

2 E2SHB 1866 - S AMD - 312
3 By Senator Morton

4 ADOPTED 4/18/97

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The purpose of this act is to create a
8 voluntary program authorizing environmental excellence program
9 agreements with persons regulated under the environmental laws of the
10 state of Washington, and to direct agencies of the state of Washington
11 to solicit and support the development of agreements that use
12 innovative environmental measures or strategies to achieve
13 environmental results more effectively or efficiently.

14 Agencies shall encourage environmental excellence program
15 agreements that favor or promote pollution prevention, source
16 reduction, or improvements in practices that are transferable to other
17 interested entities or that can achieve better overall environmental
18 results than required by otherwise applicable rules and requirements.

19 In enacting this act it is not the intent of the legislature that
20 state environmental standards be applied in a manner that could result
21 in these state standards being waived under section 121 of the federal
22 comprehensive environmental response, compensation, and liability act
23 (42 U.S.C. Sec. 9261).

24 NEW SECTION. **Sec. 2.** The definitions in this section apply
25 throughout this chapter unless the context clearly requires otherwise.

26 (1) "State, regional, or local agency" means an agency, board,
27 department, authority, or commission that administers environmental
28 laws.

29 (2) "Coordinating agency" means the state, regional, or local
30 agency with the primary regulatory responsibility for the proposed
31 environmental excellence program agreement. If multiple agencies have
32 jurisdiction to administer state environmental laws affected by an
33 environmental excellence agreement, the department of ecology shall
34 designate or act as the coordinating agency.

1 (3) "Director" means the individual or body of individuals in whom
2 the ultimate legal authority of an agency is vested by any provision of
3 law. If the agency head is a body of individuals, a majority of those
4 individuals constitutes the director.

5 (4) "Environmental laws" means chapters 43.21A, 70.94, 70.95,
6 70.105, 70.119A, 75.20, 90.48, 90.52, 90.58, 90.64, and 90.71 RCW, and
7 RCW 90.54.020(3)(b) and rules adopted under those chapters and section.
8 The term environmental laws as used in this chapter does not include
9 any provision of the Revised Code of Washington, or of any municipal
10 ordinance or enactment, that regulates the selection of a location for
11 a new facility.

12 (5) "Facility" means a site or activity that is regulated under any
13 of the provisions of the environmental laws.

14 (6) "Legal requirement" includes any provision of an environmental
15 law, rule, order, or permit.

16 (7) "Sponsor" means the owner or operator of a facility, including
17 a municipal corporation, subject to regulation under the environmental
18 laws of the state of Washington, or an authorized representative of the
19 owner or operator, that submits a proposal for an environmental
20 excellence program agreement.

21 (8) "Stakeholder" means a person who has a direct interest in the
22 proposed environmental excellence program agreement or who represents
23 a public interest in the proposed environmental excellence program
24 agreement. Stakeholders may include communities near the project,
25 local or state governments, permittees, businesses, environmental and
26 other public interest groups, employees or employee representatives, or
27 other persons.

28 NEW SECTION. **Sec. 3.** An environmental excellence program
29 agreement entered into under this chapter must achieve more effective
30 or efficient environmental results than the results that would be
31 otherwise achieved. The basis for comparison shall be a reasonable
32 estimate of the overall impact of the participating facility on the
33 environment in the absence of an environmental excellence program
34 agreement. More effective environmental results are results that are
35 better overall than those that would be achieved under the legal
36 requirements superseded or replaced by the agreement. More efficient
37 environmental results are results that are achieved at reduced cost but
38 do not decrease the overall environmental results achieved by the

1 participating facility. An environmental excellence program agreement
2 may not authorize either (1) the release of water pollutants that will
3 cause to be exceeded, at points of compliance in the ambient
4 environment established pursuant to law, numeric surface water or
5 ground water quality criteria or numeric sediment quality criteria
6 adopted as rules under chapter 90.48 RCW; or (2) the emission of any
7 air contaminants that will cause to be exceeded any air quality
8 standard as defined in RCW 70.94.030(3); or (3) a decrease in the
9 overall environmental results achieved by the participating facility
10 compared with results achieved over a representative period before the
11 date on which the agreement is proposed by the sponsor. However, an
12 environmental excellence program agreement may authorize reasonable
13 increases in the release of pollutants to permit increases in facility
14 production or facility expansion and modification.

15 NEW SECTION. **Sec. 4.** (1) The director of a state, regional, or
16 local agency may enter into an environmental excellence program
17 agreement with any sponsor, even if one or more of the terms of the
18 environmental excellence program agreement would be inconsistent with
19 an otherwise applicable legal requirement. An environmental excellence
20 program agreement must meet the requirements of section 3 of this act.
21 Otherwise applicable legal requirements identified according to section
22 7(1) of this act shall be superseded and replaced in accordance with
23 section 9 of this act.

24 (2) The director of a state, regional, or local agency may enter
25 into an environmental excellence program agreement only to the extent
26 the state, regional, or local agency has jurisdiction to administer
27 state environmental laws either directly or indirectly through the
28 adoption of rules.

29 (3) Where a sponsor proposes an environmental excellence program
30 agreement that would affect legal requirements applicable to the
31 covered facility that are administered by more than one state,
32 regional, or local agency, the coordinating agency shall take the lead
33 in developing the environmental excellence program agreement with the
34 sponsor and other agencies administering legal requirements applicable
35 to the covered facility and affected by the agreement. The
36 environmental excellence program agreement does not become effective
37 until the agreement is approved by the director of each agency

1 administering legal requirements identified according to section 7(1)
2 of this act.

3 (4) No director may enter into an environmental excellence program
4 agreement applicable to a remedial action conducted under the
5 Washington model toxics control act, chapter 70.105D RCW, or the
6 federal comprehensive environmental response, compensation and
7 liability act (42 U.S.C. Sec. 9601 et seq). No action taken under this
8 chapter shall be deemed a waiver of any applicable, relevant, or
9 appropriate requirements for any remedial action conducted under the
10 Washington model toxics control act or the federal comprehensive
11 environmental response, compensation and liability act.

12 (5) The directors of state, regional, or local agencies shall not
13 enter into an environmental excellence program agreement or a
14 modification of an environmental excellence program agreement
15 containing terms affecting legal requirements adopted to comply with
16 provisions of a federal regulatory program and to which the responsible
17 federal agency objects after notice under the terms of section 8(4) of
18 this act.

19 (6) The directors of regional or local governments may not enter
20 into an environmental excellence program agreement or a modification of
21 an environmental excellence program agreement containing terms
22 affecting legal requirements that are subject to review or appeal by a
23 state agency, including but not limited to chapters 70.94, 70.95, and
24 90.58 RCW, and to which the responsible state agency objects after
25 notice is given under the terms of section 8(4) of this act.

26 NEW SECTION. **Sec. 5.** (1) A sponsor may propose an environmental
27 excellence program agreement. A trade association or other authorized
28 representative of a sponsor or sponsors may propose a programmatic
29 environmental excellence program agreement for multiple facilities.

30 (2) A sponsor must submit, at a minimum, the following information
31 and other information that may be requested by the director or
32 directors required to sign the agreement:

33 (a) A statement that describes how the proposal is consistent with
34 the purpose of this chapter and the project approval criteria in
35 section 3 of this act;

36 (b)(i) For a site-specific proposal, a comprehensive description of
37 the proposed environmental excellence project that includes the nature
38 of the facility and the operations that will be affected, how the

1 facility or operations will achieve results more effectively or
2 efficiently, and the nature of the results anticipated; or

3 (ii) For a programmatic proposal, a comprehensive description of
4 the proposed environmental excellence project that identifies the
5 facilities and the operations that are expected to participate, how
6 participating facilities or operations will achieve environmental
7 results more effectively or efficiently, the nature of the results
8 anticipated, and the method to identify and document the commitments
9 made by individual participants;

10 (c) An environmental checklist, containing sufficient information
11 to reasonably inform the public of the nature of the proposed
12 environmental excellence program agreement and describing probable
13 significant adverse environmental impacts and environmental benefits
14 expected from implementation of the proposal;

15 (d) A draft environmental excellence program agreement;

16 (e) A description of the stakeholder process as provided in
17 section 6 of this act;

18 (f) A preliminary identification of the permit amendments or
19 modifications that may be necessary to implement the proposed
20 environmental excellence program agreement.

21 NEW SECTION. **Sec. 6.** (1) Stakeholder participation in and support
22 for an environmental excellence program agreement is vital to the
23 integrity of the environmental excellence program agreement and helps
24 to inform the decision whether an environmental excellence program
25 agreement can be approved.

26 (2) A proposal for an environmental excellence program agreement
27 shall include the sponsor's plan to identify and contact stakeholders,
28 to advise stakeholders of the facts and nature of the project, and to
29 request stakeholder participation and review. Stakeholder
30 participation and review shall occur during the development,
31 consideration, and implementation stages of the proposed environmental
32 excellence program agreement. The plan shall include notice to the
33 employees of the facility to be covered by the proposed environmental
34 excellence program agreement and public notice in the area of the
35 covered facility.

36 (3) The coordinating agency shall extend an invitation to
37 participate in the development of the proposal to a broad and
38 representative sector of the public likely to be affected by the

1 environmental excellence program agreement, including representatives
2 of local community, labor, environmental, and neighborhood advocacy
3 groups. The coordinating agency shall select participants to be
4 included in the stakeholder process that are representative of the
5 diverse sectors of the public that are interested in the agreement.
6 The stakeholder process shall include the opportunity for discussion
7 and comment at multiple stages of the process and access to the
8 information relied upon by the directors in approving the agreement.

9 (4) The coordinating agency will identify any additional provisions
10 for the stakeholder process that the director of the coordinating
11 agency, in the director's sole discretion, considers appropriate to the
12 success of the stakeholder process, and provide for notice to the
13 United States environmental protection agency or other responsible
14 federal agency of each proposed environmental excellence program
15 agreement that may affect legal requirements of any program
16 administered by that agency.

17 NEW SECTION. **Sec. 7.** An environmental excellence program
18 agreement must contain the following terms and conditions:

19 (1) An identification of all legal requirements that are superseded
20 or replaced by the environmental excellence program agreement;

21 (2) A description of all legal requirements that are enforceable as
22 provided in section 13(1) of this act that are different from those
23 legal requirements applicable in the absence of the environmental
24 excellence program agreement;

25 (3) A description of the voluntary goals that are or will be
26 pursued by the sponsor;

27 (4) A statement describing how the environmental excellence program
28 agreement will achieve the purposes of this chapter;

29 (5) A statement describing how the environmental excellence program
30 agreement will be implemented, including a list of steps and an
31 implementation schedule;

32 (6) A statement that the proposed environmental excellence program
33 agreement will not increase overall worker safety risks or cause an
34 unjust or disproportionate and inequitable distribution of
35 environmental risks among diverse economic and cultural communities;

36 (7) A summary of the stakeholder process that was followed in the
37 development of the environmental excellence program agreement;

1 (8) A statement describing how any participating facility shall
2 measure and demonstrate its compliance with the environmental
3 excellence program agreement including, without limitation, a
4 description of the methods to be used to monitor performance, criteria
5 that represent acceptable performance, and the method of reporting
6 performance to the public and local communities. The facility's
7 compliance with the agreement must be independently verifiable;

8 (9) A description of and plan for public participation in the
9 implementation of the environmental excellence program agreement and
10 for public access to information needed to assess the benefits of the
11 environmental excellence program agreement and the sponsor's compliance
12 with the environmental excellence program agreement;

13 (10) A schedule of periodic performance review of the environmental
14 excellence program agreement by the directors that signed the
15 agreement;

16 (11) Provisions for voluntary and involuntary termination of the
17 agreement;

18 (12) The duration of the environmental excellence program agreement
19 and provisions for renewal;

20 (13) Statements approving the environmental excellence program
21 agreement made by the sponsor and by or on behalf of directors of each
22 state, regional, or local agency administering legal requirements that
23 are identified according to section 7(1) of this act;

24 (14) Additional terms as requested by the directors signing the
25 environmental excellence program agreement and consistent with this
26 chapter;

27 (15) Draft permits or permit modifications as needed to implement
28 the environmental excellence program agreement;

29 (16) With respect to a programmatic environmental excellence
30 program agreement, a statement of the method with which to identify and
31 document the specific commitments to be made by individual
32 participants.

33 NEW SECTION. **Sec. 8.** (1) The coordinating agency shall provide at
34 least thirty days after notice has been published in a newspaper under
35 subsection (2) of this section for public comment on a proposal to
36 enter into or modify an environmental excellence program agreement.
37 The coordinating agency may provide for an additional period of public
38 comment if required by the complexity of the proposed environmental

1 excellence program agreement and the degree of public interest. Before
2 the start of the comment period, the coordinating agency shall prepare
3 a proposed agreement, a public notice and a fact sheet. The fact sheet
4 shall: (a) Briefly describe the principal facts and the significant
5 factual, legal, methodological and policy questions considered by the
6 directors signing the agreement, and the directors' proposed decisions;
7 and (b) briefly describe how the proposed action meets the requirements
8 of section 3 of this act.

9 (2) The coordinating agency shall publish notice of the proposed
10 agreement in the Washington State Register and in a newspaper of
11 general circulation in the vicinity of the facility or facilities
12 covered by the proposed environmental excellence program agreement.
13 The notice shall generally describe the agreement or modification; the
14 facilities to be covered; summarize the changes in legal requirements
15 that will result from the agreement; summarize the reasons for
16 approving the agreement or modifications; identify an agency person to
17 contact for additional information; state that the proposed agreement
18 or modification and fact sheet are available on request; and state that
19 comments may be submitted to the agency during the comment period. The
20 coordinating agency shall order a public informational meeting or a
21 public hearing to receive oral comments if the written comments during
22 the comment period demonstrate considerable public interest in the
23 proposed agreement.

24 (3) The coordinating agency shall prepare and make available a
25 responsiveness summary indicating the agencies' actions taken in
26 response to comments and the reasons for those actions.

27 (4) With respect to an environmental excellence program agreement
28 that affects legal requirements adopted to comply with provisions of a
29 federal regulatory program, the coordinating agency shall provide a
30 copy of the environmental excellence program agreement, and a copy of
31 the notice required by subsection (1) of this section, to the federal
32 agency that is responsible for administering that program at least
33 thirty days before entering into or modifying the environmental
34 excellence program agreement, and shall afford the federal agency the
35 opportunity to object to those terms of the environmental excellence
36 program agreement or modification of an environmental excellence
37 program agreement affecting the legal requirements. The coordinating
38 agency shall provide similar notice to state agencies that have

1 statutory review or appeal responsibilities regarding provisions of the
2 environmental excellence program agreement.

3 NEW SECTION. **Sec. 9.** (1) Notwithstanding any other provision of
4 law, any legal requirement identified under section 7(1) of this act
5 shall be superseded or replaced in accordance with the terms of the
6 environmental excellence program agreement. Legal requirements
7 contained in a permit that are affected by an environmental excellence
8 program agreement will continue to be enforceable until such time as
9 the permit is revised in accordance with subsection (2) of this
10 section. With respect to any other legal requirements, the legal
11 requirements contained in the environmental excellence program
12 agreement are effective as provided by the environmental excellence
13 program agreement, and the facility or facilities covered by an
14 environmental excellence program agreement shall comply with the terms
15 of the environmental excellence program agreement in lieu of the legal
16 requirements that are superseded and replaced by the approved
17 environmental excellence program agreement.

18 (2) Any permits affected by an environmental excellence program
19 agreement shall be revised to conform to the environmental excellence
20 program agreement by the agency with jurisdiction. The permit
21 revisions will be completed within one hundred twenty days of the
22 effective date of the agreement in accordance with otherwise applicable
23 procedural requirements, including, where applicable, public notice and
24 the opportunity for comment, and the opportunity for review and
25 objection by federal agencies.

26 (3) Other than as superseded or replaced as provided in an approved
27 environmental excellence program agreement, any existing permit
28 requirements remain in effect and are enforceable.

29 (4) A programmatic environmental excellence program agreement shall
30 become applicable to an individual facility when all directors entering
31 into the programmatic agreement approve the owner or operator's
32 commitment to comply with the agreement. A programmatic agreement may
33 not take effect, however, until notice and an opportunity to comment
34 for the individual facility has been provided in accordance with the
35 requirements of section 8 (1) through (3) of this act.

36 NEW SECTION. **Sec. 10.** (1) A decision by the directors of state,
37 regional, or local agencies to approve a proposed environmental

1 excellence program agreement, or to terminate or modify an approved
2 environmental excellence program agreement, is subject to judicial
3 review in superior court. For purposes of judicial review, the court
4 may grant relief from the decision to approve or modify an
5 environmental excellence program agreement only if it determines that
6 the action: (a) Violates constitutional provisions; (b) exceeds the
7 statutory authority of the agency; (c) was arbitrary and capricious; or
8 (d) was taken without compliance with the procedures provided by this
9 chapter. However, the decision of the director or directors shall be
10 accorded substantial deference by the court. A decision not to enter
11 into or modify an environmental excellence program agreement and a
12 decision not to accept a commitment under section 9(4) of this act to
13 comply with the terms of a programmatic environmental excellence
14 agreement are within the sole discretion of the directors of the state,
15 regional, or local agencies and are not subject to review.

16 (2) An appeal from a decision to approve or modify a facility
17 specific or a programmatic environmental excellence program agreement
18 is not timely unless filed with the superior court and served on the
19 parties to the environmental excellence program agreement within thirty
20 days of the date on which the agreement or modification is signed by
21 the director. For an environmental excellence program agreement or
22 modification signed by more than one director, there is only one
23 appeal, and the time for appeal shall run from the last date on which
24 the agreement or modification is signed by a director.

25 (3) A decision to accept the commitment of a specific facility to
26 comply with the terms of a programmatic environmental excellence
27 program agreement, or to modify the application of an agreement to a
28 specific facility, is subject to judicial review as described in
29 subsection (1) of this section. An appeal is not timely unless filed
30 with the superior court and served on the directors signing the
31 agreement, the sponsor, and the owner or operator of the specific
32 facility within thirty days of the date the director or directors that
33 signed the programmatic agreement approve the owner or operator's
34 commitment to comply with the agreement. For a programmatic
35 environmental excellence program agreement or modification signed by
36 more than one director, there shall be only one appeal and the time for
37 appeal shall run from the last date on which a director approves the
38 commitment.

1 (4) The issuance of permits and permit modifications is subject to
2 review under otherwise applicable law.

3 (5) An appeal of a decision by a director under section 11 of this
4 act to terminate in whole or in part a facility specific or
5 programmatic environmental excellence program agreement is not timely
6 unless filed with the superior court and served on the director within
7 thirty days of the date on which notice of the termination is issued
8 under section 11(2) of this act.

9 NEW SECTION. **Sec. 11.** (1) In addition to any termination
10 provisions contained in an environmental excellence program agreement,
11 a director of an agency may terminate an environmental excellence
12 program agreement in whole or in part with respect to a legal
13 requirement administered by that agency, if the director finds: (a)
14 That after notice and a reasonable opportunity to cure, the covered
15 facility is in violation of a material requirement of the agreement;
16 (b) that the facility has repeatedly violated any requirements of the
17 agreement; (c) that the operation of the facility under the agreement
18 has caused endangerment to public health or the environment that cannot
19 be remedied by modification of the agreement; or (d) the facility has
20 failed to make substantial progress in achieving the voluntary goals
21 identified under section 6(4) of this act, and these goals are material
22 to the overall objectives of the agreement.

23 (2) A director of an agency terminating an environmental excellence
24 program agreement in any respect shall provide each of the parties to
25 the agreement with a written notice of that action specifying the
26 extent to which the environmental excellence program agreement is to be
27 terminated, the factual and legal basis for termination, and a
28 description of the opportunity for judicial review of the decision to
29 terminate the environmental excellence program agreement.

30 (3) If a director terminates less than the entire environmental
31 excellence program agreement, the owner or operator of the covered
32 facility may elect to terminate the entire agreement as it applies to
33 the facility.

34 (4) If a director decides to terminate an environmental excellence
35 program agreement because the facility has not been able to meet the
36 legal requirements established under the agreement, or because
37 operation of the facility under the agreement has caused endangerment
38 to public health or the environment, as provided in subsection (1)(c)

1 of this section, the director may establish in the notice of
2 termination: (a) Practical interim requirements for the facility that
3 are no less stringent than the legal requirements that would apply to
4 the facility in the absence of the agreement; and (b) a practical
5 schedule of compliance for meeting the interim requirements. The
6 interim requirements and schedule of compliance shall be subject to
7 judicial review under the provisions of section 10(5) of this act. The
8 facility shall comply with the interim requirements established under
9 this subsection after they are final and no longer subject to judicial
10 review until applicable permits or permit modifications have been
11 issued under section 12 of this act.

12 NEW SECTION. **Sec. 12.** After a termination under section 11 of
13 this act is final and no longer subject to judicial review, the sponsor
14 has sixty days in which to apply for any permit or approval affected by
15 any terminated portion of the environmental excellence program
16 agreement. An application filed during the sixty-day period shall be
17 deemed a timely application for renewal of a permit under the terms of
18 any applicable law. Except as provided in section 11(4) of this act,
19 the terms and conditions of the environmental excellence program
20 agreement and of permits issued will continue in effect until a final
21 permit or approval is issued. If the sponsor fails to submit a timely
22 or complete application, any affected permit or approval may be
23 modified at any time that is consistent with applicable law.

24 NEW SECTION. **Sec. 13.** (1) The legal requirements contained in the
25 environmental excellence program agreement in accordance with section
26 7(2) of this act are enforceable commitments of the facility covered by
27 the agreement. Any violation of these legal requirements is subject to
28 penalties and remedies to the same extent as the legal requirements
29 that they superseded or replaced.

30 (2) The voluntary goals stated in the environmental excellence
31 program agreement in accordance with section 7(3) of this act are
32 voluntary commitments of the facility covered by the agreement. If the
33 facility fails to meet these goals, it shall not be subject to any form
34 of enforcement action, including penalties, orders, or any form of
35 injunctive relief. The failure to make substantial progress in meeting
36 these goals may be a basis on which to terminate the environmental
37 excellence program agreement under section 11 of this act.

1 (3) Nothing in this chapter limits the authority of an agency, the
2 attorney general, or a prosecuting attorney to initiate an enforcement
3 action for violation of any applicable legal requirement. However, no
4 civil, criminal, or administrative action may be brought with respect
5 to any legal requirement that is superseded or replaced under the terms
6 of an environmental excellence program agreement.

7 (4) This chapter does not create any new authority for citizen
8 suits, and does not alter or amend other statutory provisions
9 authorizing citizen suits.

10 NEW SECTION. **Sec. 14.** An environmental excellence program
11 agreement may contain a reduced fee schedule with respect to a program
12 applicable to the covered facility or facilities.

13 NEW SECTION. **Sec. 15.** A decision to approve an environmental
14 excellence program agreement is not subject to the requirements of the
15 state environmental policy act, chapter 43.21C RCW, including the
16 requirement to prepare an environmental impact statement under RCW
17 43.21C.031. However, the consideration of a proposed environmental
18 excellence program agreement will integrate an assessment of
19 environmental impacts.

20 NEW SECTION. **Sec. 16.** Any state, regional, or local agency
21 administering programs under an environmental law may adopt rules or
22 ordinances to implement this chapter. However, it is not necessary
23 that an agency adopt rules or ordinances in order to consider or enter
24 into environmental excellence program agreements.

25 NEW SECTION. **Sec. 17.** The director of the department of ecology
26 shall appoint an advisory committee to review the effectiveness of the
27 environmental excellence program agreement program and to make a
28 recommendation to the legislature concerning the continuation,
29 termination, or modification of the program. The committee also may
30 make recommendations it considers appropriate for revision of any
31 regulatory program that is affected by an environmental excellence
32 program agreement. The committee shall be composed of one
33 representative each from two state agencies, two representatives of the
34 regulated community, and two representatives of environmental
35 organizations or other public interest groups. The committee must

1 submit a report and its recommendation to the legislature not later
2 than October 31, 2001. The department of ecology shall provide the
3 advisory committee with such support as they may require.

4 NEW SECTION. **Sec. 18.** (1) Agencies authorized to enter into
5 environmental excellence program agreements may assess and collect a
6 fee to recover the costs of processing environmental excellence program
7 agreement proposals. The amount of the fee may not exceed the direct
8 and indirect costs of processing the environmental excellence program
9 agreement proposal. Processing includes, but is not limited to:
10 Working with the sponsor to develop the agreement, meeting with
11 stakeholder groups, conducting public meetings and hearings, preparing
12 a record of the decision to enter into or modify an agreement, and
13 defending any appeal from a decision to enter into or modify an
14 agreement. Fees also may include, to the extent specified by the
15 agreement, the agencies' direct costs of monitoring compliance with
16 those specific terms of an agreement not covered by permits issued to
17 the participating facility.

18 (2) Agencies assessing fees may graduate the initial fees for
19 processing an environmental excellence program agreement proposal to
20 account for the size of the sponsor and to make the environmental
21 excellence program agreement program more available to small
22 businesses. An agency may exercise its discretion to waive all or any
23 part of the fees.

24 (3) Sponsors may voluntarily contribute funds to the administration
25 of an agency's environmental excellence program agreement program.

26 NEW SECTION. **Sec. 19.** The authority of a director to enter into
27 a new environmental excellence program agreement program shall be
28 terminated June 30, 2002. Environmental excellence program agreements
29 entered into before June 30, 2002, shall remain in force and effect
30 subject to the provisions of this chapter.

31 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.21A
32 RCW to read as follows:

33 Notwithstanding any other provision of law, any legal requirement
34 under this chapter, including any standard, limitation, rule, or order
35 is superseded and replaced in accordance with the terms and provisions

1 of an environmental excellence program agreement, entered into under
2 chapter 43.-- RCW (sections 2 through 19 of this act).

3 NEW SECTION. **Sec. 21.** A new section is added to chapter 70.94 RCW
4 to read as follows:

5 Notwithstanding any other provision of law, any legal requirement
6 under this chapter, including any standard, limitation, rule, or order
7 is superseded and replaced in accordance with the terms and provisions
8 of an environmental excellence program agreement, entered into under
9 chapter 43.-- RCW (sections 2 through 19 of this act).

10 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.95 RCW
11 to read as follows:

12 Notwithstanding any other provision of law, any legal requirement
13 under this chapter, including any standard, limitation, rule, or order
14 is superseded and replaced in accordance with the terms and provisions
15 of an environmental excellence program agreement, entered into under
16 chapter 43.-- RCW (sections 2 through 19 of this act).

17 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.105
18 RCW to read as follows:

19 Notwithstanding any other provision of law, any legal requirement
20 under this chapter, including any standard, limitation, rule, or order
21 is superseded and replaced in accordance with the terms and provisions
22 of an environmental excellence program agreement, entered into under
23 chapter 43.-- RCW (sections 2 through 19 of this act).

24 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.119A
25 RCW to read as follows:

26 Notwithstanding any other provision of law, any legal requirement
27 under this chapter, including any standard, limitation, rule, or order
28 is superseded and replaced in accordance with the terms and provisions
29 of an environmental excellence program agreement, entered into under
30 chapter 43.-- RCW (sections 2 through 19 of this act).

31 NEW SECTION. **Sec. 25.** A new section is added to chapter 75.20 RCW
32 to read as follows:

33 Notwithstanding any other provision of law, any legal requirement
34 under this chapter, including any standard, limitation, rule, or order

1 is superseded and replaced in accordance with the terms and provisions
2 of an environmental excellence program agreement, entered into under
3 chapter 43.-- RCW (sections 2 through 19 of this act).

4 NEW SECTION. **Sec. 26.** A new section is added to chapter 90.48 RCW
5 to read as follows:

6 Notwithstanding any other provision of law, any legal requirement
7 under this chapter, including any standard, limitation, rule, or order
8 is superseded and replaced in accordance with the terms and provisions
9 of an environmental excellence program agreement, entered into under
10 chapter 43.-- RCW (sections 2 through 19 of this act).

11 NEW SECTION. **Sec. 27.** A new section is added to chapter 90.52 RCW
12 to read as follows:

13 Notwithstanding any other provision of law, any legal requirement
14 under this chapter, including any standard, limitation, rule, or order
15 is superseded and replaced in accordance with the terms and provisions
16 of an environmental excellence program agreement, entered into under
17 chapter 43.-- RCW (sections 2 through 19 of this act).

18 NEW SECTION. **Sec. 28.** A new section is added to chapter 90.58 RCW
19 to read as follows:

20 Notwithstanding any other provision of law, any legal requirement
21 under this chapter, including any standard, limitation, rule, or order
22 is superseded and replaced in accordance with the terms and provisions
23 of an environmental excellence program agreement, entered into under
24 chapter 43.-- RCW (sections 2 through 19 of this act).

25 NEW SECTION. **Sec. 29.** A new section is added to chapter 90.64 RCW
26 to read as follows:

27 Notwithstanding any other provision of law, any legal requirement
28 under this chapter, including any standard, limitation, rule, or order
29 is superseded and replaced in accordance with the terms and provisions
30 of an environmental excellence program agreement, entered into under
31 chapter 43.-- RCW (sections 2 through 19 of this act).

32 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.71 RCW
33 to read as follows:

1 Notwithstanding any other provision of law, any legal requirement
2 under this chapter, including any standard, limitation, rule, or order
3 is superseded and replaced in accordance with the terms and provisions
4 of an environmental excellence program agreement, entered into under
5 chapter 43.-- RCW (sections 2 through 19 of this act).

6 **Sec. 31.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read
7 as follows:

8 Utilization and management of the waters of the state shall be
9 guided by the following general declaration of fundamentals:

10 (1) Uses of water for domestic, stock watering, industrial,
11 commercial, agricultural, irrigation, hydroelectric power production,
12 mining, fish and wildlife maintenance and enhancement, recreational,
13 and thermal power production purposes, and preservation of
14 environmental and aesthetic values, and all other uses compatible with
15 the enjoyment of the public waters of the state, are declared to be
16 beneficial.

17 (2) Allocation of waters among potential uses and users shall be
18 based generally on the securing of the maximum net benefits for the
19 people of the state. Maximum net benefits shall constitute total
20 benefits less costs including opportunities lost.

21 (3) The quality of the natural environment shall be protected and,
22 where possible, enhanced as follows:

23 (a) Perennial rivers and streams of the state shall be retained
24 with base flows necessary to provide for preservation of wildlife,
25 fish, scenic, aesthetic and other environmental values, and
26 navigational values. Lakes and ponds shall be retained substantially
27 in their natural condition. Withdrawals of water which would conflict
28 therewith shall be authorized only in those situations where it is
29 clear that overriding considerations of the public interest will be
30 served.

31 (b) Waters of the state shall be of high quality. Regardless of
32 the quality of the waters of the state, all wastes and other materials
33 and substances proposed for entry into said waters shall be provided
34 with all known, available, and reasonable methods of treatment prior to
35 entry. Notwithstanding that standards of quality established for the
36 waters of the state would not be violated, wastes and other materials
37 and substances shall not be allowed to enter such waters which will
38 reduce the existing quality thereof, except in those situations where

1 it is clear that overriding considerations of the public interest will
2 be served. Technology-based effluent limitations or standards for
3 discharges for municipal water treatment plants located on the
4 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
5 to reflect credit for substances removed from the plant intake water
6 if:

7 (i) The municipality demonstrates that the intake water is drawn
8 from the same body of water into which the discharge is made; and

9 (ii) The municipality demonstrates that no violation of receiving
10 water quality standards or appreciable environmental degradation will
11 result.

12 (4) Adequate and safe supplies of water shall be preserved and
13 protected in potable condition to satisfy human domestic needs.

14 (5) Multiple-purpose impoundment structures are to be preferred
15 over single-purpose structures. Due regard shall be given to means and
16 methods for protection of fishery resources in the planning for and
17 construction of water impoundment structures and other artificial
18 obstructions.

19 (6) Federal, state, and local governments, individuals,
20 corporations, groups and other entities shall be encouraged to carry
21 out practices of conservation as they relate to the use of the waters
22 of the state. In addition to traditional development approaches,
23 improved water use efficiency and conservation shall be emphasized in
24 the management of the state's water resources and in some cases will be
25 a potential new source of water with which to meet future needs
26 throughout the state.

27 (7) Development of water supply systems, whether publicly or
28 privately owned, which provide water to the public generally in
29 regional areas within the state shall be encouraged. Development of
30 water supply systems for multiple domestic use which will not serve the
31 public generally shall be discouraged where water supplies are
32 available from water systems serving the public.

33 (8) Full recognition shall be given in the administration of water
34 allocation and use programs to the natural interrelationships of
35 surface and ground waters.

36 (9) Expressions of the public interest will be sought at all stages
37 of water planning and allocation discussions.

1 (10) Water management programs, including but not limited to, water
2 quality, flood control, drainage, erosion control and storm runoff are
3 deemed to be in the public interest.

4 (11) Notwithstanding any other provision of law, any legal
5 requirement under subsection (3)(b) of this section is superseded and
6 replaced in accordance with the terms and provisions of an
7 environmental excellence program agreement, entered into under chapter
8 43.-- RCW (sections 2 through 19 of this act).

9 NEW SECTION. Sec. 32. The environmental excellence account is
10 hereby created in the state treasury. All fees and voluntary
11 contributions collected by state agencies under section 18 of this act
12 shall be deposited into the account. Moneys in the account may be
13 spent only after appropriation. Expenditures from the account may be
14 used only for purposes consistent with the environmental excellence
15 program created under sections 2 through 19 of this act. Moneys in the
16 account may be appropriated to each agency in an amount equal to the
17 amount each agency collects and deposits into the account.

18 NEW SECTION. Sec. 33. Sections 2 through 19 of this act
19 constitute a new chapter in Title 43 RCW."

20 **E2SHB 1866** - S AMD - 312

21 By Senator Morton

22 ADOPTED 4/18/97

23 On page 1, line 2 of the title, after "agreements;" strike the
24 remainder of the title and insert "amending RCW 90.54.020; adding a new
25 section to chapter 43.21A RCW; adding a new section to chapter 70.94
26 RCW; adding a new section to chapter 70.95 RCW; adding a new section to
27 chapter 70.105 RCW; adding a new section to chapter 70.119A RCW; adding
28 a new section to chapter 75.20 RCW; adding a new section to chapter
29 90.48 RCW; adding a new section to chapter 90.52 RCW; adding a new
30 section to chapter 90.58 RCW; adding a new section to chapter 90.64
31 RCW; adding a new section to chapter 90.71 RCW; adding a new chapter to
32 Title 43 RCW; and creating new sections."

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