

Chapter 80.70 RCW
CARBON DIOXIDE MITIGATION

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RCW 80.70.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" has the meaning provided in RCW 80.50.020 and includes an applicant for a permit for a fossil-fueled thermal electric generation facility subject to RCW 70A.15.2210 and 80.70.020(1) (b) or (d).

(2) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(3) "Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by the council.

(4) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(5) "Cogeneration credit" means the carbon dioxide emissions that the council, department, or authority, as appropriate, estimates would be produced on an annual basis by a stand-alone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

(6) "Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978.

(7) "Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

(8) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(9) "Department" means the department of ecology.

(10) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

(11) "Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

(12) "Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificate holder or order of approval holder, directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes but is not limited to the use of, energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand-side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

(13) "Order of approval" means an order issued under RCW 70A.15.2210 with respect to a fossil-fueled thermal electric generation facility subject to RCW 80.70.020(1) (b) or (d).

(14) "Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

(15) "Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

(16) "Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

(17) "Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020(1) (a) and (b), the amount of carbon dioxide emitted over a thirty-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020(1) (c) and (d), the amount of carbon dioxide emitted over a thirty-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification or an order of approval pursuant to RCW 80.70.020(1) (c) and (d), new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use. [2021 c 65 § 98; 2004 c 224 § 1.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 80.70.020 Applicability of chapter—Carbon dioxide mitigation plan—Mitigation by a third party. (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under *RCW 80.50.020(14)(a), for which an application for site certification is made to the council after July 1, 2004;

(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;

(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and

(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.

(2)(a) A proposed site certification agreement submitted to the governor under RCW 80.50.100 and a final site certification agreement issued under RCW 80.50.100 shall include an approved carbon dioxide mitigation plan.

(b) For fossil-fueled thermal electric generation facilities not under jurisdiction of the council, the order of approval shall require an approved carbon dioxide mitigation plan.

(c) Site certification agreement holders or order of approval holders may request, at any time, a change in conditions of an approved carbon dioxide mitigation plan if the council, department, or authority, as appropriate, finds that the change meets all requirements and conditions for approval of such plans.

(3) An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).

(4) Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility.

(5) If the certificate holder or order of approval holder chooses to pay a third party to provide the mitigation, the mitigation rate shall be one dollar and sixty cents per metric ton of carbon dioxide to be mitigated. For a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit.

(a) Through rule making, the council may adjust the rate per ton biennially as long as any increase or decrease does not exceed fifty percent of the current rate. The department or authority shall use the adjusted rate established by the council pursuant to this subsection for fossil-fueled thermal electric generation facilities subject to the provisions of this chapter.

(b) In adjusting the mitigation rate the council shall consider, but is not limited to, the current market price of a ton of carbon dioxide. The council's adjusted mitigation rate shall be consistent with **RCW 80.50.010(3).

(6) The applicant may choose to make to the third party a lump sum payment or partial payment over a period of five years.

(a) Under the lump sum payment option, the payment amount is determined by multiplying the total carbon dioxide emissions by the twenty percent mitigation requirement under subsection (4) of this section and by the per ton mitigation rate established under subsection (5) of this section.

(b) No later than one hundred twenty days after the start of commercial operation, the certificate holder or order of approval holder shall make a one-time payment to the independent qualified organization for the amount determined under subsection (5) of this section.

(c) As an alternative to a one-time payment, the certificate holder or order of approval holder may make a partial payment of twenty percent of the amount determined under subsection (5) of this section no later than one hundred twenty days after commercial operation and a payment in the same amount or as adjusted according to subsection (5)(a) of this section, on the anniversary date of the initial payment in each of the following four years. With the initial payment, the certificate holder or order of approval holder shall provide a letter of credit or other comparable security acceptable to the council or the department for the remaining eighty percent mitigation payment amount including possible changes to the rate per metric ton from rule making under subsection (5)(a) of this section. [2004 c 224 § 2.]

Reviser's note: *(1) RCW 80.50.020 was amended by 2007 c 325 § 1, changing subsection (14)(a) to subsection (15)(a). RCW 80.50.020 was subsequently amended by 2010 c 152 § 1 and alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15)(a) to subsection (12)(b). RCW 80.50.020 was subsequently amended by 2022 c 183 § 2 and alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12)(b) to subsection (14)(b).

** (2) RCW 80.50.010 was amended by 2022 c 183 § 1, changing subsection (3) to subsection (4).

RCW 80.70.030 Permanent carbon credits. (1) Carbon dioxide mitigation plans relying on purchase of permanent carbon credits must meet the following criteria:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(2) Permanent carbon credits purchased for project mitigation shall not be resold unless approved by the council, department, or authority. [2004 c 224 § 3.]

RCW 80.70.040 Direct investment mitigation projects—Enforcement—Federal requirements may replace this section. (1) The carbon dioxide mitigation option that provides for direct investment shall be implemented through mitigation projects conducted directly by, or under the control of, the certificate holder or order of approval holder.

(2) Mitigation projects must be approved by the council, department, or authority, as appropriate, and made a condition of the proposed and final site certification agreement or order of approval. Direct investment mitigation projects shall be approved if the mitigation projects provide a reasonable certainty that the performance requirements of the mitigation projects will be achieved and the mitigation projects were implemented after July 1, 2004. No certificate holder or order of approval holder shall be required to make direct investments that would exceed the cost of making a lump sum payment to a third party, had the certificate holder or order of approval holder chosen that option under RCW 80.70.020.

(3) Mitigation projects must be fully in place within a reasonable time after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 or 70A.15 RCW.

(4) The certificate holder or order of approval holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects and the management and enforcement of contracts.

(5) (a) For facilities under the jurisdiction of the council, the implementation of a carbon dioxide mitigation project, other than purchase of a carbon credit shall be monitored by an independent entity for conformance with the performance requirements of the carbon dioxide mitigation plan. The independent entity shall make available the mitigation project monitoring results to the council.

(b) For facilities under the jurisdiction of the department or authority pursuant to RCW 80.70.020(1) (b) or (c), the implementation of a carbon dioxide mitigation project, other than a purchase of carbon dioxide equivalent emission reduction credits, shall be monitored by the department or authority issuing the order of approval.

(6) Upon promulgation of federal requirements for carbon dioxide mitigation for fossil-fueled thermal electric generation facilities, those requirements may be deemed by the council, department, or

authority to be equivalent and a replacement for the requirements of this section. [2021 c 65 § 99; 2004 c 224 § 4.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 80.70.050 Independent qualified organizations with experience in mitigation activities—Council oversight—Reports. (1)

The council shall maintain a list of independent qualified organizations with proven experience in emissions mitigation activities and a demonstrated ability to carry out their activities in an efficient, reliable, and cost-effective manner.

(2) An independent qualified organization shall not use more than twenty percent of the total funds for selection, monitoring, and evaluation of mitigation projects and the management and enforcement of contracts. None of these funds shall be used to lobby federal, state, and local agencies, their elected officials, officers, or employees.

(3) Before signing contracts to purchase offsets with funds from certificate holders or order of approval holders, an independent qualified organization must demonstrate to the council that the mitigation projects it proposes to use provides a reasonable certainty that the performance requirements of the carbon dioxide mitigation projects will be achieved.

(4) The independent qualified organization shall permit the council to appoint up to three persons to inspect plans, operation, and compliance activities of the organization and to audit financial records and performance measures for carbon dioxide mitigation projects using carbon dioxide mitigation money paid by certificate holders or order of approval holders under this chapter.

(5) An independent qualified organization must file biennial reports with the council, the department, or authority on the performance of carbon dioxide mitigation projects, including the amount of carbon dioxide reductions achieved and a statement of cost for the mitigation period. [2004 c 224 § 5.]

RCW 80.70.060 Costs to be assessed against applicants and holders of site certification agreements. Reasonable and necessary costs incurred by the council in implementing and administering this chapter shall be assessed against applicants and holders of site certification agreements that are subject to the requirements of this chapter. [2004 c 224 § 6.]

RCW 80.70.070 Rules. The council, department, and authority shall adopt rules to carry out this chapter. [2004 c 224 § 7.]

RCW 80.70.080 Certain applicants for a natural gas-fired generation plant exempt from chapter. (Contingent expiration date.)

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c). [2011 c 180 § 306.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.