

Jurisdiction Over the Mill's Air Emissions

The Regulatory Mechanism Behind ORCAA's Lack of Authority

Citizens for Safe Water and Air - Port Townsend

PORT TOWNSEND, WA

This research has been compiled to the best of our ability from named public sources. If you believe any fact presented here is incorrect or incomplete, please contact safewaterandair@gmail.com so it can be reviewed and corrected.

This document identifies the specific legal mechanism that removes Port Townsend Paper Company (PTPC)'s air emissions from local and regional regulatory oversight, confirmed directly against primary regulatory sources.

1. The Core Finding

Washington State law removes three specific industries from the jurisdiction of local and regional clean air agencies statewide, reserving direct regulatory authority exclusively to the Washington State Department of Ecology. Those three industries are listed below.

- Kraft Pulping Mills, governed by Washington Administrative Code (WAC) 173-405.
- Sulfite Pulping Mills, governed by Washington Administrative Code (WAC) 173-410.
- Primary Aluminum Plants, governed by Washington Administrative Code (WAC) 173-415.

PTPC is a kraft pulping mill and falls under Washington Administrative Code (WAC) 173-405. This is the specific legal basis for Olympic Region Clean Air Agency (ORCAA)'s own written statement that it "has no regulatory authority over PTPC's facility."

2. The Rule's Own Stated Purpose

Washington Administrative Code (WAC) 173-405-012, the statement of purpose for the Kraft Pulping Mills chapter, reads in relevant part: "Assume state jurisdiction over emissions from kraft pulping mills to provide for the systematic control of air pollution in this industry and for the proper development of the state's natural resources." The Primary Aluminum Plants chapter, Washington Administrative Code (WAC) 173-415-010, uses nearly identical language: "Assume state jurisdiction over emissions from primary aluminum reduction plants to provide for the systematic control of air pollution in this industry and for the proper development of the state's natural resources."

The near-identical wording across both rules indicates a single, deliberate regulatory template applied to each of the three carved-out industries, rather than three separate, unrelated decisions. In both cases, the rule's own stated purpose names industrial development alongside pollution control as an explicit justification for centralizing authority away from local agencies.

3. Statutory and Regulatory Citation Chain

The underlying statutory authority for all three rules is Chapter 70.94 of the Revised Code of Washington (RCW), the Washington Clean Air Act, specifically Revised Code of Washington (RCW) 70.94.331 and Revised Code of Washington (RCW) 70.94.395. The earliest confirmed filing dates for the current rule chapters are listed below.

- Washington Administrative Code (WAC) 173-405 (Kraft Pulping Mills): filed August 20, 1980 (WSR 80-11-060, Order DE 80-15).
- Washington Administrative Code (WAC) 173-415 (Primary Aluminum Plants): filed August 14, 1980 (WSR 80-11-028, Order DE 80-17), six days apart from the kraft mill filing.

The Primary Aluminum Plants rule's own citation history notes it was "Formerly Washington Administrative Code (WAC) 18-52-010" (quoted exactly as cited in the rule's own history), indicating a version of this exemption existed under a different rule numbering system before the 1980 filing. This is consistent with an origin in the 1970s, when Washington's Clean Air Act framework was first established following the federal Clean Air Act Amendments of 1970, with the 1980 filings representing a renumbering and formalization of already-existing state jurisdiction rather than its creation.

This document was not able to independently confirm the exact original enactment date of the underlying policy prior to 1980. Both rules were adopted and later amended under the same statutory authority (RCW 70.94.331 and Revised Code of Washington (RCW) 70.94.395), with a later amendment recorded February 19, 1991 (WSR 91-05-064, Order 90-06) for both chapters.

4. Confirmed at the Federal Level, Not Only State

The state carve-out is also embedded directly in federal enforcement delegation. A September 19, 2001 Federal Register filing (Volume 66, Number 182, pages 48211 to 48219, FR Doc. 01-23311), "Final Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Washington Department of Ecology and Four Local Air Agencies in Washington," documents the United States Environmental Protection Agency (EPA) delegating enforcement of federal National Emission Standards for Hazardous Air Pollutants (NESHAP) to the Washington State Department of Ecology and several local agencies.

Within that delegation, Subpart S, the federal Pulp and Paper National Emission Standards for Hazardous Air Pollutants (NESHAP), the actual federal hazardous air pollutant standard for this industry, was delegated to local agencies for pulp and paper facilities generally, with one explicit exception, stated in the filing's own footnote: "Subpart S of this Part is delegated to the Washington Department of Ecology and these local agencies... except kraft and sulfite pulping mills. The Washington Department of Ecology (Ecology) retains the authority to regulate kraft and sulfite pulping mills in the State of Washington, pursuant to Washington Administrative Code (WAC) 173-405-012 and 173-410-012."

The same filing shows the United States Environmental Protection Agency (EPA) correcting an error in its own proposed rule regarding primary aluminum plants.

An earlier draft had incorrectly listed two local agencies as holding delegated authority; the final rule explicitly corrects this: "United States Environmental Protection Agency (EPA) is not delegating subpart LL to any local agencies because no local agency in Washington can receive such delegation." The filing further states that Revised Code of Washington (RCW) 70.94.395 "provides Ecology with

authority to exclusively regulate a particular class of air contaminant sources on a state-wide basis," making this a matter of statutory impossibility for any local agency, not a matter of agency choice or historical practice.

5. Confirmed: The Local Agency Is the Same Agency, Under a Former Name

The 2001 federal filing names the relevant local agency for Jefferson County as the Olympic Air Pollution Control Authority (OAPCA). This is confirmed to be the same organization now known as Olympic Region Clean Air Agency (ORCAA). According to Olympic Region Clean Air Agency (ORCAA)'s own published history, the agency was formally launched March 24, 1968, as the Olympic Air Pollution Control Authority, serving Clallam, Grays Harbor, Jefferson, Mason, Pacific, and Thurston counties, the same six counties Olympic Region Clean Air Agency (ORCAA) serves today, and was renamed the Olympic Region Clean Air Agency in 2003.

This confirms that the federal delegation record naming the Olympic Air Pollution Control Authority (OAPCA)'s lack of authority over kraft and sulfite pulping mills applies directly, under a former name, to the same agency that stated in a July 20, 2026 written response to a community records request that it "has no regulatory authority over PTPC's facility."

This carve-out is not unique to Olympic Region Clean Air Agency (ORCAA). A federal register filing concerning the Northwest Clean Air Agency (NWCAA) confirms the identical exclusion: "Under the applicability provisions of Washington Administrative Code (WAC) 173-405-012, 173-410-012, and 173-415-012, Northwest Clean Air Agency (NWCAA) also does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction." A separate federal filing from 2001 states this authority "cannot be delegated to any local agencies in Washington," confirming this is a permanent structural feature of how the state has organized air quality authority, not a temporary or agency-specific gap that could be closed through delegation.

6. A Claim Not Independently Confirmed

A community source (Port Townsend Air Watchers) describes this carve-out as covering "kraft pulp mills, aluminum smelters and concrete plants." This document was able to confirm three industries, kraft pulping mills, sulfite pulping mills, and primary aluminum plants, through direct review of the relevant Washington Administrative Code (WAC) chapters and federal filings. No equivalent state-jurisdiction carve-out for concrete or cement plants was located. This detail should be treated as unconfirmed unless independently verified.

7. What This Means for PTPC Specifically

Because PTPC is a kraft pulping mill, Olympic Region Clean Air Agency (ORCAA) has no legal authority to permit, inspect, or enforce air quality requirements against it, regardless of funding or staffing levels. This authority rests exclusively with the Washington State Department of Ecology's Industrial Section.

This explains, with a specific legal citation, several things already documented elsewhere in this campaign's research: why Olympic Region Clean Air Agency (ORCAA)'s July 20, 2026 written response to a community records request repeatedly redirected air quality questions to Ecology; why the single air monitor in Port Townsend (at Blue Heron Middle School) was never configured to track the sulfur compounds specific to kraft mill emissions, since that was never within the operating agency's jurisdiction to design; and why a 2012 Port Townsend City Council resolution requesting a second, facility-specific monitor was directed at an agency that lacks the underlying legal authority to act on kraft mill emissions regardless of funding.

Sources and Citations

All factual claims in this document are drawn from the following sources, verified during research for this document.

1. Washington Administrative Code (WAC) 173-405-012, Kraft Pulping Mills, Statement of Purpose. app.leg.wa.gov/wac/default.aspx?cite=173-405
2. Washington Administrative Code (WAC) 173-415-010, Primary Aluminum Plants. app.leg.wa.gov/wac/default.aspx?cite=173-415&full=true
3. Washington State Department of Ecology, Regulations and Permits page, adopted rule language for Chapter 173-405, Washington Administrative Code (WAC), Kraft Pulping Mills; Chapter 173-410, Washington Administrative Code (WAC), Sulfite Pulping Mills; Chapter 173-415, Washington Administrative Code (WAC), Primary Aluminum Plants. ecology.wa.gov/regulations-permits
4. Federal Register, "Air Plan Approval; Washington; Northwest Clean Air Agency," June 15, 2020. [federalregister.gov/documents/2020/06/15/2020-11237/air-plan-approval-washington-northwest-clean-air-agency](https://www.federalregister.gov/documents/2020/06/15/2020-11237/air-plan-approval-washington-northwest-clean-air-agency)
5. Federal Register, Volume 66, Number 182, September 19, 2001, pages 48211 to 48219, FR Doc. 01-23311, FRL-7057-8, "Final Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Washington Department of Ecology and Four Local Air Agencies in Washington." govinfo.gov/content/pkg/FR-2001-09-19/html/01-23311.htm
6. United States Environmental Protection Agency (EPA), Washington State Implementation Plan (SIP), EPA-Approved Regulations Table 2. epa.gov/sips-wa/washington-sip-epa-approved-regulations-table-2-washington-department-ecology
7. Washington State Department of Ecology, Preliminary Cost-Benefit and Least-Burdensome Alternative Analysis: Chapter 173-405, Washington Administrative Code (WAC), Kraft Pulping Mills; Chapter 173-410, Washington Administrative Code (WAC), Sulfite Pulping Mills; Chapter 173-415, Washington Administrative Code (WAC), Primary Aluminum Plants. apps.ecology.wa.gov/publications/SummaryPages/1802039.html
8. Port Townsend Air Watchers, Data Sources page (community source, partially confirmed; the concrete plants detail was not independently verified). ptairwatchers.org/data/data-sources/
9. Olympic Region Clean Air Agency (ORCAA), written response to David Ginsberg, July 20, 2026, confirming no regulatory authority over Port Townsend Paper Company's facility.
10. Olympic Region Clean Air Agency (ORCAA), "History of the Olympic Region Clean Air Agency (ORCAA)," official agency history page, confirming founding as the Olympic Air Pollution Control Authority (OAPCA) on March 24, 1968, and renaming to Olympic Region Clean Air Agency (ORCAA) in 2003. orcaa.org/about/history-of-orcaa/