
SENATE BILL 5243

State of Washington 53rd Legislature 1993 Regular Session

By Senators Sutherland and Fraser; by request of Department of Ecology

Read first time 01/19/93. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to fee structures of the air quality stationary
2 source permit programs; amending RCW 70.94.015, 70.94.030, 70.94.151,
3 70.94.152, 70.94.161, 70.94.331, and 70.94.431; and adding new sections
4 to chapter 70.94 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.94.015 and 1991 c 199 s 228 are each amended to
7 read as follows:

8 (1) The air pollution control account is established in the state
9 treasury. All receipts collected by or on behalf of the department
10 from RCW 70.94.151(2), and receipts from nonpermit program sources
11 under RCW 70.94.152(1) and 70.94.331(10), and all receipts from RCW
12 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be deposited
13 into the account. Moneys in the account may be spent only after
14 appropriation. Expenditures from the account may be used only to
15 develop and implement the provisions of ((this act and)) chapters 70.94
16 and 70.120 RCW.

17 (2) The amounts collected and allocated in accordance with this
18 section shall be expended upon appropriation except as otherwise

1 provided in this section and in accordance with the following
2 limitations:

3 Portions of moneys received by the department of ecology from the
4 air pollution control account shall be distributed by the department to
5 local authorities based on:

6 (a) The level and extent of air quality problems within such
7 authority's jurisdiction;

8 (b) The costs associated with implementing air pollution regulatory
9 programs by such authority; and

10 (c) The amount of funding available to such authority from other
11 sources, whether state, federal, or local, that could be used to
12 implement such programs.

13 (3) The air operating permit account is created in the custody of
14 the state treasurer. All receipts ~~((paid to the department of
15 revenue))~~ collected by or on behalf of the department from permit
16 program sources under RCW 70.94.152(1), 70.94.331(10), 70.94.161, and
17 section 6 of this act shall be deposited into the account. All
18 penalties recovered from permit program sources by or on behalf of the
19 department under RCW 70.94.431(7) with respect to operating permit fees
20 shall be deposited in the account. All interest on moneys and
21 penalties deposited in the account shall be treated as receipts to the
22 account such that expenditures of these amounts shall be subject to the
23 same conditions as other account receipts. Expenditures from the
24 account may be used only for the direct and indirect costs of
25 implementing the air operating permit program under RCW 70.94.152(1),
26 70.94.331(10), 70.94.161, and section 6 of this act. ((Only the
27 director of the department of ecology or the director's designee may
28 authorize expenditures from the account. The account is subject to the
29 allotment procedures under chapter 43.88 RCW, but no)) Moneys in the
30 account may be spent only after appropriation ((is required for such
31 expenditures)).

32 **Sec. 2.** RCW 70.94.030 and 1991 c 199 s 103 are each amended to
33 read as follows:

34 Unless a different meaning is plainly required by the context, the
35 following words and phrases as hereinafter used in this chapter shall
36 have the following meanings:

1 (1) "Air contaminant" means dust, fumes, mist, smoke, other
2 particulate matter, vapor, gas, odorous substance, or any combination
3 thereof.

4 (2) "Air pollution" is presence in the outdoor atmosphere of one or
5 more air contaminants in sufficient quantities and of such
6 characteristics and duration as is, or is likely to be, injurious to
7 human health, plant or animal life, or property, or which unreasonably
8 interfere with enjoyment of life and property. For the purpose of this
9 chapter, air pollution shall not include air contaminants emitted in
10 compliance with chapter 17.21 RCW.

11 (3) "Air quality standard" means an established concentration,
12 exposure time, and frequency of occurrence of an air contaminant or
13 multiple contaminants in the ambient air which shall not be exceeded.

14 (4) "Ambient air" means the surrounding outside air.

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

18 (6) "Best available control technology" (BACT) means an emission
19 limitation, including a visible emission standard, based on the maximum
20 degree of reduction for each air pollutant subject to this standard
21 that would be emitted from any proposed new or modified source that the
22 permitting authority, on a case-by-case basis, taking into account
23 energy, environmental, and economic impacts and other costs, determines
24 is achievable for such sources or modification through application of
25 production processes, available methods, systems, and techniques,
26 including fuel cleaning or treatment or innovative fuel combustion
27 techniques for control of the air pollutant. In no event shall
28 application of the best available technology result in emissions of an
29 air pollutant that would exceed the emissions allowed by an applicable
30 standard under 40 C.F.R. Part 60 and Part 61, as they exist on the
31 effective date of this act, or their later enactments as adopted by
32 reference by the director by rule. If the reviewing agency determines
33 that technological or economic limitations on the application of
34 measurement methodology to a particular class of sources would make the
35 imposition of an emission standard infeasible, it may instead prescribe
36 a design, equipment, work practice, or operational standard, or
37 combination thereof, to meet the requirement of best available control
38 technology. The standard shall, to the degree possible, set forth the
39 emission reduction achievable by implementation of the design,

1 equipment, work practice, or operation and shall provide for compliance
2 by means that achieve equivalent results. The term "all known
3 available and reasonable methods of emission control" is interpreted to
4 mean the same as best available control technology.

5 (7) "Board" means the board of directors of an authority.

6 ~~((+7))~~ (8) "Control officer" means the air pollution control
7 officer of any authority.

8 ~~((+8))~~ (9) "Department" means the department of ecology.

9 ~~((+9))~~ (10) "Emission" means a release of air contaminants into
10 the ambient air.

11 ~~((+10))~~ (11) "Emission standard" ~~((means a limitation on the~~
12 ~~release of an air contaminant or multiple contaminants into the ambient~~
13 ~~air))~~ and "emission limitation" mean a requirement established under
14 the federal clean air act or this chapter that limits the quantity,
15 rate, or concentration of emissions of air contaminants on a continuous
16 basis, including requirements relating to the operation or maintenance
17 of a source to assure continuous emission reduction, and design,
18 equipment, work practice, or operational standards adopted under the
19 federal clean air act or this chapter.

20 ~~((+11))~~ (12) "Lowest achievable emission rate" (LAER) means for a
21 source that rate of emissions that reflects:

22 (a) The most stringent emission limitation that is contained in the
23 implementation plan of any state for such class or category of source,
24 unless the owner or operator of the proposed new or modified source
25 demonstrates that the limitations are not achievable; or

26 (b) The most stringent emission limitation that is achieved in
27 practice by such class or category of source, whichever is more
28 stringent.

29 In no event shall the application of this term permit a proposed
30 new or modified source to emit a pollutant in excess of the amount
31 allowable under applicable new source performance standards.

32 (13) "Multicounty authority" means an authority which consists of
33 two or more counties.

34 ~~((+12))~~ (14) "Permit program source" means a source required to
35 apply for or to maintain an operating permit under RCW 70.94.161.

36 (15) "Person" means an individual, firm, public or private
37 corporation, association, partnership, political subdivision of the
38 state, municipality, or governmental agency.

1 (~~(13)~~) (16) "Reasonably available control technology" (RACT)
2 means the lowest emission limit that a particular source or source
3 category is capable of meeting by the application of control technology
4 that is reasonably available considering technological and economic
5 feasibility. RACT is determined on a case-by-case basis for an
6 individual source or source category taking into account the impact of
7 the source upon air quality, the availability of additional controls,
8 the emission reduction to be achieved by additional controls, the
9 impact of additional controls on air quality, and the capital and
10 operating costs of the additional controls. RACT requirements for a
11 source or source category shall be adopted only after notice and
12 opportunity for comment are afforded.

13 (17) "Silvicultural burning" means burning of wood fiber on forest
14 land consistent with the provisions of RCW 70.94.660.

15 **Sec. 3.** RCW 70.94.151 and 1987 c 109 s 37 are each amended to read
16 as follows:

17 (1) The board of any activated authority or the department, may
18 classify air contaminant sources, by ordinance, resolution, rule or
19 regulation, which in its judgment may cause or contribute to air
20 pollution, according to levels and types of emissions and other
21 characteristics which cause or contribute to air pollution, and may
22 require registration or reporting or both for any such class or
23 classes. Classifications made pursuant to this section may be for
24 application to the area of jurisdiction of such authority, or the state
25 as a whole or to any designated area within the jurisdiction, and shall
26 be made with special reference to effects on health, economic and
27 social factors, and physical effects on property.

28 (2) Any person operating or responsible for the operation of air
29 contaminant sources of any class for which the ordinances, resolutions,
30 rules or regulations of the department or board of the authority,
31 require registration and reporting shall register therewith and make
32 reports containing information as may be required by such department or
33 board concerning location, size and height of contaminant outlets,
34 processes employed, nature of the contaminant emission and such other
35 information as is relevant to air pollution and available or reasonably
36 capable of being assembled. The department or board may require that
37 such registration be accompanied by a fee and may determine the amount
38 of such fee for such class or classes: PROVIDED, That the amount of

1 the fee shall only be to compensate for the costs of administering such
2 registration program which shall be defined as initial registration and
3 annual or other periodic reports from the source owner providing
4 information directly related to air pollution registration, on-site
5 inspections necessary to verify compliance with registration
6 requirements, data storage and retrieval systems necessary for support
7 of the registration program, emission inventory reports and emission
8 reduction credits computed from information provided by sources
9 pursuant to registration program requirements, staff review, including
10 engineering analysis for accuracy and currentness, of information
11 provided by sources pursuant to registration program requirements,
12 clerical and other office support provided in direct furtherance of the
13 registration program, and administrative support provided in directly
14 carrying out the registration program: PROVIDED FURTHER, That any such
15 registration made with either the board or the department shall
16 preclude a further registration with any other board or the department.

17 All registration program fees collected by the department shall be
18 deposited in the air pollution control account. All registration
19 program fees collected by the local air authorities shall be deposited
20 in their respective treasuries.

21 **Sec. 4.** RCW 70.94.152 and 1991 c 199 s 302 are each amended to
22 read as follows:

23 (1) The department of ecology or board of any authority may require
24 notice of the establishment of any proposed new sources except single
25 family and duplex dwellings. The department of ecology or board may
26 require such notice to be accompanied by a fee and determine the amount
27 of such fee: PROVIDED, That the amount of the fee may not exceed the
28 cost of reviewing the plans, specifications, and other information and
29 administering such notice: PROVIDED FURTHER, That any such notice
30 given or notice of construction application submitted to either the
31 board or to the department of ecology shall preclude a further
32 submittal of a duplicate application to any board or to the department
33 of ecology.

34 The department shall, after opportunity for public review and
35 comment, adopt rules that establish a workload-driven process for
36 determination and review of the fee covering the direct and indirect
37 costs of administering such a new source notice and a methodology for
38 tracking revenues and expenditures. All such new source fees collected

1 by the department from permit program sources shall be deposited in the
2 air operating permit account. All such new source fees collected by
3 the delegated local air authorities from permit program sources shall
4 be deposited in the dedicated accounts of their respective treasuries.
5 All such new source fees collected by the department from nonpermit
6 program sources shall be deposited in the air pollution control
7 account. All such new source fees collected by local air authorities
8 from nonpermit program sources shall be deposited in their respective
9 treasuries. Within thirty days of receipt of a notice of construction
10 application, the department of ecology or board may require, as a
11 condition precedent to the establishment of the new source or sources
12 covered thereby, the submission of plans, specifications, and such
13 other information as it deems necessary to determine whether the
14 proposed new source will be in accord with applicable rules and
15 regulations in force under this chapter. If on the basis of plans,
16 specifications, or other information required under this section the
17 department of ecology or board determines that the proposed new source
18 will not be in accord with this chapter or the applicable ordinances,
19 resolutions, rules, and regulations adopted under this chapter, it
20 shall issue an order denying permission to establish the new source.
21 If on the basis of plans, specifications, or other information required
22 under this section, the department of ecology or board determines that
23 the proposed new source will be in accord with this chapter, and the
24 applicable rules and regulations adopted under this chapter, it shall
25 issue an order of approval for the establishment of the new source or
26 sources, which order may provide such conditions as are reasonably
27 necessary to assure the maintenance of compliance with this chapter and
28 the applicable rules and regulations adopted under this chapter. Every
29 order of approval under this chapter must be reviewed prior to issuance
30 by a professional engineer or staff under the supervision of a
31 professional engineer in the employ of the department of ecology or
32 board.

33 (2) The determination required under subsection (1) of this section
34 shall include a determination of whether the operation of the new air
35 contaminant source at the location proposed will cause any ambient air
36 quality standard to be exceeded.

37 (3) New source review of a modification shall be limited to the
38 emission unit or units proposed to be modified and the air contaminants
39 whose emissions would increase as a result of the modification.

1 (4) Nothing in this section shall be construed to authorize the
2 department of ecology or board to require the use of emission control
3 equipment or other equipment, machinery, or devices of any particular
4 type, from any particular supplier, or produced by any particular
5 manufacturer.

6 (5) Any features, machines, and devices constituting parts of or
7 called for by plans, specifications, or other information submitted
8 pursuant to subsection (1) of this section shall be maintained and
9 operate in good working order.

10 (6) The absence of an ordinance, resolution, rule, or regulation,
11 or the failure to issue an order pursuant to this section shall not
12 relieve any person from his or her obligation to comply with applicable
13 emission control requirements or with any other provision of law.

14 (7) Within thirty days of receipt of a notice of construction
15 application the department of ecology or board shall either notify the
16 applicant in writing that the application is complete or notify the
17 applicant in writing of all additional information necessary to
18 complete the application. Within sixty days of receipt of a complete
19 application the department or board shall either (a) issue a final
20 decision on the application, or (b) for those projects subject to
21 public notice, initiate notice and comment on a proposed decision,
22 followed as promptly as possible by a final decision. A person seeking
23 approval to construct or modify a source that requires an operating
24 permit may elect to integrate review of the operating permit
25 application or amendment required by RCW 70.94.161 and the notice of
26 construction application required by this section. A notice of
27 construction application designated for integrated review shall be
28 processed in accordance with operating permit program procedures and
29 deadlines.

30 **Sec. 5.** RCW 70.94.161 and 1991 c 199 s 301 are each amended to
31 read as follows:

32 The department of ecology, or board of an authority, shall require
33 renewable permits for the operation of air contaminant sources subject
34 to the following conditions and limitations:

35 (1) Unless a different meaning is plainly required by the context,
36 the following words and phrases shall have the following meanings:

37 (a) (~~"Lowest achievable emission rate" (LAER) means for any source~~
38 ~~that rate of emissions which reflects:~~

1 (i) The most stringent emission limitation that is contained in the
2 implementation plan of any state for such class or category of source,
3 unless the owner or operator of the proposed new or modified source
4 demonstrates that such limitations are not achievable; or

5 (ii) The most stringent emission limitation that is achieved in
6 practice by such class or category of source, whichever is more
7 stringent.

8 In no event shall the application of this term permit a proposed
9 new or modified source to emit any pollutant in excess of the amount
10 allowable under applicable new source performance standards.

11 (b) "Best available control technology" (BACT) means technology
12 that will result in an emission limitation, including a visible
13 emission standard, based on the maximum degree of reduction for each
14 air pollutant subject to this regulation that would be emitted from any
15 proposed new or modified source that the permitting authority, on a
16 case-by-case basis, taking into account energy, environmental, and
17 economic impacts and other costs, determines is achievable for such
18 sources or modification through application of production processes,
19 available methods, systems, and techniques, including fuel cleaning or
20 treatment or innovative fuel combustion techniques for control of such
21 air pollutant. In no event shall application of the best available
22 technology result in emissions of any air pollutant that would exceed
23 the emissions allowed by any applicable standard under 40 C.F.R. Part
24 60 and Part 61. If the reviewing agency determines that technological
25 or economic limitations on the application of measurement methodology
26 to a particular class of sources would make the imposition of an
27 emission standard infeasible, it may instead prescribe a design,
28 equipment, work practice, or operational standard, or combination
29 thereof, to meet the requirement of best available control technology.
30 Such standard shall, to the degree possible, set forth the emission
31 reduction achievable by implementation of such design, equipment, work
32 practice, or operation and shall provide for compliance by means that
33 achieve equivalent results. The term "all known available and
34 reasonable methods of emission control" is interpreted to mean the same
35 as best available control technology.

36 (c) "Reasonably available control technology" (RACT) means the
37 lowest emission limit that a particular source or source category is
38 capable of meeting by the application of control technology that is
39 reasonably available considering technological and economic

1 feasibility. ~~RACT is determined on a case by case basis for an~~
2 ~~individual source or source category taking into account the impact of~~
3 ~~the source upon air quality, the availability of additional controls,~~
4 ~~the emission reduction to be achieved by additional controls, the~~
5 ~~impact of additional controls on air quality, and the capital and~~
6 ~~operating costs of the additional controls. RACT requirements for any~~
7 ~~source or source category shall be adopted only after notice and~~
8 ~~opportunity for comment are afforded.~~

9 (d)) "Regulated pollutant" shall have the same meaning as defined
10 in section 502(b) of the federal clean air act as it exists on the
11 effective date of this act, or its later enactment as adopted by
12 reference by the director by rule.

13 (b) "Source" means all of the emissions units including
14 quantifiable fugitive emissions, that are located on one or more
15 contiguous or adjacent properties, and are under the control of the
16 same person, or persons under common control, whose activities are
17 ancillary to the production of a single product or functionally related
18 group of products.

19 ((e)) (c) "New source" means (i) the construction or modification
20 of a stationary source that increases the amount of any air contaminant
21 emitted by such source or that results in the emission of any air
22 contaminant not previously emitted, and (ii) any other project that
23 constitutes a new source under the federal clean air act.

24 ((f)) (d) "Stationary source" means any building, structure,
25 facility, or installation that emits or may emit any air contaminant.

26 ((g)) (e) "Modification" means any physical change in, or change
27 in the method of operation of, a stationary source that increases the
28 amount of any air contaminant emitted by such source or that results in
29 the emission of any air contaminant not previously emitted. The term
30 modification shall be construed consistent with the definition of
31 modification in Section 7411, Title 42, United States Code, and with
32 rules implementing that section.

33 (2) Permits shall be issued for a term of five years. A permit may
34 be modified or amended during its term at the request of the permittee,
35 or for any reason allowed by the federal clean air act. The rules
36 adopted pursuant to subsection (3) of this section shall include rules
37 for permit amendments and modifications. The terms and conditions of
38 a permit shall remain in effect after the permit itself expires if the
39 permittee submits a timely and complete application for permit renewal.

1 (3)(a) Rules establishing the elements for a state-wide operating
2 permit program and the process for permit application and renewal
3 consistent with federal requirements shall be established by the
4 department by January 1, 1993. The rules shall provide that every
5 proposed permit must be reviewed prior to issuance by a professional
6 engineer or staff under the direct supervision of a professional
7 engineer in the employ of the permitting authority. The permit program
8 established by these rules shall be administered by the department and
9 delegated local air authorities. Rules developed under this subsection
10 shall not preclude a delegated local air authority from including in a
11 permit its own more stringent emission standards and operating
12 restrictions.

13 (b) The board of any local air pollution control authority may
14 apply to the department of ecology for a delegation order authorizing
15 the local authority to administer the operating permit program for
16 sources under that authority's jurisdiction. The department shall, by
17 order, approve such delegation, if the department finds that the local
18 authority has the technical and financial resources, to discharge the
19 responsibilities of a permitting authority under the federal clean air
20 act. A delegation request shall include adequate information about the
21 local authority's resources to enable the department to make the
22 findings required by this subsection; provided, any delegation order
23 issued under this subsection shall take effect ninety days after the
24 environmental protection agency authorizes the local authority to issue
25 operating permits under the federal clean air act.

26 (c) Except for the authority granted the energy facility site
27 evaluation council to issue permits for the new construction,
28 reconstruction, or enlargement or operation of new energy facilities
29 under chapter 80.50 RCW, the department may exercise the authority, as
30 delegated by the environmental protection agency, to administer Title
31 IV of the federal clean air act as amended and to delegate such
32 administration to local authorities as applicable pursuant to (b) of
33 this subsection.

34 (4) "Best available control technology" (BACT) is required for new
35 sources except where LAER is required.

36 Until July 1, 1993, "lowest achievable emission rate" (LAER) is
37 required solely for those sources required by the federal clean air
38 act. By December 1, 1992, the department shall recommend control

1 technology requirements for new sources to the appropriate standing
2 committees of the legislature.

3 Except as otherwise provided in RCW 70.94.331(9), "reasonably
4 available control technology" (RACT) is required for existing sources.

5 In establishing technical standards, defined in (~~subsection (2) of~~
6 ~~this section~~) RCW 70.94.030, the permitting authority shall consider
7 and, if found to be appropriate, give credit for waste reduction within
8 the process.

9 (5) Operating permits shall apply to all sources (a) where required
10 by the federal clean air act, and (b) for any source that may cause or
11 contribute to air pollution in such quantity as to create a threat to
12 the public health or welfare. Subsection (b) of this subsection is not
13 intended to apply to small businesses except when both of the following
14 limitations are satisfied: (i) The source is in an area exceeding or
15 threatening to exceed federal or state air quality standards; and (ii)
16 the department provides a reasonable justification that requiring a
17 source to have a permit is necessary to meet a federal or state air
18 quality standard, or to prevent exceeding a standard in an area
19 threatening to exceed the standard. For purposes of this subsection
20 "areas threatening to exceed air quality standards" shall mean areas
21 projected by the department to exceed such standards within five years.
22 Prior to identifying threatened areas the department shall hold a
23 public hearing or hearings within the proposed areas.

24 (6) Sources operated by government agencies are not exempt under
25 this section.

26 (7) (~~By October 1, 1993, or ninety~~) Within one hundred eighty
27 days after the United States environmental protection agency approves
28 the state operating permit program, (~~whichever is later, any~~) a
29 person required to have a permit shall submit to the permitting agency
30 a compliance plan and permit application, signed by a responsible
31 official, certifying the accuracy of the information submitted. Until
32 permits are issued, existing sources shall be allowed to operate under
33 presently applicable standards and conditions provided that such
34 sources submit complete and timely permit applications.

35 (8) All (~~proposed~~) draft permits shall be subject to public
36 notice and comment. The rules adopted pursuant to subsection (3) of
37 this section shall specify procedures for public notice and comment.
38 Such procedures shall provide the permitting agency with an opportunity
39 to respond to comments received from interested parties prior to the

1 time that the proposed permit is submitted to the environmental
2 protection agency for review pursuant to section 505(a) of the federal
3 clean air act. In the event that the environmental protection agency
4 objects to a proposed permit pursuant to section 505(b) of the federal
5 clean air act, the permitting authority shall not issue the permit,
6 unless the permittee consents to the changes required by the
7 environmental protection agency.

8 (9) The procedures contained in chapter 43.21B RCW shall apply to
9 permit appeals. The pollution control hearings board may stay the
10 effectiveness of any permit issued under this section during the
11 pendency of an appeal filed by the permittee, if the permittee
12 demonstrates that compliance with the permit during the pendency of the
13 appeal would require significant expenditures that would not be
14 necessary in the event that the permittee prevailed on the merits of
15 the appeal.

16 (10) After the effective date of any permit program promulgated
17 under this section, it shall be unlawful for any person to: (a)
18 Operate a permitted source in violation of any requirement of a permit
19 issued under this section; or (b) fail to submit a permit application
20 at the time required by rules adopted under subsection (3) of this
21 section.

22 (11) Each air operating permit shall state the origin of and
23 specific legal authority for each requirement included therein. Every
24 requirement in an operating permit shall be based upon the most
25 stringent of the following requirements:

26 (a) The federal clean air act and rules implementing that act,
27 including provision of the approved state implementation plan;

28 (b) This chapter and rules adopted thereunder; and

29 (c) In permits issued by a local air pollution control authority,
30 the requirements of any order or regulation adopted by that authority.

31 (12) Consistent with the provisions of the federal clean air act,
32 the permitting authority may issue general permits covering categories
33 of permitted sources, and temporary permits authorizing emissions from
34 similar operations at multiple temporary locations.

35 (13) Permitted sources within the territorial jurisdiction of an
36 authority delegated the operating permit program shall file their
37 permit applications with that authority, except that permit
38 applications for sources regulated on a state-wide basis pursuant to
39 RCW 70.94.395 shall be filed with the department. Permitted sources

1 outside the territorial jurisdiction of a delegated authority shall
2 file their applications with the department.

3 (14) When issuing operating permits to coal fired electric
4 generating plants, the permitting authority shall give consideration to
5 the federal time lines for the implementation of required control
6 technology.

7 (15)(a) The department and the local air authorities are authorized
8 to assess and to collect, and each source emitting one hundred tons or
9 more per year of a regulated pollutant shall pay, shall pay, an interim
10 assessment ((of ten dollars per ton multiplied by the annual process-
11 related emissions of each regulated pollutant emitted during calendar
12 years 1990 and 1991. "Regulated pollutant" shall have the same meaning
13 as defined in section 502(b) of the federal clean air act amendments of
14 1990)).

15 (b) ~~((Fees collected under (a) of this subsection shall be~~
16 ~~distributed as follows: Eighty percent to the department and twenty~~
17 ~~percent to local air authorities.~~

18 ~~(c))~~ The department shall conduct a workload analysis and prepare
19 an operating permit program development budget for fiscal year 1994.
20 The department shall allocate among all sources emitting one hundred
21 tons or more per year of a regulated pollutant during calendar year
22 1992 the costs identified in its program development budget according
23 to a three-tiered model, with each of the three tiers being equally
24 weighted, based upon:

25 (i) The number of sources;

26 (ii) The complexity of sources; and

27 (iii) The size of sources, as measured by the quantity of each
28 regulated pollutant emitted by the source.

29 (c) Each local authority and the department shall collect from
30 sources under their respective jurisdictions the interim fee determined
31 by the department and shall remit the fee to the department.

32 (d) Each local authority may, in addition, allocate its operating
33 permit program development costs among the sources under its
34 jurisdiction emitting one hundred tons or more per year of a regulated
35 pollutant during calendar year 1992 and may collect the interim fee
36 from these sources. A fee assessed pursuant to this subsection (15)(d)
37 shall be collected at the same time as the fee assessed pursuant to (c)
38 of this subsection.

1 (e) The fees assessed to a source under (~~((a) of~~) this subsection
2 (~~and any fees enacted under subsection (16) of this section~~) shall be
3 limited to the first seven thousand five hundred tons for each
4 regulated pollutant per year.

5 (16) (~~On or before November 1, 1992, the department, in~~
6 ~~consultation with the department of revenue, shall report to the~~
7 ~~appropriate standing committees of the legislature recommendations on~~
8 ~~air operating permit fees. The department shall recommend a level of~~
9 ~~fees to cover the direct and indirect costs of implementing the~~
10 ~~operating permit program required under the 1990 federal clean air act.~~
11 ~~In making such recommendations, the department shall address:~~

12 ~~(a) The costs of the permit program elements as identified in~~
13 ~~regulations promulgated by the United States environmental protection~~
14 ~~agency, including, as applicable:~~

15 ~~(i) Oversight of a delegated local air authority;~~

16 ~~(ii) Ambient air monitoring, modeling, and reporting;~~

17 ~~(iii) Training;~~

18 ~~(iv) Data management and quality assurance;~~

19 ~~(v) Development of state implementation plans;~~

20 ~~(vi) Emission inventories;~~

21 ~~(vii) Technical assistance;~~

22 ~~(viii) Rule making and guidelines; and~~

23 ~~(ix) Any other activities, consistent with the federal clean air~~
24 ~~act, that may be identified by the department;~~

25 ~~(b) The appropriate division of fees with delegated local air~~
26 ~~authorities; and~~

27 ~~(c) A methodology for tracking revenues and expenditures from fees~~
28 ~~paid under this chapter.~~

29 ~~(17))~~ The department shall determine the persons liable for the
30 fee imposed by subsection (15) of this section, compute the fee, and
31 provide by November 1 of (~~(1991 and 1992,)~~) 1993 the identity of the
32 fee payer with the computation of the fee to each local authority and
33 to the department of revenue for collection. The department of revenue
34 shall collect the fee computed by the department from the fee payers
35 (~~(identified by)~~) under the jurisdiction of the department. The
36 administrative, collection, and penalty provisions of chapter 82.32 RCW
37 shall apply to the collection of the fee by the department of revenue.
38 The department shall provide technical assistance to the department of
39 revenue for decisions made by the department of revenue pursuant to RCW

1 82.32.160 and 82.32.170. All interim fees collected by the department
2 of revenue on behalf of the department and all interim fees collected
3 by local authorities on behalf of the department shall be deposited in
4 the air operating permit account. The portion of the interim fees
5 collected by the local air authorities to cover their permit program
6 development costs under subsection (15)(d) of this section shall be
7 deposited in the dedicated accounts of their respective treasuries.

8 All fees identified in this section shall be due and payable on
9 March 1 of ~~((1992 and 1993))~~ 1994. The 1993 amendments to RCW
10 70.94.161 contained in section 5 of this act do not have the effect of
11 terminating, or in any way modifying, any liability, civil or criminal,
12 incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as
13 they existed prior to the effective date of this act.

14 ~~((18))~~ (17) For sources or source categories not required to
15 obtain permits under subsection (5) of this section, the department or
16 local authority may establish by rule control technology requirements.
17 If control technology rule revisions are made by the department or
18 local authority under this subsection, the department or local
19 authority shall consider the remaining useful life of control equipment
20 previously installed on existing sources before requiring technology
21 changes. The department or any local air authority may issue a general
22 permit, as authorized under the federal clean air act, for such
23 sources.

24 ~~((19))~~ (18) RCW 70.94.151 shall not apply to any source for which
25 a permit under this section has been issued.

26 NEW SECTION. Sec. 6. A new section is added to chapter 70.94 RCW
27 to read as follows:

28 (1) The department and delegated local air authorities are
29 authorized to determine, assess, and collect, and each permit program
30 source shall pay, annual fees sufficient to cover the direct and
31 indirect costs of implementing a state operating permit program
32 approved by the United States environmental protection agency under the
33 1990 amendments to the federal clean air act. Each permitting
34 authority shall develop by rule a fee schedule allocating among its
35 permit program sources the costs of the operating permit program, and
36 may, by rule, establish a payment schedule whereby periodic
37 installments of the annual fee are due and payable more frequently. The
38 department and the department of revenue may enter into an interagency

1 agreement for collection of the fees. If such an agreement is entered
2 into, the department will determine the persons subject to the fee,
3 calculate the amount of the fee to be assessed to each fee payer, and
4 provide this information to the department of revenue. The
5 administrative, collection, and penalty provisions of chapter 82.32 RCW
6 shall apply to the collection of the fee by the department of revenue.
7 The department shall provide technical assistance to the department of
8 revenue for decisions made by the department of revenue pursuant to RCW
9 82.32.160 and 82.32.170. This section does not preclude the department
10 from exercising its authority pursuant to the penalty provisions of
11 this chapter; nor does it preclude the department from exercising such
12 other legal and equitable remedies that it is authorized to carry out
13 in the event of a permit program source's failure to pay fees,
14 including action resulting in the revocation of a source's operating
15 permit. The department shall, in consultation with the department of
16 revenue, provide by rule for coordination with the department of
17 revenue regarding penalty assessment and collection. All operating
18 permit program fees collected by or on behalf of the department shall
19 be deposited in the air operating permit account. All operating permit
20 program fees collected by the delegated local air authorities shall be
21 deposited in their respective air operating permit accounts or other
22 accounts dedicated exclusively to support of the operating permit
23 program. The fees assessed under this subsection shall first be due
24 not less than forty-five days after the United States environmental
25 protection agency delegates to the department the authority to
26 administer the operating permit program and then annually thereafter.

27 The department shall establish, by rule, procedures for
28 administrative appeals to the department regarding the fee assessed
29 pursuant to this subsection and for review of any such administrative
30 determination by the pollution control hearings board in accordance
31 with chapter 43.21B RCW. The sole basis for such appeal shall be that
32 the assessment contains an arithmetic or clerical error.

33 (2) The fee schedule developed by each permitting authority shall
34 cover both its permit administration costs and the permitting
35 authority's share of state-wide program development and oversight
36 costs.

37 (a) Permit administration costs are those incurred by each
38 permitting authority, including the department, in administering and
39 enforcing the operating permit program with respect to sources under

1 its jurisdiction. Costs associated with the following activities are
2 fee eligible as these activities relate to the operating permit program
3 and to the sources permitted by a permitting authority, including,
4 where applicable, sources subject to a general permit:

5 (i) Preapplication assistance and review of an application and
6 proposed compliance plan for a permit, permit revision, or renewal;

7 (ii) Source inspections, testing, and other data-gathering
8 activities necessary for the development of a permit, permit revision,
9 or renewal;

10 (iii) Acting on an application for a permit, permit revision, or
11 renewal, including the costs of developing an applicable requirement as
12 part of the processing of a permit, permit revision, or renewal but
13 excluding the costs of developing BACT, LAER, or RACT requirements for
14 criteria and toxic air pollutants to the extent that these costs are
15 recovered as a part of fees collected under RCW 70.94.152 or 70.94.331,
16 preparing a draft permit and fact sheet, and preparing a final permit;

17 (iv) Notifying and soliciting, reviewing and responding to comment
18 from the public and contiguous states and tribes, conducting public
19 hearings regarding the issuance of a draft permit and other costs of
20 providing information to the public regarding operating permits and the
21 permit issuance process;

22 (v) Modeling necessary to establish permit limits or to determine
23 compliance with permit limits;

24 (vi) Reviewing compliance certifications and emissions reports and
25 conducting related compilation and reporting activities;

26 (vii) Conducting compliance inspections, complaint investigations,
27 and other activities necessary to ensure that a source is complying
28 with permit conditions;

29 (viii) Administrative enforcement activities and penalty
30 assessment, excluding the costs of proceedings before the pollution
31 control hearings board and all costs of judicial enforcement;

32 (ix) The share attributable to permitted sources of the development
33 and maintenance of emissions inventories;

34 (x) The share attributable to permitted sources of ambient air
35 quality monitoring and associated recording and reporting activities;

36 (xi) Training for permit administration and enforcement;

37 (xii) Fee determination, assessment, and collection, including the
38 costs of necessary administrative dispute resolution and penalty
39 collection pursuant to RCW 70.94.431(7);

1 (xiii) Required fiscal audits, periodic performance audits, and
2 reporting activities;

3 (xiv) Tracking of time, revenues and expenditures, and accounting
4 activities;

5 (xv) Administering the permit program including the costs of
6 clerical support, supervision, and management;

7 (xvi) Provision of assistance to small businesses under the
8 jurisdiction of the permitting authority as required under section 507
9 of the federal clean air act; and

10 (xvii) Other activities required by operating permit regulations
11 issued by the United States environmental protection agency under the
12 federal clean air act.

13 (b) Development and oversight costs are those incurred by the
14 department in developing and administering the state operating permit
15 program, and in overseeing the administration of the program by the
16 delegated local permitting authorities. Costs associated with the
17 following activities are fee eligible as these activities relate to the
18 operating permit program:

19 (i) Review and determinations necessary for delegation of authority
20 to administer and enforce a permit program to a local air authority
21 under RCW 70.94.161(3) and 70.94.860;

22 (ii) Conducting fiscal audits and periodic performance audits of
23 delegated local authorities, and other oversight functions required by
24 the operating permit program;

25 (iii) Administrative enforcement actions taken by the department on
26 behalf of a permitting authority, including those actions taken by the
27 department under RCW 70.94.785, but excluding the costs of proceedings
28 before the pollution control hearings board and all costs of judicial
29 enforcement;

30 (iv) Determination and assessment with respect to each permitting
31 authority of the fees covering its share of the costs of development
32 and oversight;

33 (v) Training and assistance for permit program administration and
34 oversight, including training and assistance regarding technical,
35 administrative, and data management issues;

36 (vi) Development of generally applicable regulations or guidance
37 regarding the permit program or its implementation or enforcement;

38 (vii) State codification of federal rules or standards for
39 inclusion in operating permits;

1 (viii) Preparation of delegation package and other activities
2 associated with submittal of the state permit program to the United
3 States environmental protection agency for approval, including ongoing
4 coordination activities;

5 (ix) General administration and coordination of the state permit
6 program, related support activities, and other agency indirect costs,
7 including necessary data management and quality assurance;

8 (x) Required fiscal audits and periodic performance audits of the
9 department, and reporting activities;

10 (xi) Tracking of time, revenues and expenditures, and accounting
11 activities;

12 (xii) Public education and outreach related to the operating permit
13 program, including the maintenance of a permit register;

14 (xiii) The share attributable to permitted sources of compiling and
15 maintaining emissions inventories;

16 (xiv) The share attributable to permitted sources of ambient air
17 quality monitoring, related technical support, and associated recording
18 activities;

19 (xv) The share attributable to permitted sources of modeling
20 activities;

21 (xvi) Provision of assistance to small business as required under
22 section 507 of the federal clean air act as it exists on the effective
23 date of this act or its later enactment as adopted by reference by the
24 director by rule;

25 (xvii) Provision of services by the department of revenue and the
26 office of the state attorney general and other state agencies in
27 support of permit program administration;

28 (xviii) A one-time revision to the state implementation plan to
29 include authority for source-specific requirements to be imposed via
30 operating permits; and

31 (xix) Other activities required by operating permit regulations
32 issued by the United States environmental protection agency under the
33 federal clean air act.

34 (3) The responsibility for operating permit fee determination,
35 assessment, and collection is to be shared by the department and
36 delegated local air authorities as follows:

37 (a) Each permitting authority, including the department, acting in
38 its capacity as a permitting authority, shall develop a fee schedule
39 and mechanism for collecting fees from the permit program sources under

1 its jurisdiction; the fees collected by each authority shall be
2 sufficient to cover its costs of permit administration and its share of
3 the department's costs of development and oversight. Each delegated
4 local authority shall remit to the department its share of the
5 department's development and oversight costs.

6 (b) Only those local air authorities to whom the department has
7 delegated the authority to administer the program pursuant to RCW
8 70.94.161(3) (b) and (c) and 70.94.860 shall have the authority to
9 administer and collect operating permit fees. The department shall
10 retain the authority to administer and collect such fees with respect
11 to the sources within the jurisdiction of a local air authority until
12 the effective date of program delegation to that air authority.

13 (c) The department shall allocate its development and oversight
14 costs among all permitting authorities, including the department, in
15 proportion to the number of permit program sources under the
16 jurisdiction of each authority, except that extraordinary costs or
17 other costs readily attributable to a specific permitting authority may
18 be assessed that authority. For purposes of this subsection, all
19 sources covered by a single general permit shall be treated as one
20 source.

21 (4) The department and each delegated local air authority shall
22 adopt by rule a general permit fee schedule for sources under their
23 respective jurisdictions after such time as the department adopts
24 provisions for general permit issuance. Within ninety days of the time
25 that the department adopts a general permit fee schedule, the
26 department shall report to the relevant standing committees of the
27 legislature regarding the general permit fee schedules adopted by the
28 department and by the delegated local air authorities. The permit
29 administration costs of each general permit shall be allocated
30 equitably among only those sources subject to that general permit. The
31 share of development and oversight costs attributable to each general
32 permit shall be determined pursuant to subsection (3)(c) of this
33 section.

34 (5) The fee schedule developed by the department shall allocate the
35 department's permit administration costs and its share of the
36 development and oversight costs among the sources for whom it acts as
37 a permitting authority, except sources subject to a general permit, as
38 follows:

1 (a) The department shall allocate its permit administration costs
2 and its share of the development and oversight costs according to a
3 three-tiered model based upon:

4 (i) The number of permit program sources under its jurisdiction;

5 (ii) The complexity of permit program sources under its
6 jurisdiction; and

7 (iii) The size of permit program sources under its jurisdiction, as
8 measured by the quantity of each regulated pollutant emitted by the
9 source.

10 (b) Each of the three tiers shall be equally weighted. The
11 department may, after opportunity for public review and comment, assign
12 to each of the three tiers a different weight.

13 (c) The department may, in addition, allocate extraordinary costs
14 or other activities-based costs readily attributable to a specific
15 source to that source.

16 The quantity of each regulated pollutant emitted by a source shall
17 be determined based on the annual emissions during the most recent
18 calendar year for which data is available.

19 (6) The department shall, after opportunity for public review and
20 comment, adopt rules that establish a process for development and
21 review of its operating permit program fee schedule, a methodology for
22 tracking program revenues and expenditures and, for both the department
23 and the delegated local air authorities, a system of fiscal audits,
24 reports, and periodic performance audits.

25 (a) The fee schedule development and review process shall include
26 the following:

27 (i) The department shall conduct a biennial workload analysis. The
28 department shall provide the opportunity for public review of and
29 comment on the workload analysis. The department shall review and
30 update its workload analysis during each biennial budget cycle, taking
31 into account information gathered by tracking previous revenues, time,
32 and expenditures and other information obtained through fiscal audits
33 and performance audits.

34 (ii) The department shall prepare a biennial budget based upon the
35 resource requirements identified in the workload analysis for that
36 biennium. In preparing the budget, the department shall take into
37 account the projected operating permit account balance at the start of
38 the biennium. The department shall provide the opportunity for public

1 review of and comment on the proposed budget. The department shall
2 review and update its budget each biennium.

3 (iii) The department shall develop a fee schedule allocating the
4 department's permit administration costs and its share of the
5 development and oversight costs among the department's permit program
6 sources using the methodology described in subsection (5) of this
7 section. The department shall provide the opportunity for public
8 review of and comment on the allocation methodology and fee schedule.
9 The department shall provide procedures for administrative resolution
10 of disputes regarding the source data on which allocation
11 determinations are based; these procedures shall be designed such that
12 resolution occurs prior to the completion of the allocation process.
13 The department shall review and update its fee schedule annually.

14 (b) The methodology for tracking revenues and expenditures shall
15 include the following:

16 (i) The department shall develop a system for tracking revenues and
17 expenditures that provides the maximum practicable information. At a
18 minimum, revenues from fees collected under the operating permit
19 program shall be tracked on a source-specific basis and time and
20 expenditures required to administer the program shall be tracked on the
21 basis of source categories and functional categories. Each general
22 permit will be treated as a separate source category for tracking and
23 accounting purposes.

24 (ii) The department shall use the information obtained from
25 tracking revenues, time, and expenditures to modify the workload
26 analysis required in subsection (6)(a) of this section.

27 (iii) The information obtained from tracking revenues, time, and
28 expenditures shall not provide a basis for challenge to the amount of
29 an individual source's fee.

30 (iv) On or before December 1, 1996, the department shall report to
31 the appropriate standing committees of the legislature recommendations
32 on the administrative feasibility and benefits of source-specific
33 tracking of time and expenditures. The report may include findings
34 from demonstration projects wherein time and expenditures are tracked
35 on a source-specific basis.

36 (c) The system of fiscal audits, reports, and periodic performance
37 audits shall include the following:

38 (i) The department and the delegated local air authorities shall
39 prepare annual reports and shall submit the reports to, respectively,

1 the appropriate standing committees of the legislature and the board of
2 directors of the local air authority.

3 (ii) The department shall arrange for fiscal audits and routine
4 performance audits and for periodic intensive performance audits of
5 each permitting authority and of the department.

6 (7) Each local air authority requesting delegation shall, after
7 opportunity for public review and comment, publish regulations which
8 establish a process for development and review of its operating permit
9 program fee schedule, and a methodology for tracking its revenues and
10 expenditures. These regulations shall be submitted to the department
11 for review and approval as part of the local authority's delegation
12 request.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.94 RCW
14 to read as follows:

15 The department of health shall have all the enforcement powers as
16 provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431(1) through
17 (7), and 70.94.435 with respect to emissions of radionuclides. This
18 section does not preclude the department of ecology from exercising its
19 authority under this chapter.

20 **Sec. 8.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
21 read as follows:

22 (1) The department shall have all the powers as provided in RCW
23 70.94.141.

24 (2) The department, in addition to any other powers vested in it by
25 law after consideration at a public hearing held in accordance with
26 chapters 42.30 and 34.05 RCW shall:

27 (a) Adopt rules establishing air quality objectives and air quality
28 standards;

29 (b) Adopt emission standards which shall constitute minimum
30 emission standards throughout the state. An authority may enact more
31 stringent emission standards, except for emission performance standards
32 for new wood stoves and opacity levels for residential solid fuel
33 burning devices which shall be state-wide, but in no event may less
34 stringent standards be enacted by an authority without the prior
35 approval of the department after public hearing and due notice to
36 interested parties;

1 (c) Adopt by rule air quality standards and emission standards for
2 the control or prohibition of emissions to the outdoor atmosphere of
3 radionuclides, dust, fumes, mist, smoke, other particulate matter,
4 vapor, gas, odorous substances, or any combination thereof. Such
5 requirements may be based upon a system of classification by types of
6 emissions or types of sources of emissions, or combinations thereof,
7 which it determines most feasible for the purposes of this chapter.
8 However, an industry, or the air pollution control authority having
9 jurisdiction, can choose, subject to the submittal of appropriate data
10 that the industry has quantified, to have any limit on the opacity of
11 emissions from a source whose emission standard is stated in terms of
12 a weight of particulate per unit volume of air (e.g., grains per dry
13 standard cubic foot) be based on the applicable particulate emission
14 standard for that source, such that any violation of the opacity limit
15 accurately indicates a violation of the applicable particulate emission
16 standard. Any alternative opacity limit provided by this section that
17 would result in increasing air contaminants emissions in any
18 nonattainment area shall only be granted if equal or greater emission
19 reductions are provided for by the same source obtaining the revised
20 opacity limit. A reasonable fee may be assessed to the industry to
21 which the alternate opacity standard would apply. The fee shall cover
22 only those costs to the air pollution control authority which are
23 directly related to the determination on the acceptability of the
24 alternate opacity standard, including testing, oversight and review of
25 data.

26 (3) The air quality standards and emission standards may be for the
27 state as a whole or may vary from area to area or source to source,
28 except that emission performance standards for new wood stoves and
29 opacity levels for residential solid fuel burning devices shall be
30 state-wide, as may be appropriate to facilitate the accomplishment of
31 the objectives of this chapter and to take necessary or desirable
32 account of varying local conditions of population concentration, the
33 existence of actual or reasonably foreseeable air pollution,
34 topographic and meteorologic conditions and other pertinent variables.

35 (4) The department is directed to cooperate with the appropriate
36 agencies of the United States or other states or any interstate
37 agencies or international agencies with respect to the control of air
38 pollution and air contamination, or for the formulation for the

1 submission to the legislature of interstate air pollution control
2 compacts or agreements.

3 (5) The department is directed to conduct or cause to be conducted
4 a continuous surveillance program to monitor the quality of the ambient
5 atmosphere as to concentrations and movements of air contaminants and
6 conduct or cause to be conducted a program to determine the quantity of
7 emissions to the atmosphere.

8 (6) The department shall enforce the air quality standards and
9 emission standards throughout the state except where a local authority
10 is enforcing the state regulations or its own regulations which are
11 more stringent than those of the state.

12 (7) The department shall encourage local units of government to
13 handle air pollution problems within their respective jurisdictions;
14 and, on a cooperative basis provide technical and consultative
15 assistance therefor.

16 (8) The department shall have the power to require the addition to
17 or deletion of a county or counties from an existing authority in order
18 to carry out the purposes of this chapter. No such addition or
19 deletion shall be made without the concurrence of any existing
20 authority involved. Such action shall only be taken after a public
21 hearing held pursuant to the provisions of chapter 34.05 RCW.

22 (9) The department shall establish rules requiring sources or
23 source categories to apply reasonable and available control methods.
24 Such rules shall apply to those sources or source categories that
25 individually or collectively contribute the majority of state-wide air
26 emissions of each regulated pollutant. The department shall review,
27 and if necessary, update its rules every five years to ensure
28 consistency with current reasonable and available control methods. The
29 department shall have adopted rules required under this subsection for
30 all sources by July 1, 1996.

31 (10) The department and local air authorities are authorized to
32 assess and collect a fee to cover the costs of developing,
33 establishing, or reviewing categorical or case-by-case control
34 technology requirements. The fee shall apply to determinations of
35 control technology requirements as defined under this section and RCW
36 70.94.161. The amount of the fee may not exceed the direct and
37 indirect costs of establishing the requirement for the particular
38 source or the pro rata portion of the direct and indirect costs of
39 establishing the requirement for the relevant source category. The

1 department shall, after opportunity for public review and comment,
2 adopt rules that establish a workload-driven process for determination
3 and review of the fee covering the direct and indirect costs of its
4 control technology determinations and a methodology for tracking
5 revenues and expenditures. All such control technology determination
6 fees collected by the department from permit program sources shall be
7 deposited in the air operating permit account. All such control
8 technology determination fees collected by the delegated local air
9 authorities from permit program sources shall be deposited in the
10 dedicated accounts of their respective treasuries. All such control
11 technology fees collected by the department from nonpermit program
12 sources shall be deposited in the air pollution control account. All
13 such control technology fees collected by local air authorities from
14 nonpermit program sources shall be deposited in their respective
15 treasuries.

16 (11) The department will establish a process to determine the
17 frequency and timing of determinations of RACT.

18 For the purposes of this section, "reasonable and available control
19 methods" shall include but not be limited to, changes in technology,
20 processes, or other control strategies.

21 **Sec. 9.** RCW 70.94.431 and 1991 c 199 s 311 are each amended to
22 read as follows:

23 (1) In addition to or as an alternate to any other penalty provided
24 by law, any person who violates any of the provisions of chapter 70.94
25 RCW, chapter 70.120 RCW, or any of the rules in force under such
26 chapters may incur a civil penalty in an amount not to exceed ten
27 thousand dollars per day for each violation. Each such violation shall
28 be a separate and distinct offense, and in case of a continuing
29 violation, each day's continuance shall be a separate and distinct
30 violation.

31 Any person who fails to take action as specified by an order issued
32 pursuant to this chapter shall be liable for a civil penalty of not
33 more than ten thousand dollars for each day of continued noncompliance.

34 (2) Penalties incurred but not paid shall accrue interest,
35 beginning on the ninety-first day following the date that the penalty
36 becomes due and payable, at the highest rate allowed by RCW 19.52.020
37 on the date that the penalty becomes due and payable. If violations or

1 penalties are appealed, interest shall not begin to accrue until the
2 thirty-first day following final resolution of the appeal.

3 The maximum penalty amounts established in this section may be
4 increased annually to account for inflation as determined by the state
5 office of the economic and revenue forecast council.

6 (3) Each act of commission or omission which procures, aids or
7 abets in the violation shall be considered a violation under the
8 provisions of this section and subject to the same penalty. The
9 penalties provided in this section shall be imposed pursuant to RCW
10 43.21B.300.

11 (4) All penalties recovered under this section by the department
12 shall be paid into the state treasury and credited to the air pollution
13 control account established in RCW 70.94.015 or, if recovered by the
14 authority, shall be paid into the treasury of the authority and
15 credited to its funds, except that penalties recovered pursuant to
16 subsection (7) of this section from permit program sources with respect
17 to operating permit program fees shall be deposited in the air
18 operating permit account established in RCW 70.94.015(3) or, if
19 recovered by a delegated local air authority, shall be deposited in its
20 air operating permit account or the dedicated account of its treasury.
21 If a prior penalty for the same violation has been paid to a local
22 authority, the penalty imposed by the department under subsection (1)
23 of this section shall be reduced by the amount of the payment.

24 (5) To secure the penalty incurred under this section, the state or
25 the authority shall have a lien on any vessel used or operated in
26 violation of this chapter which shall be enforced as provided in RCW
27 60.36.050.

28 (6) Public or private entities that are recipients or potential
29 recipients of department grants, whether for air quality related
30 activities or not, may have such grants rescinded or withheld by the
31 department for failure to comply with provisions of this chapter.

32 (7) In addition to other penalties provided by this chapter,
33 persons knowingly under-reporting emissions or other information used
34 to set fees, or persons required to pay emission or permit fees who are
35 more than ninety days late with such payments may be subject to a
36 penalty equal to three times the amount of the original fee owed.

37 (8) By January 1, 1992, the department shall develop rules for
38 excusing excess emissions from enforcement action if such excess
39 emissions are unavoidable. The rules shall specify the criteria and

1 procedures for the department and local air authorities to determine
2 whether a period of excess emissions is excusable in accordance with
3 the state implementation plan.

--- END ---