

SWCAA 400

General Regulations for Air Pollution Sources

2016 Proposed Revisions

Response to Public Comments

SWCAA Board Meeting

September 1, 2016

Proposed 2016 Rule Changes for SWCAA 400 – Response to Public Comment

SWCAA received one comment from the public during the public comment period. Partial text of the comment is presented below followed by SWCAA's response. The applicable rule section has been cited for clarity.

Commenter: Clark Regional Wastewater District – John Peterson, General Manager

1) Comment on 400-040(4)(a). General Standards for Maximum Emissions - Odors

Our primary concern is that the regulation relies on subjective standards and could result in a wide range of possible outcomes depending on the specific actions of a small number of individuals. The interpretation of what may be considered unreasonable interference is certainly open to a possible range of interpretations. More to the point, enforcement action is possible under this proposed section based on either what a single SWCAA staff member may consider an attempt at avoidance of an odor, or what a single property owner may consider an unreasonable interference with their enjoyment of life and property from an odor. While a single person is authorized under this section to initiate a process that may result in an enforcement action, the results of the enforcement action will necessarily need to be addressed by the relevant utility and, through rates and charges for service, be paid for by all residents served by the public sewer system.

In order to better address this possible imbalance, it is requested that this section be modified to rely on a more systematic and objective basis before triggering an enforcement action. Further, it is requested that a clearer framework for enforcement action be embedded in the rule that provides for a scale-appropriate response. Under the current draft language it appears possible that a single property owner could trigger the process leading to an enforcement action that could result in millions of dollars of capital improvements and related operating costs that are borne ultimately by the utility ratepayers.

SWCAA Response:

The existing rule is one of the most challenging for the Agency to administer and has been in place since 2003. The existing language provides no objective criteria for determining what level of odor is considered to be a nuisance and in violation of the odor regulation. Because odors arise from many different types of sources or activities and, depending on the chemical compound causing the odor, no single odor standard is appropriate for all odors. There also is no single instrument available that “determines” a level of odor. In addition, each person’s sense of smell is unique to that individual. Under the existing rule language a single person is authorized to initiate a process that may result in an enforcement action. The proposed language is no different in that regard.

In 1999 the Puget Sound Clean Air Agency adopted revised language to include the more objective criteria now proposed by SWCAA. As of 2013 the same criteria is used by Spokane Regional Clean Air Agency. SWCAA has proposed using the same criteria to make nuisance determinations consistent with these other Agencies in an effort to move toward statewide consistency in criteria. SWCAA asserts that the proposed language provides more objective

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criteria for determining nuisance odors in addition to obtaining an affidavit from the affected person. The purpose of the affidavit is to document that the odor level causes a loss of use or enjoyment of their property consistent with the Washington Clean Air Act (RCW 70.94) definition of air pollution. That definition states “Air pollution” is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.’

While a single person may file a complaint about an unreasonable odor, the criteria as proposed requires a SWCAA representative to confirm the odor level and the source of the odor to ensure that the complaint is valid before initiating any action against the designated source. SWCAA notes that the Washington Clean Air Act does not establish a standard of “no odor” but rather a standard of “unreasonable interference”.

No changes to the proposed language will be made as a result of this comment.