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## ARTICLE 2

### General Provisions

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**AMENDED: 1-Nov-2021**

#### Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)

[Statutory Authority: RCW 70A.15.1560, and RCW 70A.15.2040.]

- A. RCW 70A.15.1560 deems Benton Clean Air Agency a municipal corporation with the following authorities:
1. Right to perpetual succession;
  2. Adopt and use a seal;
  3. Sue and be sued in the name of the Agency in all courts and in all proceedings;
  4. Receive, account for, and disburse funds;
  5. Employ personnel; and
  6. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.
  7. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW 70A.15.1560 and 70A.15.2040.

#### Section 2.02 Requirements for Board of Directors Members

[Statutory Authority: RCW 70A.15.2000]

- A. Public interest.
1. A majority of the members of the Agency's Board of Directors (Board) will represent the public interest.
  2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts.
  3. An elected public official and the Board will 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 will delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.
- B. Disclosure.
1. Each member of the Board will disclose any potential conflict of interest in any matter prior to any action or consideration before the Board.
  2. The member will remove themselves from participation as a Board member in any action, including voting on the matter.

3. The Board will, 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.
  - a. Definition of significant income: For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will 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 will not be considered in the determination of "significant portion of income."

**Section 2.03 Powers and Duties of the Board of Directors**

- A. Pursuant to the provisions of chapter 70A.15 RCW, the Board will:
  1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;
  2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and
  3. Appoint a Control Officer, in accordance with RCW 70A.15.2300, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.
- B. Under RCW 70A.15.2040, the Board will have the power to:
  1. Adopt, amend, and repeal its own rules and regulations, implementing chapter 70A.15 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations will also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules will not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency will be in accordance with Part V of chapter 34.05 RCW;
  2. Hold hearings relating to any aspect of or matter in the administration of chapter 70A.15 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex.sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;
  3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;
  4. Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere;
  5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
  6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;

7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;
  8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;
  9. Collect and disseminate information and conduct educational and training programs relating to air pollution;
  10. Advise, consult, cooperate and contract with:
    - a. State agencies, departments, and educational institutions;
    - b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government; and
    - c. Industries, interested persons or groups.
  11. Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and
  12. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or local law or regulation.
- C. Exception to powers of the Agency.

The Agency may not hold adjudicative proceedings pursuant to the Administrative Procedures Act, chapter 34.05 RCW. Decisions and orders may be appealed to the Pollution Control Hearings Board as provided in WAC 173-400-250.

#### Section 2.04 **Powers and Duties of the Control Officer**

[Statutory Authority: RCW 70A.15.2040, RCW 70A.15.2300, RCW 70A.15.2500]

- A. The Control Officer and duly authorized representatives of the Agency will observe and enforce applicable federal, state, and local air pollution laws and regulations and all orders, ordinances, resolutions, or rules and regulations of the Agency pertaining to the control and prevention of air pollution pursuant to the policies set down by the Board.
- B. The Control Officer, with the approval of the Board, will have the authority to appoint and remove such staff persons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.
- C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.
- D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.
- E. As authorized under RCW 70A.15.2500, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting non-multiple unit private dwellings housing two (2)

families or less. No person may refuse entry or access to the Control Officer or duly authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.

- F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:
  - 1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and
  - 2. Will give a receipt to the owner or operator for the sample obtained.
- G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

#### **Section 2.05 Severability**

[Statutory Authority: chapter 43.21B RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

#### **Section 2.06 Confidentiality of Records and Information**

[Statutory Authority: RCW 70A.15.2510]

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section: PROVIDED FURTHER, That emission data furnished to or obtained by the Agency will be correlated with applicable emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

#### **Section 2.07 Entering Private, Public Property**

[Statutory Authority: RCW 70A.15.2500]

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants in the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized

representatives, who request entry for the purpose of inspection, and who present appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

## Section 2.08 **Authority to Collect Fees**

[Statutory Authority: RCW 70A.15.2200]

### A. Legal Authority.

Washington Clean Air Act authorizes the agency to assess fees and recover costs for permits, registrations, and professional services.

### B. Charges.

Charges include but are not limited to the following:

1. Reimbursement of agency staff time for review of complex projects of lengthy enforcement action;
2. Costs incurred by the authority for the implementation of the Air Operating Permit program as defined in WAC 173-401;
3. Reimbursement of agency staff time for costs to prepare notices of construction;
4. Reimbursement of the costs for annual registrations including periodic inspections;
5. Charges from Ecology for state level support and oversight work, and;
6. Appropriate charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.

### C. Refunds

1. The following fees are non-refundable:
  - a. Actual costs incurred by the authority;
  - b. Application fees.
2. Fees collected in excess of actual cost will be refunded with interest.
3. Fees collected in error will be refunded with interest.

### D. Fees

1. Adoption of fee schedules.

Fee Schedules shall be adopted by board resolution under the authority of RCW 42.30 at any time after receiving public comment.

2. Fees for the Registration and Notice of Construction Programs are contained in the Fee Schedule. .
3. Availability of Fee Schedules and Related Information.

The Fee Schedule and billing rate schedule for reimbursable fees shall be made available upon request.

## Section 2.09 **Variations**

[Statutory Authority: RCW 70A.15.2310]

- A. Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment

may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health or safety; and
  2. Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.
- B. No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.
- C. Any variance or renewal thereof shall be granted within the requirements of Section 2.09 A and for time periods and under conditions consistent with reasons therefore, and with the following limitations:
1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.
  2. If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
  3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection 2.09 (C)(1) and 2.09 (C)(1), it shall be for not more than one year.
- D. Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.
- E. A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

- F. Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6040 to any person or his property.