or "measured with steel tape"). All such visual notes should be referenced to show where the subject was observed in the facility. All drawings should be labeled "not to scale".

