
HOUSE BILL 1775

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By Representatives Pennington, Grant, Mielke, Lisk, Boldt, McMorris, Koster, G. Chandler, Linville, Carlson, Schoesler, Cooper and Ogden

Read first time . Referred to Committee on .

1 AN ACT Relating to fee increases for air pollution control
2 authorities; amending RCW 70.94.030, 70.94.151, 70.94.154, 70.94.162,
3 and 70.94.650; and reenacting and amending RCW 70.94.152.

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

5 **Sec. 1.** RCW 70.94.030 and 1993 c 252 s 2 are each amended to read
6 as follows:

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

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

13 (2) "Air pollution" is presence in the outdoor atmosphere of one or
14 more air contaminants in sufficient quantities and of such
15 characteristics and duration as is, or is likely to be, injurious to
16 human health, plant or animal life, or property, or which unreasonably
17 interfere with enjoyment of life and property. For the purpose of this
18 chapter, air pollution shall not include air contaminants emitted in
19 compliance with chapter 17.21 RCW.

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

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

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

8 (6) "Best available control technology" (BACT) means an emission
9 limitation based on the maximum degree of reduction for each air
10 pollutant subject to regulation under this chapter emitted from or that
11 results from any new or modified stationary source, that the permitting
12 authority, on a case-by-case basis, taking into account energy,
13 environmental, and economic impacts and other costs, determines is
14 achievable for such a source or modification through application of
15 production processes and available methods, systems, and techniques,
16 including fuel cleaning, clean fuels, or treatment or innovative fuel
17 combustion techniques for control of each such a pollutant. In no
18 event shall application of "best available control technology" result
19 in emissions of any pollutants that will exceed the emissions allowed
20 by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they
21 exist on July 25, 1993, or their later enactments as adopted by
22 reference by the director by rule. Emissions from any source utilizing
23 clean fuels, or any other means, to comply with this subsection shall
24 not be allowed to increase above levels that would have been required
25 under the definition of BACT as it existed prior to enactment of the
26 [federal] clean air act amendments of 1990.

27 (7) "Best available retrofit technology" (BART) means an emission
28 limitation based on the degree of reduction achievable through the
29 application of the best system of continuous emission reduction for
30 each pollutant that is emitted by an existing stationary facility. The
31 emission limitation must be established, on a case-by-case basis,
32 taking into consideration the technology available, the costs of
33 compliance, the energy and nonair quality environmental impacts of
34 compliance, any pollution control equipment in use or in existence at
35 the source, the remaining useful life of the source, and the degree of
36 improvement in visibility that might reasonably be anticipated to
37 result from the use of the technology.

38 (8) "Board" means the board of directors of an authority.

1 (9) "Control officer" means the air pollution control officer of
2 any authority.

3 (10) "Department" or "ecology" means the department of ecology.

4 (11) "Emission" means a release of air contaminants into the
5 ambient air.

6 (12) "Emission standard" and "emission limitation" mean a
7 requirement established under the federal clean air act or this chapter
8 that limits the quantity, rate, or concentration of emissions of air
9 contaminants on a continuous basis, including any requirement relating
10 to the operation or maintenance of a source to assure continuous
11 emission reduction, and any design, equipment, work practice, or
12 operational standard adopted under the federal clean air act or this
13 chapter.

14 (13) "Fiscal growth factor" has the meaning in RCW 43.135.025.

15 (14) "Lowest achievable emission rate" (LAER) means for any source
16 that rate of emissions that reflects:

17 (a) The most stringent emission limitation that is contained in the
18 implementation plan of any state for such class or category of source,
19 unless the owner or operator of the proposed source demonstrates that
20 such limitations are not achievable; or

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

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

27 (~~(14)~~) (15) "Modification" means any physical change in, or
28 change in the method of operation of, a stationary source that
29 increases the amount of any air contaminant emitted by such source or
30 that results in the emission of any air contaminant not previously
31 emitted. The term modification shall be construed consistent with the
32 definition of modification in Section 7411, Title 42, United States
33 Code, and with rules implementing that section.

34 (~~(15)~~) (16) "Multicounty authority" means an authority which
35 consists of two or more counties.

36 (~~(16)~~) (17) "New source" means (a) the construction or
37 modification of a stationary source that increases the amount of any
38 air contaminant emitted by such source or that results in the emission

1 of any air contaminant not previously emitted, and (b) any other
2 project that constitutes a new source under the federal clean air act.

3 ~~((17))~~ (18) "Permit program source" means a source required to
4 apply for or to maintain an operating permit under RCW 70.94.161.

5 ~~((18))~~ (19) "Person" means an individual, firm, public or private
6 corporation, association, partnership, political subdivision of the
7 state, municipality, or governmental agency.

8 ~~((19))~~ (20) "Reasonably available control technology" (RACT)
9 means the lowest emission limit that a particular source or source
10 category is capable of meeting by the application of control technology
11 that is reasonably available considering technological and economic
12 feasibility. RACT is determined on a case-by-case basis for an
13 individual source or source category taking into account the impact of
14 the source upon air quality, the availability of additional controls,
15 the emission reduction to be achieved by additional controls, the
16 impact of additional controls on air quality, and the capital and
17 operating costs of the additional controls. RACT requirements for a
18 source or source category shall be adopted only after notice and
19 opportunity for comment are afforded.

20 ~~((20))~~ (21) "Silvicultural burning" means burning of wood fiber
21 on forest land consistent with the provisions of RCW 70.94.660.

22 ~~((21))~~ (22) "Source" means all of the emissions units including
23 quantifiable fugitive emissions, that are located on one or more
24 contiguous or adjacent properties, and are under the control of the
25 same person, or persons under common control, whose activities are
26 ancillary to the production of a single product or functionally related
27 group of products.

28 ~~((22))~~ (23) "Stationary source" means any building, structure,
29 facility, or installation that emits or may emit any air contaminant.

30 **Sec. 2.** RCW 70.94.151 and 1997 c 410 s 1 are each amended to read
31 as follows:

32 (1) The board of any activated authority or the department, may
33 classify air contaminant sources, by ordinance, resolution, rule or
34 regulation, which in its judgment may cause or contribute to air
35 pollution, according to levels and types of emissions and other
36 characteristics which cause or contribute to air pollution, and may
37 require registration or reporting or both for any such class or
38 classes. Classifications made pursuant to this section may be for

1 application to the area of jurisdiction of such authority, or the state
2 as a whole or to any designated area within the jurisdiction, and shall
3 be made with special reference to effects on health, economic and
4 social factors, and physical effects on property.

5 (2) Except as provided in subsection (3) of this section, any
6 person operating or responsible for the operation of air contaminant
7 sources of any class for which the ordinances, resolutions, rules or
8 regulations of the department or board of the authority, require
9 registration and reporting shall register therewith and make reports
10 containing information as may be required by such department or board
11 concerning location, size and height of contaminant outlets, processes
12 employed, nature of the contaminant emission and such other information
13 as is relevant to air pollution and available or reasonably capable of
14 being assembled. The department or board may require that such
15 registration be accompanied by a fee and may determine the amount of
16 such fee for such class or classes: PROVIDED, That the amount of the
17 fee may only be increased in any given fiscal year up to the percent
18 authorized under the fiscal growth factor for the preceding fiscal year
19 and shall only be to compensate for the costs of administering such
20 registration program which shall be defined as initial registration and
21 annual or other periodic reports from the source owner providing
22 information directly related to air pollution registration, on-site
23 inspections necessary to verify compliance with registration
24 requirements, data storage and retrieval systems necessary for support
25 of the registration program, emission inventory reports and emission
26 reduction credits computed from information provided by sources
27 pursuant to registration program requirements, staff review, including
28 engineering analysis for accuracy and currentness, of information
29 provided by sources pursuant to registration program requirements,
30 clerical and other office support provided in direct furtherance of the
31 registration program, and administrative support provided in directly
32 carrying out the registration program: PROVIDED FURTHER, That any such
33 registration made with either the board or the department shall
34 preclude a further registration with any other board or the department.

35 All registration program fees collected by the department shall be
36 deposited in the air pollution control account. All registration
37 program fees collected by the local air authorities shall be deposited
38 in their respective treasuries.

1 (3) If a registration or report has been filed for a grain
2 warehouse or grain elevator as required under this section,
3 registration, reporting, or a registration program fee shall not, after
4 January 1, 1997, again be required under this section for the warehouse
5 or elevator unless the capacity of the warehouse or elevator as listed
6 as part of the license issued for the facility has been increased since
7 the date the registration or reporting was last made. If the capacity
8 of the warehouse or elevator listed as part of the license is
9 increased, any registration or reporting required for the warehouse or
10 elevator under this section must be made by the date the warehouse or
11 elevator receives grain from the first harvest season that occurs after
12 the increase in its capacity is listed in the license.

13 For the purposes of this subsection, a "grain warehouse" or "grain
14 elevator" is an establishment classified in standard industrial
15 classification (SIC) code 5153 for wholesale trade; and a "license" is
16 a license issued by the department of agriculture licensing a facility
17 as a grain warehouse or grain elevator under chapter 22.09 RCW or a
18 license issued by the federal government licensing a facility as a
19 grain warehouse or grain elevator for purposes similar to those of
20 licensure for the facility under chapter 22.09 RCW.

21 This subsection does not apply to a grain warehouse or grain
22 elevator if the warehouse or elevator handles more than ten million
23 bushels of grain annually.

24 **Sec. 3.** RCW 70.94.152 and 1996 c 67 s 1 and 1996 c 29 s 1 are each
25 reenacted and amended to read as follows:

26 (1) The department of ecology or board of any authority may require
27 notice of the establishment of any proposed new sources except single
28 family and duplex dwellings or de minimis new sources as defined in
29 rules adopted under subsection (11) of this section. The department of
30 ecology or board may require such notice to be accompanied by a fee and
31 determine the amount of such fee: PROVIDED, That the amount of the fee
32 may only be increased in any given fiscal year up to the percent
33 authorized under the fiscal growth factor for the preceding fiscal year
34 and may not exceed the cost of reviewing the plans, specifications, and
35 other information and administering such notice: PROVIDED FURTHER,
36 That any such notice given or notice of construction application
37 submitted to either the board or to the department of ecology shall

1 preclude a further submittal of a duplicate application to any board or
2 to the department of ecology.

3 (2) The department shall, after opportunity for public review and
4 comment, adopt rules that establish a workload-driven process for
5 determination and review of the fee covering the direct and indirect
6 costs of processing a notice of construction application and a
7 methodology for tracking revenues and expenditures. All new source
8 fees collected by the delegated local air authorities from sources
9 shall be deposited in the dedicated accounts of their respective
10 treasuries. All new source fees collected by the department from
11 sources shall be deposited in the air pollution control account.

12 (3) Within thirty days of receipt of a notice of construction
13 application, the department of ecology or board may require, as a
14 condition precedent to the establishment of the new source or sources
15 covered thereby, the submission of plans, specifications, and such
16 other information as it deems necessary to determine whether the
17 proposed new source will be in accord with applicable rules and
18 regulations in force under this chapter. If on the basis of plans,
19 specifications, or other information required under this section the
20 department of ecology or board determines that the proposed new source
21 will not be in accord with this chapter or the applicable ordinances,
22 resolutions, rules, and regulations adopted under this chapter, it
23 shall issue an order denying permission to establish the new source.
24 If on the basis of plans, specifications, or other information required
25 under this section, the department of ecology or board determines that
26 the proposed new source will be in accord with this chapter, and the
27 applicable rules and regulations adopted under this chapter, it shall
28 issue an order of approval for the establishment of the new source or
29 sources, which order may provide such conditions as are reasonably
30 necessary to assure the maintenance of compliance with this chapter and
31 the applicable rules and regulations adopted under this chapter. Every
32 order of approval under this chapter must be reviewed prior to issuance
33 by a professional engineer or staff under the supervision of a
34 professional engineer in the employ of the department of ecology or
35 board.

36 (4) The determination required under subsection (3) of this section
37 shall include a determination of whether the operation of the new air
38 contaminant source at the location proposed will cause any ambient air
39 quality standard to be exceeded.

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

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

9 (7) Any features, machines, and devices constituting parts of or
10 called for by plans, specifications, or other information submitted
11 pursuant to subsection (1) or (3) of this section shall be maintained
12 and operate in good working order.

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

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

33 (10) A notice of construction approval required under subsection
34 (3) of this section shall include a determination that the new source
35 will achieve best available control technology. If more stringent
36 controls are required under federal law, the notice of construction
37 shall include a determination that the new source will achieve the more
38 stringent federal requirements. Nothing in this subsection is intended
39 to diminish other state authorities under this chapter.

1 (11) No person is required to submit a notice of construction or
2 receive approval for a new source that is deemed by the department of
3 ecology or board to have de minimis impact on air quality. The
4 department of ecology shall adopt and periodically update rules
5 identifying categories of de minimis new sources. The department of
6 ecology may identify de minimus new sources by category, size, or
7 emission thresholds.

8 (12) For purposes of this section, "de minimus new sources" means
9 new sources with trivial levels of emissions that do not pose a threat
10 to human health or the environment.

11 **Sec. 4.** RCW 70.94.154 and 1996 c 29 s 2 are each amended to read
12 as follows:

13 (1) RACT as defined in RCW 70.94.030 is required for existing
14 sources except as otherwise provided in RCW 70.94.331(9).

15 (2) RACT for each source category containing three or more sources
16 shall be determined by rule except as provided in subsection (3) of
17 this section.

18 (3) Source-specific RACT determinations may be performed under any
19 of the following circumstances:

20 (a) As authorized by RCW 70.94.153;

21 (b) When required by the federal clean air act;

22 (c) For sources in source categories containing fewer than three
23 sources;

24 (d) When an air quality problem, for which the source is a
25 contributor, justifies a source-specific RACT determination prior to
26 development of a categorical RACT rule; or

27 (e) When a source-specific RACT determination is needed to address
28 either specific air quality problems for which the source is a
29 significant contributor or source-specific economic concerns.

30 (4) By January 1, 1994, ecology shall develop a list of sources and
31 source categories requiring RACT review and a schedule for conducting
32 that review. Ecology shall review the list and schedule within six
33 months of receiving the initial operating permit applications and at
34 least once every five years thereafter. In developing the list to
35 determine the schedule of RACT review, ecology shall consider emission
36 reductions achievable through the use of new available technologies and
37 the impacts of those incremental reductions on air quality, the
38 remaining useful life of previously installed control equipment, the

1 impact of the source or source category on air quality, the number of
2 years since the last BACT, RACT, or LAER determination for that source
3 and other relevant factors. Prior to finalizing the list and schedule,
4 ecology shall consult with local air authorities, the regulated
5 community, environmental groups, and other interested individuals and
6 organizations. The department and local authorities shall revise RACT
7 requirements, as needed, based on the review conducted under this
8 subsection.

9 (5) In determining RACT, ecology and local authorities shall
10 utilize the factors set forth in RCW 70.94.030 and shall consider RACT
11 determinations and guidance made by the federal environmental
12 protection agency, other states and local authorities for similar
13 sources, and other relevant factors. In establishing or revising RACT
14 requirements, ecology and local authorities shall address, where
15 practicable, all air contaminants deemed to be of concern for that
16 source or source category.

17 (6) Emission standards and other requirements contained in rules or
18 regulatory orders in effect at the time of operating permit issuance or
19 renewal shall be considered RACT for purposes of permit issuance or
20 renewal. RACT determinations under subsections (2) and (3) of this
21 section shall be incorporated into operating permits as provided in RCW
22 70.94.161 and rules implementing that section.

23 (7) The department and local air authorities are authorized to
24 assess and collect a fee to cover the costs of developing,
25 establishing, or reviewing categorical or case-by-case RACT
26 requirements. The fee shall apply to determinations of RACT
27 requirements as defined under this section and RCW 70.94.331(9). The
28 amount of the fee may not exceed the direct and indirect costs of
29 establishing the requirement for the particular source or the pro rata
30 portion of the direct and indirect costs of establishing the
31 requirement for the relevant source category, and may only be increased
32 in any given fiscal year up to the percent authorized under the fiscal
33 growth factor for the preceding fiscal year. The department shall,
34 after opportunity for public review and comment, adopt rules that
35 establish a workload-driven process for determination and review of the
36 fee covering the direct and indirect costs of its RACT determinations
37 and a methodology for tracking revenues and expenditures. All such
38 RACT determination fees collected by the delegated local air
39 authorities from sources shall be deposited in the dedicated accounts

1 of their respective treasuries. All such RACT fees collected by the
2 department from sources shall be deposited in the air pollution control
3 account.

4 **Sec. 5.** RCW 70.94.162 and 1998 c 245 s 129 are each amended to
5 read as follows:

6 (1) The department and delegated local air authorities are
7 authorized to determine, assess, and collect, and each permit program
8 source shall pay, annual fees sufficient to cover the direct and
9 indirect costs of implementing a state operating permit program
10 approved by the United States environmental protection agency under the
11 federal clean air act. However, a source that receives its operating
12 permit from the United States environmental protection agency shall not
13 be considered a permit program source so long as the environmental
14 protection agency continues to act as the permitting authority for that
15 source. Each permitting authority shall develop by rule a fee schedule
16 allocating among its permit program sources the costs of the operating
17 permit program, and may, by rule, establish a payment schedule whereby
18 periodic installments of the annual fee are due and payable more
19 frequently. Such fees may only be increased in any given fiscal year
20 up to the percent authorized under the fiscal growth factor for the
21 preceding fiscal year. All operating permit program fees collected by
22 the department shall be deposited in the air operating permit account.
23 All operating permit program fees collected by the delegated local air
24 authorities shall be deposited in their respective air operating permit
25 accounts or other accounts dedicated exclusively to support of the
26 operating permit program. The fees assessed under this subsection
27 shall first be due not less than forty-five days after the United
28 States environmental protection agency delegates to the department the
29 authority to administer the operating permit program and then annually
30 thereafter.

31 The department shall establish, by rule, procedures for
32 administrative appeals to the department regarding the fee assessed
33 pursuant to this subsection.

34 (2) The fee schedule developed by each permitting authority shall
35 fully cover and not exceed both its permit administration costs and the
36 permitting authority's share of state-wide program development and
37 oversight costs.

1 (a) Permit administration costs are those incurred by each
2 permitting authority, including the department, in administering and
3 enforcing the operating permit program with respect to sources under
4 its jurisdiction. Costs associated with the following activities are
5 fee eligible as these activities relate to the operating permit program
6 and to the sources permitted by a permitting authority, including,
7 where applicable, sources subject to a general permit:

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

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

13 (iii) Acting on an application for a permit, permit revision, or
14 renewal, including the costs of developing an applicable requirement as
15 part of the processing of a permit, permit revision, or renewal,
16 preparing a draft permit and fact sheet, and preparing a final permit,
17 but excluding the costs of developing BACT, LAER, BART, or RACT
18 requirements for criteria and toxic air pollutants;

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

24 (v) Modeling necessary to establish permit limits or to determine
25 compliance with permit limits;

26 (vi) Reviewing compliance certifications and emissions reports and
27 conducting related compilation and reporting activities;

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

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

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

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

38 (xi) Training for permit administration and enforcement;

1 (xii) Fee determination, assessment, and collection, including the
2 costs of necessary administrative dispute resolution and penalty
3 collection;

4 (xiii) Required fiscal audits, periodic performance audits, and
5 reporting activities;

6 (xiv) Tracking of time, revenues and expenditures, and accounting
7 activities;

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

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

13 (xvii) Other activities required by operating permit regulations
14 issued by the United States environmental protection agency under the
15 federal clean air act.

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

22 (i) Review and determinations necessary for delegation of authority
23 to administer and enforce a permit program to a local air authority
24 under RCW 70.94.161(2) and 70.94.860;

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

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

33 (iv) Determination and assessment with respect to each permitting
34 authority of the fees covering its share of the costs of development
35 and oversight;

36 (v) Training and assistance for permit program administration and
37 oversight, including training and assistance regarding technical,
38 administrative, and data management issues;

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

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

5 (viii) Preparation of delegation package and other activities
6 associated with submittal of the state permit program to the United
7 States environmental protection agency for approval, including ongoing
8 coordination activities;

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

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

14 (xi) Tracking of time, revenues and expenditures, and accounting
15 activities;

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

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

20 (xiv) The share attributable to permitted sources of ambient air
21 quality monitoring, related technical support, and associated recording
22 activities;

23 (xv) The share attributable to permitted sources of modeling
24 activities;

25 (xvi) Provision of assistance to small business as required under
26 section 507 of the federal clean air act as it exists on July 25, 1993,
27 or its later enactment as adopted by reference by the director by rule;

28 (xvii) Provision of services by the department of revenue and the
29 office of the state attorney general and other state agencies in
30 support of permit program administration;

31 (xviii) A one-time revision to the state implementation plan to
32 make those administrative changes necessary to ensure coordination of
33 the state implementation plan and the operating permit program; and

34 (xix) Other activities required by operating permit regulations
35 issued by the United States environmental protection agency under the
36 federal clean air act.

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

1 (a) Each permitting authority, including the department, acting in
2 its capacity as a permitting authority, shall develop a fee schedule
3 and mechanism for collecting fees from the permit program sources under
4 its jurisdiction; the fees collected by each authority shall be
5 sufficient to cover its costs of permit administration and its share of
6 the department's costs of development and oversight. Each delegated
7 local authority shall remit to the department its share of the
8 department's development and oversight costs.

9 (b) Only those local air authorities to whom the department has
10 delegated the authority to administer the program pursuant to RCW
11 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to
12 administer and collect operating permit fees. The department shall
13 retain the authority to administer and collect such fees with respect
14 to the sources within the jurisdiction of a local air authority until
15 the effective date of program delegation to that air authority.

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

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

37 (5) The fee schedule developed by the department shall allocate
38 among the sources for whom the department acts as a permitting
39 authority, other than sources subject to a general permit, those

1 portions of the department's permit administration costs and the
2 department's share of the development and oversight costs which the
3 department does not plan to recover under its general permit fee
4 schedule or schedules as follows:

5 (a) The department shall allocate its permit administration costs
6 and its share of the development and oversight costs not recovered
7 through general permit fees according to a three-tiered model based
8 upon:

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

10 (ii) The complexity of permit program sources under its
11 jurisdiction; and

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

15 (b) Each of the three tiers shall be equally weighted.

16 (c) The department may, in addition, allocate activities-based
17 costs readily attributable to a specific source to that source under
18 RCW 70.94.152(1) and 70.94.154(7).

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

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

28 (a) The fee schedule development and review process shall include
29 the following:

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

37 (ii) The department shall prepare a biennial budget based upon the
38 resource requirements identified in the workload analysis for that
39 biennium. In preparing the budget, the department shall take into

1 account the projected operating permit account balance at the start of
2 the biennium. The department shall provide the opportunity for public
3 review of and comment on the proposed budget. The department shall
4 review and update its budget each biennium.

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

16 (b) The methodology for tracking revenues and expenditures shall
17 include the following:

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

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

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

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

34 (i) The department and the delegated local air authorities shall
35 prepare annual reports and shall submit the reports to, respectively,
36 the appropriate standing committees of the legislature and the board of
37 directors of the local air authority.

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

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

11 (8) As used in this section and in RCW 70.94.161(14), "regulated
12 pollutant" shall have the same meaning as defined in section 502(b) of
13 the federal clean air act as it exists on July 25, 1993, or its later
14 enactment as adopted by reference by the director by rule.

15 (9) Fee structures as authorized under this section shall remain in
16 effect until such time as the legislature authorizes an alternative
17 structure following receipt of the report required by this subsection.

18 **Sec. 6.** RCW 70.94.650 and 1998 c 43 s 1 are each amended to read
19 as follows:

20 (1) Any person who proposes to set fires in the course of:

21 (a) Weed abatement;

22 (b) Instruction in methods of fire fighting, except training to
23 fight structural fires as provided in RCW 52.12.150 or training to
24 fight aircraft crash rescue fires as provided in subsection (5) of this
25 section, and except forest fire training; or

26 (c) Agricultural activities,

27 shall obtain a permit from an air pollution control authority, the
28 department of ecology, or a local entity delegated permitting authority
29 under RCW 70.94.654. General permit criteria of state-wide
30 applicability shall be established by the department, by rule, after
31 consultation with the various air pollution control authorities.
32 Permits shall be issued under this section based on seasonal operations
33 or by individual operations, or both. All permits shall be conditioned
34 to insure that the public interest in air, water, and land pollution
35 and safety to life and property is fully considered. In addition to
36 any other requirements established by the department to protect air
37 quality pursuant to other laws, applicants for permits must show that
38 the setting of fires as requested is the most reasonable procedure to

1 follow in safeguarding life or property under all circumstances or is
2 otherwise reasonably necessary to successfully carry out the enterprise
3 in which the applicant is engaged, or both. All burning permits will
4 be designed to minimize air pollution insofar as practical. Nothing in
5 this section shall relieve the applicant from obtaining permits,
6 licenses, or other approvals required by any other law. An application
7 for a permit to set fires in the course of agricultural burning for
8 controlling diseases, insects, weed abatement or development of
9 physiological conditions conducive to increased crop yield, shall be
10 acted upon within seven days from the date such application is filed.
11 The department of ecology and local air authorities shall provide
12 convenient methods for issuance and oversight of agricultural burning
13 permits. The department and local air authorities shall, through
14 agreement, work with counties and cities to provide convenient methods
15 for granting permission for agricultural burning, including telephone,
16 facsimile transmission, issuance from local city or county offices, or
17 other methods. A local air authority administering the permit program
18 under this subsection (1)(c) shall not limit the number of days of
19 allowable agricultural burning, but may consider the time of year,
20 meteorological conditions, and other criteria specified in rules
21 adopted by the department to implement this subsection (1)(c).

22 (2) Permit fees shall be assessed for burning under this section
23 and shall be collected by the department of ecology, the appropriate
24 local air authority, or a local entity delegated permitting authority
25 pursuant to RCW 70.94.654 at the time the permit is issued. All fees
26 collected shall be deposited in the air pollution control account
27 created in RCW 70.94.015, except for that portion of the fee necessary
28 to cover local costs of administering a permit issued under this
29 section. Fees shall be set by rule by the permitting agency at the
30 level determined by the task force created by subsection (4) of this
31 section, but shall not exceed two dollars and fifty cents per acre to
32 be burned. After fees are established by rule, any increases in such
33 fees shall be limited to ~~((annual inflation adjustments as determined
34 by the state office of the economic and revenue forecast council))~~ the
35 percent increase in the fiscal growth factor for the preceding fiscal
36 year.

37 (3) Conservation districts and the Washington State University
38 agricultural extension program in conjunction with the department shall
39 develop public education material for the agricultural community

1 identifying the health and environmental effects of agricultural
2 outdoor burning and providing technical assistance in alternatives to
3 agricultural outdoor burning.

4 (4) An agricultural burning practices and research task force shall
5 be established under the direction of the department. The task force
6 shall be composed of a representative from the department who shall
7 serve as chair; one representative of eastern Washington local air
8 authorities; three representatives of the agricultural community from
9 different agricultural pursuits; one representative of the department
10 of agriculture; two representatives from universities or colleges
11 knowledgeable in agricultural issues; one representative of the public
12 health or medical community; and one representative of the conservation
13 districts. The task force shall identify best management practices for
14 reducing air contaminant emissions from agricultural activities and
15 provide such information to the department and local air authorities.
16 The task force shall determine the level of fees to be assessed by the
17 permitting agency pursuant to subsection (2) of this section, based
18 upon the level necessary to cover the costs of administering and
19 enforcing the permit programs, to provide funds for research into
20 alternative methods to reduce emissions from such burning, and to the
21 extent possible be consistent with fees charged for such burning
22 permits in neighboring states. The fee level shall provide, to the
23 extent possible, for lesser fees for permittees who use best management
24 practices to minimize air contaminant emissions. The task force shall
25 identify research needs related to minimizing emissions from
26 agricultural burning and alternatives to such burning. Further, the
27 task force shall make recommendations to the department on priorities
28 for spending funds provided through this chapter for research into
29 alternative methods to reduce emissions from agricultural burning.

30 (5) A permit is not required under this section, or under RCW
31 70.94.743 through 70.94.780, from an air pollution control authority,
32 the department, or any local entity with delegated permit authority,
33 for aircraft crash rescue fire training activities meeting the
34 following conditions:

35 (a) Fire fighters participating in the training fires must be
36 limited to those who provide fire fighting support to an airport that
37 is either certified by the federal aviation administration or operated
38 in support of military or governmental activities;

1 (b) The fire training may not be conducted during an air pollution
2 episode or any stage of impaired air quality declared under RCW
3 70.94.715 for the area where training is to be conducted;

4 (c) The number of training fires allowed per year without a permit
5 shall be the minimum number necessary to meet federal aviation
6 administration or other federal safety requirements;

7 (d) The facility shall use current technology and be operated in a
8 manner that will minimize, to the extent possible, the air contaminants
9 generated during operation; and

10 (e) Prior to the commencement of the aircraft fire training, the
11 organization conducting training shall notify both the: (i) Local fire
12 district or fire department; and (ii) air pollution control authority,
13 department of ecology, or local entity delegated permitting authority
14 under RCW 70.94.654, having jurisdiction within the area where training
15 is to be conducted.

16 Written approval from the department or a local air pollution
17 control authority shall be obtained prior to the initial operation of
18 aircraft crash rescue fire training. Such approval will be granted to
19 fire training activities meeting the conditions in this subsection.

20 (6) Aircraft crash rescue fire training activities conducted in
21 compliance with (~~this~~) subsection (5) of this section are not subject
22 to the prohibition, in RCW 70.94.775(1), of outdoor fires containing
23 petroleum products and are not considered outdoor burning under RCW
24 70.94.743 through 70.94.780.

25 (7) To provide for fire fighting instruction in instances not
26 governed by subsection (6) of this section, or other actions to protect
27 public health and safety, the department or a local air pollution
28 control authority may issue permits that allow limited burning of
29 prohibited materials listed in RCW 70.94.775(1).

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