

**AMENDATORY SECTION** (Amending Order Res. 04-01, Filed 03/04/2004)

**SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY ((ODORS AND NUISANCES))**

- A. Definitions: All definitions in SRCAA Regulation I, Article 1, Section 1.04 apply to this Section, unless otherwise defined herein.
- B. The Agency implements and enforces WAC 173-400-040 in Spokane County in addition to Section 6.04. The provisions of RCW 70.94.640 are herein incorporated by reference.
- C. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:
  - 1. Injurious to the health or safety of human, animal, or plant life;
  - 2. Injurious or cause damage to property; or
  - 3. Which unreasonably interferes with enjoyment of life and property.
- D. With respect to odor, the Agency may take enforcement action, pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented all of the following:
  - 1. The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:
    - Level 0 – no odor detected,
    - Level 1 – odor barely detected,
    - Level 2 – odor is distinct and definite, any unpleasant characteristics recognizable,
    - Level 3 – odor is objectionable enough or strong enough to cause attempts at avoidance, and
    - Level 4 – odor is so strong that a person does not want to remain present.
  - 2. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and
  - 3. The source of the odor.
- E. With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation
- F. When determining whether to take formal enforcement action authorized in subsection D above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action.
- G. The Agency will document all the criteria used in making its determination in subsection F above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW 70.94.205, will be made available to any

person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.

H. Nothing in this Section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

~~((A.—Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum.~~

~~B.—The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gas, and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.~~

~~C.—Odors caused by agricultural activities consistent with good agricultural practices exempt from this section:~~

~~1.—Odors caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this section unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the Authority shall consult with a recognized third-party expert in activity prior to issuing any notice of violation.~~

~~2.—Any notice of violation issued under this section pertaining to odors cause by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.~~

~~3.—In any appeal to the Pollution Control Hearings Board or any judicial appeal of final order pertaining to odors caused by agricultural activity, the Authority shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.~~

~~4.—If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.~~

~~5.—As used in this section:~~

~~a.—"Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.~~

~~b.—"Good agricultural practices" mean economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.~~

~~c.—"Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.~~

~~6. The Authority, implements and enforces WAC 173-400-040(4), in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supercedes the lesser. ))~~