
HOUSE BILL 3236

State of Washington 59th Legislature 2006 Regular Session

By Representatives Dickerson, Darneille and Campbell

Read first time 01/27/2006. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to mercury emissions; amending RCW 70.94.030,
2 70.94.161, and 70.94.422; and adding a new section to chapter 70.94
3 RCW.

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

5 **Sec. 1.** RCW 70.94.030 and 2005 c 197 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

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

12 (2) "Air pollution" is presence in the outdoor atmosphere of one or
13 more air contaminants in sufficient quantities and of such
14 characteristics and duration as is, or is likely to be, injurious to
15 human health, plant or animal life, or property, or which unreasonably
16 interfere with enjoyment of life and property. For the purpose of this
17 chapter, air pollution shall not include air contaminants emitted in
18 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) "Fine particulate" means particulates with a diameter of two
15 and one-half microns and smaller.

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

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

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

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

28 (15) "Mercury-emitting facility" means any facility that combusts
29 coal or another fossil fuel, as that term is defined in RCW 80.70.010,
30 in order to produce electricity that is offered for sale or used
31 outside of the facility.

32 (16) "Modification" means any physical change in, or change in the
33 method of operation of, a stationary source that increases the amount
34 of any air contaminant emitted by such source or that results in the
35 emission of any air contaminant not previously emitted. The term
36 modification shall be construed consistent with the definition of
37 modification in Section 7411, Title 42, United States Code, and with
38 rules implementing that section.

1 ~~((+16+))~~ (17) "Multicounty authority" means an authority which
2 consists of two or more counties.

3 ~~((+17+))~~ (18) "New source" means (a) the construction or
4 modification of a stationary source that increases the amount of any
5 air contaminant emitted by such source or that results in the emission
6 of any air contaminant not previously emitted, and (b) any other
7 project that constitutes a new source under the federal clean air act.

8 ~~((+18+))~~ (19) "Permit program source" means a source required to
9 apply for or to maintain an operating permit under RCW 70.94.161.

10 ~~((+19+))~~ (20) "Person" means an individual, firm, public or private
11 corporation, association, partnership, political subdivision of the
12 state, municipality, or governmental agency.

13 ~~((+20+))~~ (21) "Reasonably available control technology" (RACT)
14 means the lowest emission limit that a particular source or source
15 category is capable of meeting by the application of control technology
16 that is reasonably available considering technological and economic
17 feasibility. RACT is determined on a case-by-case basis for an
18 individual source or source category taking into account the impact of
19 the source upon air quality, the availability of additional controls,
20 the emission reduction to be achieved by additional controls, the
21 impact of additional controls on air quality, and the capital and
22 operating costs of the additional controls. RACT requirements for a
23 source or source category shall be adopted only after notice and
24 opportunity for comment are afforded.

25 ~~((+21+))~~ (22) "Silvicultural burning" means burning of wood fiber
26 on forest land consistent with the provisions of RCW 70.94.660.

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

33 ~~((+23+))~~ (24) "Stationary source" means any building, structure,
34 facility, or installation that emits or may emit any air contaminant.

35 ~~((+24+))~~ (25) "Trigger level" means the ambient level of fine
36 particulates, measured in micrograms per cubic meter, that must be
37 detected prior to initiating a first or second stage of impaired air
38 quality under RCW 70.94.473.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94 RCW
2 to read as follows:

3 (1) By July 1, 2010, the owner or operator of a mercury-emitting
4 facility shall either:

5 (a) Satisfy an emission standard of equal to or less than 0.6
6 pounds per trillion British thermal units produced; or

7 (b) Satisfy an emission standard equal to or greater than a ninety
8 percent reduction of mercury emissions.

9 (2) The owner or operator of a mercury-emitting facility that is
10 operational before the effective date of this act may choose which
11 emission standard established in subsection (1) of this section will be
12 satisfied. Mercury-emitting facilities that become operational after
13 the effective date of this act may only be deemed in compliance with
14 this section if the facilities satisfy the requirements of subsection
15 (1)(a) of this section.

16 (3) The department shall determine a process for obtaining
17 representative fuel samples and analysis in order to confirm compliance
18 with this section.

19 **Sec. 3.** RCW 70.94.161 and 1993 c 252 s 5 are each amended to read
20 as follows:

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

24 (1) Permits shall be issued for a term of five years. A permit may
25 be modified or amended during its term at the request of the permittee,
26 or for any reason allowed by the federal clean air act. The rules
27 adopted pursuant to subsection (2) of this section shall include rules
28 for permit amendments and modifications. The terms and conditions of
29 a permit shall remain in effect after the permit itself expires if the
30 permittee submits a timely and complete application for permit renewal.

31 (2)(a) Rules establishing the elements for a statewide operating
32 permit program and the process for permit application and renewal
33 consistent with federal requirements shall be established by the
34 department (~~by January 1, 1993~~). The rules shall provide that every
35 proposed permit must be reviewed prior to issuance by a professional
36 engineer or staff under the direct supervision of a professional
37 engineer in the employ of the permitting authority. The permit program

1 established by these rules shall be administered by the department and
2 delegated local air authorities. Rules developed under this subsection
3 shall not preclude a delegated local air authority from including in a
4 permit its own more stringent emission standards and operating
5 restrictions.

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

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

27 (3) In establishing technical standards, defined in RCW 70.94.030,
28 the permitting authority shall consider and, if found to be
29 appropriate, give credit for waste reduction within the process.

30 (4) Operating permits shall apply to all sources (a) where required
31 by the federal clean air act, and (b) for any source that may cause or
32 contribute to air pollution in such quantity as to create a threat to
33 the public health or welfare. Subsection (b) of this subsection is not
34 intended to apply to small businesses except when both of the following
35 limitations are satisfied: (i) The source is in an area exceeding or
36 threatening to exceed federal or state air quality standards; and (ii)
37 the department provides a reasonable justification that requiring a
38 source to have a permit is necessary to meet a federal or state air

1 quality standard, or to prevent exceeding a standard in an area
2 threatening to exceed the standard. For purposes of this subsection
3 "areas threatening to exceed air quality standards" shall mean areas
4 projected by the department to exceed such standards within five years.
5 Prior to identifying threatened areas the department shall hold a
6 public hearing or hearings within the proposed areas.

7 (5) Sources operated by government agencies are not exempt under
8 this section.

9 (6) Within one hundred eighty days after the United States
10 environmental protection agency approves the state operating permit
11 program, a person required to have a permit shall submit to the
12 permitting authority a compliance plan and permit application, signed
13 by a responsible official, certifying the accuracy of the information
14 submitted. Until permits are issued, existing sources shall be allowed
15 to operate under presently applicable standards and conditions provided
16 that such sources submit complete and timely permit applications.

17 (7) All draft permits shall be subject to public notice and
18 comment. The rules adopted pursuant to subsection (2) of this section
19 shall specify procedures for public notice and comment. Such
20 procedures shall provide the permitting agency with an opportunity to
21 respond to comments received from interested parties prior to the time
22 that the proposed permit is submitted to the environmental protection
23 agency for review pursuant to section 505(a) of the federal clean air
24 act. In the event that the environmental protection agency objects to
25 a proposed permit pursuant to section 505(b) of the federal clean air
26 act, the permitting authority shall not issue the permit, unless the
27 permittee consents to the changes required by the environmental
28 protection agency.

29 (8) The procedures contained in chapter 43.21B RCW shall apply to
30 permit appeals. The pollution control hearings board may stay the
31 effectiveness of any permit issued under this section during the
32 pendency of an appeal filed by the permittee, if the permittee
33 demonstrates that compliance with the permit during the pendency of the
34 appeal would require significant expenditures that would not be
35 necessary in the event that the permittee prevailed on the merits of
36 the appeal.

37 (9) After the effective date of any permit program (~~promulgated~~)
38 adopted under this section, it shall be unlawful for any person to:

1 (a) Operate a permitted source in violation of any requirement of a
2 permit issued under this section; or (b) fail to submit a permit
3 application at the time required by rules adopted under subsection (2)
4 of this section.

5 (10) Each air operating permit shall state the origin of and
6 specific legal authority for each requirement included therein. Every
7 requirement in an operating permit shall be based upon the most
8 stringent of the following requirements:

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

11 (b) This chapter and rules adopted thereunder;

12 (c) In permits issued by a local air pollution control authority,
13 the requirements of any order or regulation adopted by that authority;

14 (d) Chapter 70.98 RCW and rules adopted thereunder; and

15 (e) Chapter 80.50 RCW and rules adopted thereunder.

16 (11) Consistent with the provisions of the federal clean air act,
17 the permitting authority may issue general permits covering categories
18 of permitted sources, and temporary permits authorizing emissions from
19 similar operations at multiple temporary locations.

20 (12) Permit program sources within the territorial jurisdiction of
21 an authority delegated the operating permit program shall file their
22 permit applications with that authority, except that permit
23 applications for sources regulated on a statewide basis pursuant to RCW
24 70.94.395 shall be filed with the department. Permit program sources
25 outside the territorial jurisdiction of a delegated authority shall
26 file their applications with the department. Permit program sources
27 subject to chapter 80.50 RCW shall, irrespective of their location,
28 file their applications with the energy facility site evaluation
29 council.

30 (13) When issuing operating permits to coal fired electric
31 generating plants, the permitting authority shall establish
32 requirements consistent with Title IV of the federal clean air act.

33 ~~(14) ((a) The department and the local air authorities are~~
34 ~~authorized to assess and to collect, and each source emitting one~~
35 ~~hundred tons or more per year of a regulated pollutant shall pay an~~
36 ~~interim assessment to fund the development of the operating permit~~
37 ~~program during fiscal year 1994.~~

1 ~~(b) The department shall conduct a workload analysis and prepare an~~
2 ~~operating permit program development budget for fiscal year 1994. The~~
3 ~~department shall allocate among all sources emitting one hundred tons~~
4 ~~or more per year of a regulated pollutant during calendar year 1992 the~~
5 ~~costs identified in its program development budget according to a~~
6 ~~three tiered model, with each of the three tiers being equally~~
7 ~~weighted, based upon:~~

8 ~~(i) The number of sources;~~

9 ~~(ii) The complexity of sources; and~~

10 ~~(iii) The size of sources, as measured by the quantity of each~~
11 ~~regulated pollutant emitted by the source.~~

12 ~~(c) Each local authority and the department shall collect from~~
13 ~~sources under their respective jurisdictions the interim fee determined~~
14 ~~by the department and shall remit the fee to the department.~~

15 ~~(d) Each local authority may, in addition, allocate its fiscal year~~
16 ~~1994 operating permit program development costs among the sources under~~
17 ~~its jurisdiction emitting one hundred tons or more per year of a~~
18 ~~regulated pollutant during calendar year 1992 and may collect an~~
19 ~~interim fee from these sources. A fee assessed pursuant to this~~
20 ~~subsection (14)(d) shall be collected at the same time as the fee~~
21 ~~assessed pursuant to (c) of this subsection.~~

22 ~~(e) The fees assessed to a source under this subsection shall be~~
23 ~~limited to the first seven thousand five hundred tons for each~~
24 ~~regulated pollutant per year.~~

25 ~~(15) The department shall determine the persons liable for the fee~~
26 ~~imposed by subsection (14) of this section, compute the fee, and~~
27 ~~provide by November 1 of 1993 the identity of the fee payer with the~~
28 ~~computation of the fee to each local authority and to the department of~~
29 ~~revenue for collection. The department of revenue shall collect the~~
30 ~~fee computed by the department from the fee payers under the~~
31 ~~jurisdiction of the department. The administrative, collection, and~~
32 ~~penalty provisions of chapter 82.32 RCW shall apply to the collection~~
33 ~~of the fee by the department of revenue. The department shall provide~~
34 ~~technical assistance to the department of revenue for decisions made by~~
35 ~~the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All~~
36 ~~interim fees collected by the department of revenue on behalf of the~~
37 ~~department and all interim fees collected by local authorities on~~
38 ~~behalf of the department shall be deposited in the air operating permit~~

1 ~~account. The interim fees collected by the local air authorities to~~
2 ~~cover their permit program development costs under subsection (14)(d)~~
3 ~~of this section shall be deposited in the dedicated accounts of their~~
4 ~~respective treasuries.~~

5 ~~All fees identified in this section shall be due and payable on~~
6 ~~March 1 of 1994, except that the local air pollution control~~
7 ~~authorities may adopt by rule an earlier date on which fees are to be~~
8 ~~due and payable. The section 5, chapter 252, Laws of 1993 amendments~~
9 ~~to RCW 70.94.161 do not have the effect of terminating, or in any way~~
10 ~~modifying, any liability, civil or criminal, incurred pursuant to the~~
11 ~~provisions of RCW 70.94.161 (15) and (17) as they existed prior to July~~
12 ~~25, 1993.~~

13 ~~(16))~~ For sources or source categories not required to obtain
14 permits under subsection (4) of this section, the department or local
15 authority may establish by rule control technology requirements. If
16 control technology rule revisions are made by the department or local
17 authority under this subsection, the department or local authority
18 shall consider the remaining useful life of control equipment
19 previously installed on existing sources before requiring technology
20 changes. The department or any local air authority may issue a general
21 permit, as authorized under the federal clean air act, for such
22 sources.

23 ~~((17))~~ (15) RCW 70.94.151 shall not apply to any permit program
24 source after the effective date of United States environmental
25 protection agency approval of the state operating permit program.

26 (16) Permits approved under this section for mercury-emitting
27 facilities may not be renewed after June 1, 2010, if the mercury-
28 emitting facility is not in compliance with section 2 of this act.

29 **Sec. 4.** RCW 70.94.422 and 1993 c 252 s 7 are each amended to read
30 as follows:

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

36 (2) Permits for energy facilities subject to chapter 80.50 RCW
37 shall be issued by the energy facility site evaluation council.

1 However, the permits become effective only if the governor approves an
2 application for certification and executes a certification agreement
3 under chapter 80.50 RCW. The council shall have all powers necessary
4 to administer an operating permits program pertaining to such
5 facilities, consistent with applicable air quality standards
6 established by the department or local air pollution control
7 authorities, or both, and to obtain the approval of the United States
8 environmental protection agency. The council's powers include, but are
9 not limited to, all of the enforcement powers provided in RCW
10 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and
11 70.94.435 with respect to permit program sources required to obtain
12 certification from the council under chapter 80.50 RCW. To the extent
13 not covered under RCW 80.50.071, the council may collect fees as
14 granted to delegated local air authorities under RCW 70.94.152,
15 (~~70.94.161 (14) and (15),~~) 70.94.162, and 70.94.154(7) with respect
16 to permit program sources required to obtain certification from the
17 council under chapter 80.50 RCW. The council and the department shall
18 each establish procedures that provide maximum coordination and avoid
19 duplication between the two agencies in carrying out the requirements
20 of this chapter.

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