

---

ENGROSSED SUBSTITUTE HOUSE BILL 1089

---

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Environmental Affairs (originally sponsored by Representatives J. Kohl, Horn, Rust and Pruitt; by request of Department of Ecology)

Read first time 02/24/93.

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

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

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

7 (1) The air pollution control account is established in the state  
8 treasury. All receipts collected by or on behalf of the department  
9 from RCW 70.94.151(2), and receipts from nonpermit program sources  
10 under RCW 70.94.152(1) and section 8(7) of this act, and all receipts  
11 from RCW 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be  
12 deposited into the account. Moneys in the account may be spent only  
13 after appropriation. Expenditures from the account may be used only to  
14 develop and implement the provisions of (~~this act and~~) chapters 70.94  
15 and 70.120 RCW.

16 (2) The amounts collected and allocated in accordance with this  
17 section shall be expended upon appropriation except as otherwise  
18 provided in this section and in accordance with the following  
19 limitations:

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

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

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

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

11 (3) The air operating permit account is created in the custody of  
12 the state treasurer. All receipts ~~((paid to the department of  
13 revenue))~~ collected by or on behalf of the department from permit  
14 program sources under RCW 70.94.152(1), 70.94.161, and sections 6 and  
15 8(7) of this act shall be deposited into the account. Expenditures  
16 from the account may be used only for the ~~((direct and indirect costs  
17 of implementing the air operating permit program under))~~ activities  
18 described in RCW 70.94.152(1), 70.94.161, and sections 6 and 8(7) of  
19 this act. ~~((Only the director of the department of ecology or the  
20 director's designee may authorize expenditures from the account. The  
21 account is subject to the allotment procedures under chapter 43.88 RCW,  
22 but no))~~ Moneys in the account may be spent only after appropriation  
23 ((is required for such expenditures)).

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

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

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

32 (2) "Air pollution" is presence in the outdoor atmosphere of one or  
33 more air contaminants in sufficient quantities and of such  
34 characteristics and duration as is, or is likely to be, injurious to  
35 human health, plant or animal life, or property, or which unreasonably  
36 interfere with enjoyment of life and property. For the purpose of this  
37 chapter, air pollution shall not include air contaminants emitted in  
38 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 the effective date of this act, or their later enactments as  
22 adopted by reference by the director by rule. Emissions from any  
23 source utilizing clean fuels, or any other means, to comply with this  
24 subsection shall not be allowed to increase above levels that would  
25 have been required under the definition of BACT as it existed prior to  
26 enactment of the 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       ~~((7))~~ (9) "Control officer" means the air pollution control  
2 officer of any authority.

3       ~~((8))~~ (10) "Department" or "ecology" means the department of  
4 ecology.

5       ~~((9))~~ (11) "Emission" means a release of air contaminants into  
6 the ambient air.

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

16       ~~((11))~~ (13) "Lowest achievable emission rate" (LAER) means for  
17 any source 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       (14) "Modification" means any physical change in, or change in the  
29 method of operation of, a stationary source that increases the amount  
30 of any air contaminant emitted by such source or that results in the  
31 emission of any air contaminant not previously emitted. The term  
32 modification shall be construed consistent with the definition of  
33 modification in Section 7411, Title 42, United States Code, and with  
34 rules implementing that section.

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

37       ~~((12))~~ (16) "New source" means (a) the construction or  
38 modification of a stationary source that increases the amount of any  
39 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) "Permit program source" means a source required to apply for  
4 or to maintain an operating permit under RCW 70.94.161.

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

8 ~~((+13+))~~ (19) "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) "Silvicultural burning" means burning of wood fiber on forest  
21 land consistent with the provisions of RCW 70.94.660.

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

30 **Sec. 3.** RCW 70.94.151 and 1987 c 109 s 37 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) Any person operating or responsible for the operation of air  
6 contaminant sources of any class for which the ordinances, resolutions,  
7 rules or regulations of the department or board of the authority,  
8 require registration and reporting shall register therewith and make  
9 reports containing information as may be required by such department or  
10 board concerning location, size and height of contaminant outlets,  
11 processes employed, nature of the contaminant emission and such other  
12 information as is relevant to air pollution and available or reasonably  
13 capable of being assembled. The department or board may require that  
14 such registration be accompanied by a fee and may determine the amount  
15 of such fee for such class or classes: PROVIDED, That the amount of  
16 the fee shall only be to compensate for the costs of administering such  
17 registration program which shall be defined as initial registration and  
18 annual or other periodic reports from the source owner providing  
19 information directly related to air pollution registration, on-site  
20 inspections necessary to verify compliance with registration  
21 requirements, data storage and retrieval systems necessary for support  
22 of the registration program, emission inventory reports and emission  
23 reduction credits computed from information provided by sources  
24 pursuant to registration program requirements, staff review, including  
25 engineering analysis for accuracy and currentness, of information  
26 provided by sources pursuant to registration program requirements,  
27 clerical and other office support provided in direct furtherance of the  
28 registration program, and administrative support provided in directly  
29 carrying out the registration program: PROVIDED FURTHER, That any such  
30 registration made with either the board or the department shall  
31 preclude a further registration with any other board or the department.

32 All registration program fees collected by the department shall be  
33 deposited in the air pollution control account. All registration  
34 program fees collected by the local air authorities shall be deposited  
35 in their respective treasuries.

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

1 (1) The department of ecology or board of any authority may require  
2 notice of the establishment of any proposed new sources except single  
3 family and duplex dwellings. The department of ecology or board may  
4 require such notice to be accompanied by a fee and determine the amount  
5 of such fee: PROVIDED, That the amount of the fee may not exceed the  
6 cost of reviewing the plans, specifications, and other information and  
7 administering such notice: PROVIDED FURTHER, That any such notice  
8 given or notice of construction application submitted to either the  
9 board or to the department of ecology shall preclude a further  
10 submittal of a duplicate application to any board or to the department  
11 of ecology.

12 (2) The department shall, after opportunity for public review and  
13 comment, adopt rules that establish a workload-driven process for  
14 determination and review of the fee covering the direct and indirect  
15 costs of processing a notice of construction application and a  
16 methodology for tracking revenues and expenditures. All new source  
17 fees collected by the department from permit program sources shall be  
18 deposited in the air operating permit account. All new source fees  
19 collected by the delegated local air authorities from permit program  
20 sources shall be deposited in the dedicated accounts of their  
21 respective treasuries. All new source fees collected by the department  
22 from nonpermit program sources shall be deposited in the air pollution  
23 control account. All new source fees collected by local air  
24 authorities from nonpermit program sources shall be deposited in their  
25 respective treasuries.

26 (3) Within thirty days of receipt of a notice of construction  
27 application, the department of ecology or board may require, as a  
28 condition precedent to the establishment of the new source or sources  
29 covered thereby, the submission of plans, specifications, and such  
30 other information as it deems necessary to determine whether the  
31 proposed new source will be in accord with applicable rules and  
32 regulations in force under this chapter. If on the basis of plans,  
33 specifications, or other information required under this section the  
34 department of ecology or board determines that the proposed new source  
35 will not be in accord with this chapter or the applicable ordinances,  
36 resolutions, rules, and regulations adopted under this chapter, it  
37 shall issue an order denying permission to establish the new source.  
38 If on the basis of plans, specifications, or other information required  
39 under this section, the department of ecology or board determines that

1 the proposed new source will be in accord with this chapter, and the  
2 applicable rules and regulations adopted under this chapter, it shall  
3 issue an order of approval for the establishment of the new source or  
4 sources, which order may provide such conditions as are reasonably  
5 necessary to assure the maintenance of compliance with this chapter and  
6 the applicable rules and regulations adopted under this chapter. Every  
7 order of approval under this chapter must be reviewed prior to issuance  
8 by a professional engineer or staff under the supervision of a  
9 professional engineer in the employ of the department of ecology or  
10 board.

11 ~~((2))~~ (4) The determination required under subsection ~~((1))~~ (3)  
12 of this section shall include a determination of whether the operation  
13 of the new air contaminant source at the location proposed will cause  
14 any ambient air quality standard to be exceeded.

15 ~~((3))~~ (5) New source review of a modification shall be limited to  
16 the emission unit or units proposed to be modified and the air  
17 contaminants whose emissions would increase as a result of the  
18 modification.

19 ~~((4))~~ (6) Nothing in this section shall be construed to authorize  
20 the department of ecology or board to require the use of emission  
21 control equipment or other equipment, machinery, or devices of any  
22 particular type, from any particular supplier, or produced by any  
23 particular manufacturer.

24 ~~((5))~~ (7) Any features, machines, and devices constituting parts  
25 of or called for by plans, specifications, or other information  
26 submitted pursuant to subsection (1) or (3) of this section shall be  
27 maintained and operate in good working order.

28 ~~((6))~~ (8) The absence of an ordinance, resolution, rule, or  
29 regulation, or the failure to issue an order pursuant to this section  
30 shall not relieve any person from his or her obligation to comply with  
31 applicable emission control requirements or with any other provision of  
32 law.

33 ~~((7))~~ (9) Within thirty days of receipt of a notice of  
34 construction application the department of ecology or board shall  
35 either notify the applicant in writing that the application is complete  
36 or notify the applicant in writing of all additional information  
37 necessary to complete the application. Within sixty days of receipt of  
38 a complete application the department or board shall either (a) issue  
39 a final decision on the application, or (b) for those projects subject

1 to public notice, initiate notice and comment on a proposed decision,  
2 followed as promptly as possible by a final decision. A person seeking  
3 approval to construct or modify a source that requires an operating  
4 permit may elect to integrate review of the operating permit  
5 application or amendment required by RCW 70.94.161 and the notice of  
6 construction application required by this section. A notice of  
7 construction application designated for integrated review shall be  
8 processed in accordance with operating permit program procedures and  
9 deadlines.

10 (10) Best available control technology (BACT) is required for new  
11 sources except where the federal clean air act requires compliance with  
12 the lowest achievable emission rate (LAER).

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

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

18 ~~(1) ((Unless a different meaning is plainly required by the~~  
19 ~~context, the following words and phrases shall have the following~~  
20 ~~meanings:~~

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

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

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

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

33 ~~(b) "Best available control technology" (BACT) means technology~~  
34 ~~that will result in an emission limitation, including a visible~~  
35 ~~emission standard, based on the maximum degree of reduction for each~~  
36 ~~air pollutant subject to this regulation that would be emitted from any~~  
37 ~~proposed new or modified source that the permitting authority, on a~~  
38 ~~case-by-case basis, taking into account energy, environmental, and~~

1 economic impacts and other costs, determines is achievable for such  
2 sources or modification through application of production processes,  
3 available methods, systems, and techniques, including fuel cleaning or  
4 treatment or innovative fuel combustion techniques for control of such  
5 air pollutant. In no event shall application of the best available  
6 technology result in emissions of any air pollutant that would exceed  
7 the emissions allowed by any applicable standard under 40 C.F.R. Part  
8 60 and Part 61. If the reviewing agency determines that technological  
9 or economic limitations on the application of measurement methodology  
10 to a particular class of sources would make the imposition of an  
11 emission standard infeasible, it may instead prescribe a design,  
12 equipment, work practice, or operational standard, or combination  
13 thereof, to meet the requirement of best available control technology.  
14 Such standard shall, to the degree possible, set forth the emission  
15 reduction achievable by implementation of such design, equipment, work  
16 practice, or operation and shall provide for compliance by means that  
17 achieve equivalent results. The term "all known available and  
18 reasonable methods of emission control" is interpreted to mean the same  
19 as best available control technology.

20 (c) "Reasonably available control technology" (RACT) means the  
21 lowest emission limit that a particular source or source category is  
22 capable of meeting by the application of control technology that is  
23 reasonably available considering technological and economic  
24 feasibility. RACT is determined on a case by case basis for an  
25 individual source or source category taking into account the impact of  
26 the source upon air quality, the availability of additional controls,  
27 the emission reduction to be achieved by additional controls, the  
28 impact of additional controls on air quality, and the capital and  
29 operating costs of the additional controls. RACT requirements for any  
30 source or source category shall be adopted only after notice and  
31 opportunity for comment are afforded.

32 (d) "Source" means all of the emissions units including  
33 quantifiable fugitive emissions, that are located on one or more  
34 contiguous or adjacent properties, and are under the control of the  
35 same person, or persons under common control, whose activities are  
36 ancillary to the production of a single product or functionally related  
37 group of products.

38 (e) "New source" means (i) the construction or modification of a  
39 stationary source that increases the amount of any air contaminant

1 emitted by such source or that results in the emission of any air  
2 contaminant not previously emitted, and (ii) any other project that  
3 constitutes a new source under the federal clean air act.

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

6 (g) "Modification" means any physical change in, or change in the  
7 method of operation of, a stationary source that increases the amount  
8 of any air contaminant emitted by such source or that results in the  
9 emission of any air contaminant not previously emitted. The term  
10 modification shall be construed consistent with the definition of  
11 modification in Section 7411, Title 42, United States Code, and with  
12 rules implementing that section.

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

21 ((3)) (2)(a) Rules establishing the elements for a state-wide  
22 operating permit program and the process for permit application and  
23 renewal consistent with federal requirements shall be established by  
24 the department by January 1, 1993. The rules shall provide that every  
25 proposed permit must be reviewed prior to issuance by a professional  
26 engineer or staff under the direct supervision of a professional  
27 engineer in the employ of the permitting authority. The permit program  
28 established by these rules shall be administered by the department and  
29 delegated local air authorities. Rules developed under this subsection  
30 shall not preclude a delegated local air authority from including in a  
31 permit its own more stringent emission standards and operating  
32 restrictions.

33 (b) The board of any local air pollution control authority may  
34 apply to the department of ecology for a delegation order authorizing  
35 the local authority to administer the operating permit program for  
36 sources under that authority's jurisdiction. The department shall, by  
37 order, approve such delegation, if the department finds that the local  
38 authority has the technical and financial resources, to discharge the  
39 responsibilities of a permitting authority under the federal clean air

1 act. A delegation request shall include adequate information about the  
2 local authority's resources to enable the department to make the  
3 findings required by this subsection; provided, any delegation order  
4 issued under this subsection shall take effect ninety days after the  
5 environmental protection agency authorizes the local authority to issue  
6 operating permits under the federal clean air act.

7 (c) Except for the authority granted the energy facility site  
8 evaluation council to issue permits for the new construction,  
9 reconstruction, or enlargement or operation of new energy facilities  
10 under chapter 80.50 RCW, the department may exercise the authority, as  
11 delegated by the environmental protection agency, to administer Title  
12 IV of the federal clean air act as amended and to delegate such  
13 administration to local authorities as applicable pursuant to (b) of  
14 this subsection.

15 ~~((4) "Best available control technology" (BACT) is required for  
16 new sources except where LAER is required.~~

17 ~~Until July 1, 1993, "lowest achievable emission rate" (LAER) is  
18 required solely for those sources required by the federal clean air  
19 act. By December 1, 1992, the department shall recommend control  
20 technology requirements for new sources to the appropriate standing  
21 committees of the legislature.~~

22 ~~Except as otherwise provided in RCW 70.94.331(9), "reasonably  
23 available control technology" (RACT) is required for existing  
24 sources.))~~

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

29 ~~((5))~~ (4) Operating permits shall apply to all sources (a) where  
30 required by the federal clean air act, and (b) for any source that may  
31 cause or contribute to air pollution in such quantity as to create a  
32 threat to the public health or welfare. Subsection (b) of this  
33 subsection is not intended to apply to small businesses except when  
34 both of the following limitations are satisfied: (i) The source is in  
35 an area exceeding or threatening to exceed federal or state air quality  
36 standards; and (ii) the department provides a reasonable justification  
37 that requiring a source to have a permit is necessary to meet a federal  
38 or state air quality standard, or to prevent exceeding a standard in an  
39 area threatening to exceed the standard. For purposes of this

1 subsection "areas threatening to exceed air quality standards" shall  
2 mean areas projected by the department to exceed such standards within  
3 five years. Prior to identifying threatened areas the department shall  
4 hold a public hearing or hearings within the proposed areas.

5 ~~((+6))~~ (5) Sources operated by government agencies are not exempt  
6 under this section.

7 ~~((+7) By October 1, 1993, or ninety)~~ (6) Within one hundred eighty  
8 days after the United States environmental protection agency approves  
9 the state operating permit program, ~~((whichever is later, any))~~ a  
10 person required to have a permit shall submit to the permitting  
11 ~~((agency))~~ authority a compliance plan and permit application, signed  
12 by a responsible official, certifying the accuracy of the information  
13 submitted. Until permits are issued, existing sources shall be allowed  
14 to operate under presently applicable standards and conditions provided  
15 that such sources submit complete and timely permit applications.

16 ~~((+8))~~ (7) All ~~((proposed))~~ draft permits shall be subject to  
17 public notice and comment. The rules adopted pursuant to subsection  
18 ~~((+3))~~ (2) of this section shall specify procedures for public notice  
19 and comment. Such procedures shall provide the permitting agency with  
20 an opportunity to respond to comments received from interested parties  
21 prior to the time that the proposed permit is submitted to the  
22 environmental protection agency for review pursuant to section 505(a)  
23 of the federal clean air act. In the event that the environmental  
24 protection agency objects to a proposed permit pursuant to section  
25 505(b) of the federal clean air act, the permitting authority shall not  
26 issue the permit, unless the permittee consents to the changes required  
27 by the environmental protection agency.

28 ~~((+9))~~ (8) The procedures contained in chapter 43.21B RCW shall  
29 apply to permit appeals. The pollution control hearings board may stay  
30 the effectiveness of any permit issued under this section during the  
31 pendency of an appeal filed by the permittee, if the permittee  
32 demonstrates that compliance with the permit during the pendency of the  
33 appeal would require significant expenditures that would not be  
34 necessary in the event that the permittee prevailed on the merits of  
35 the appeal.

36 ~~((+10))~~ (9) After the effective date of any permit program  
37 promulgated under this section, it shall be unlawful for any person to:  
38 (a) Operate a permitted source in violation of any requirement of a  
39 permit issued under this section; or (b) fail to submit a permit

1 application at the time required by rules adopted under subsection  
2 (~~((3))~~) (2) of this section.

3 (~~((11))~~) (10) Each air operating permit shall state the origin of  
4 and specific legal authority for each requirement included therein.  
5 Every requirement in an operating permit shall be based upon the most  
6 stringent of the following requirements:

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

9 (b) This chapter and rules adopted thereunder; (~~and~~)

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

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

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

14 (~~((12))~~) (11) Consistent with the provisions of the federal clean  
15 air act, the permitting authority may issue general permits covering  
16 categories of permitted sources, and temporary permits authorizing  
17 emissions from similar operations at multiple temporary locations.

18 (~~((13) Permitted)~~) (12) Permit program sources within the  
19 territorial jurisdiction of an authority delegated the operating permit  
20 program shall file their permit applications with that authority,  
21 except that permit applications for sources regulated on a state-wide  
22 basis pursuant to RCW 70.94.395 shall be filed with the department.

23 (~~Permitted~~) Permit program sources outside the territorial  
24 jurisdiction of a delegated authority shall file their applications  
25 with the department. Permit program sources subject to chapter 80.50  
26 RCW shall, irrespective of their location, file their applications with  
27 the energy facility site evaluation council.

28 (~~((14))~~) (13) When issuing operating permits to coal fired electric  
29 generating plants, the permitting authority shall give consideration to  
30 the federal time lines for the implementation of required control  
31 technology.

32 (~~((15))~~) (14)(a) The department and the local air authorities are  
33 authorized to assess and to collect, and each source emitting one  
34 hundred tons or more per year of a regulated pollutant shall pay an  
35 interim assessment ((of ten dollars per ton multiplied by the annual  
36 process-related emissions of each regulated pollutant emitted during  
37 calendar years 1990 and 1991. "Regulated pollutant" shall have the  
38 same meaning as defined in section 502(b) of the federal clean air act

1 ~~amendments of 1990)) to fund the development of the operating permit~~  
2 ~~program during fiscal year 1994.~~

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

6 ~~(c)) The department shall conduct a workload analysis and prepare~~  
7 ~~an operating permit program development budget for fiscal year 1994.~~  
8 ~~The department shall allocate among all sources emitting one hundred~~  
9 ~~tons or more per year of a regulated pollutant during calendar year~~  
10 ~~1992 the costs identified in its program development budget according~~  
11 ~~to a three-tiered model, with each of the three tiers being equally~~  
12 ~~weighted, based upon:~~

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

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

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

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

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

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

31 ~~((16) On or before November 1, 1992, the department, in~~  
32 ~~consultation with the department of revenue, shall report to the~~  
33 ~~appropriate standing committees of the legislature recommendations on~~  
34 ~~air operating permit fees. The department shall recommend a level of~~  
35 ~~fees to cover the direct and indirect costs of implementing the~~  
36 ~~operating permit program required under the 1990 federal clean air act.~~  
37 ~~In making such recommendations, the department shall address:~~

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

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

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

6       ~~(iii) Training;~~

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

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

9       ~~(vi) Emission inventories;~~

10       ~~(vii) Technical assistance;~~

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

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

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

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

18       ~~(17))~~ (15) The department shall determine the persons liable for  
19 the fee imposed by subsection ~~((15))~~ (14) of this section, compute  
20 the fee, and provide by November 1 of ~~((1991 and 1992,))~~ 1993 the  
21 identity of the fee payer with the computation of the fee to each local  
22 authority and to the department of revenue for collection. The  
23 department of revenue shall collect the fee computed by the department  
24 from the fee payers ~~((identified by))~~ under the jurisdiction of the  
25 department. The administrative, collection, and penalty provisions of  
26 chapter 82.32 RCW shall apply to the collection of the fee by the  
27 department of revenue. The department shall provide technical  
28 assistance to the department of revenue for decisions made by the  
29 department of revenue pursuant to RCW 82.32.160 and 82.32.170. All  
30 interim fees collected by the department of revenue on behalf of the  
31 department and all interim fees collected by local authorities on  
32 behalf of the department shall be deposited in the air operating permit  
33 account. The interim fees collected by the local air authorities to  
34 cover their permit program development costs under subsection (14)(d)  
35 of this section shall be deposited in the dedicated accounts of their  
36 respective treasuries.

37       All fees identified in this section shall be due and payable on  
38 March 1 of ~~((1992 and 1993))~~ 1994, except that the local air pollution  
39 control authorities may adopt by rule an earlier date on which fees are

1 to be due and payable. The 1993 amendments to RCW 70.94.161 contained  
2 in section 5 of this act do not have the effect of terminating, or in  
3 any way modifying, any liability, civil or criminal, incurred pursuant  
4 to the provisions of RCW 70.94.161 (15) and (17) as they existed prior  
5 to the effective date of this act.

6 ~~((+18+))~~ (16) For sources or source categories not required to  
7 obtain permits under subsection ~~((+5+))~~ (4) of this section, the  
8 department or local authority may establish by rule control technology  
9 requirements. If control technology rule revisions are made by the  
10 department or local authority under this subsection, the department or  
11 local authority shall consider the remaining useful life of control  
12 equipment previously installed on existing sources before requiring  
13 technology changes. The department or any local air authority may  
14 issue a general permit, as authorized under the federal clean air act,  
15 for such sources.

16 ~~((+19+))~~ (17) RCW 70.94.151 shall not apply to any permit program  
17 source ((for which a permit under this section has been issued)) after  
18 the effective date of United States environmental protection agency  
19 approval of the state operating permit program.

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

22 (1) The department and delegated local air authorities are  
23 authorized to determine, assess, and collect, and each permit program  
24 source shall pay, annual fees sufficient to cover the direct and  
25 indirect costs of implementing a state operating permit program  
26 approved by the United States environmental protection agency under the  
27 federal clean air act. However, a source that receives its operating  
28 permit from the United States environmental protection agency shall not  
29 be considered a permit program source so long as the environmental  
30 protection agency continues to act as the permitting authority for that  
31 source. Each permitting authority shall develop by rule a fee schedule  
32 allocating among its permit program sources the costs of the operating  
33 permit program, and may, by rule, establish a payment schedule whereby  
34 periodic installments of the annual fee are due and payable more  
35 frequently. All operating permit program fees collected by the  
36 department shall be deposited in the air operating permit account. All  
37 operating permit program fees collected by the delegated local air  
38 authorities shall be deposited in their respective air operating permit

1 accounts or other accounts dedicated exclusively to support of the  
2 operating permit program. The fees assessed under this subsection  
3 shall first be due not less than forty-five days after the United  
4 States environmental protection agency delegates to the department the  
5 authority to administer the operating permit program and then annually  
6 thereafter.

7 The department shall establish, by rule, procedures for  
8 administrative appeals to the department regarding the fee assessed  
9 pursuant to this subsection.

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

14 (a) Permit administration costs are those incurred by each  
15 permitting authority, including the department, in administering and  
16 enforcing the operating permit program with respect to sources under  
17 its jurisdiction. Costs associated with the following activities are  
18 fee eligible as these activities relate to the operating permit program  
19 and to the sources permitted by a permitting authority, including,  
20 where applicable, sources subject to a general permit:

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

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

26 (iii) Acting on an application for a permit, permit revision, or  
27 renewal, including the costs of developing an applicable requirement as  
28 part of the processing of a permit, permit revision, or renewal,  
29 preparing a draft permit and fact sheet, and preparing a final permit,  
30 but excluding the costs of developing BACT, LAER, BART, or RACT  
31 requirements for criteria and toxic air pollutants;

32 (iv) Notifying and soliciting, reviewing and responding to comment  
33 from the public and contiguous states and tribes, conducting public  
34 hearings regarding the issuance of a draft permit and other costs of  
35 providing information to the public regarding operating permits and the  
36 permit issuance process;

37 (v) Modeling necessary to establish permit limits or to determine  
38 compliance with permit limits;

1 (vi) Reviewing compliance certifications and emissions reports and  
2 conducting related compilation and reporting activities;

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

6 (viii) Administrative enforcement activities and penalty  
7 assessment, excluding the costs of proceedings before the pollution  
8 control hearings board and all costs of judicial enforcement;

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

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

13 (xi) Training for permit administration and enforcement;

14 (xii) Fee determination, assessment, and collection, including the  
15 costs of necessary administrative dispute resolution and penalty  
16 collection;

17 (xiii) Required fiscal audits, periodic performance audits, and  
18 reporting activities;

19 (xiv) Tracking of time, revenues and expenditures, and accounting  
20 activities;

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

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

26 (xvii) Other activities required by operating permit regulations  
27 issued by the United States environmental protection agency under the  
28 federal clean air act.

29 (b) Development and oversight costs are those incurred by the  
30 department in developing and administering the state operating permit  
31 program, and in overseeing the administration of the program by the  
32 delegated local permitting authorities. Costs associated with the  
33 following activities are fee eligible as these activities relate to the  
34 operating permit program:

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

- 1 (ii) Conducting fiscal audits and periodic performance audits of  
2 delegated local authorities, and other oversight functions required by  
3 the operating permit program;
- 4 (iii) Administrative enforcement actions taken by the department on  
5 behalf of a permitting authority, including those actions taken by the  
6 department under RCW 70.94.785, but excluding the costs of proceedings  
7 before the pollution control hearings board and all costs of judicial  
8 enforcement;
- 9 (iv) Determination and assessment with respect to each permitting  
10 authority of the fees covering its share of the costs of development  
11 and oversight;
- 12 (v) Training and assistance for permit program administration and  
13 oversight, including training and assistance regarding technical,  
14 administrative, and data management issues;
- 15 (vi) Development of generally applicable regulations or guidance  
16 regarding the permit program or its implementation or enforcement;
- 17 (vii) State codification of federal rules or standards for  
18 inclusion in operating permits;
- 19 (viii) Preparation of delegation package and other activities  
20 associated with submittal of the state permit program to the United  
21 States environmental protection agency for approval, including ongoing  
22 coordination activities;
- 23 (ix) General administration and coordination of the state permit  
24 program, related support activities, and other agency indirect costs,  
25 including necessary data management and quality assurance;
- 26 (x) Required fiscal audits and periodic performance audits of the  
27 department, and reporting activities;
- 28 (xi) Tracking of time, revenues and expenditures, and accounting  
29 activities;
- 30 (xii) Public education and outreach related to the operating permit  
31 program, including the maintenance of a permit register;
- 32 (xiii) The share attributable to permitted sources of compiling and  
33 maintaining emissions inventories;
- 34 (xiv) The share attributable to permitted sources of ambient air  
35 quality monitoring, related technical support, and associated recording  
36 activities;
- 37 (xv) The share attributable to permitted sources of modeling  
38 activities;

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

5 (xvii) Provision of services by the department of revenue and the  
6 office of the state attorney general and other state agencies in  
7 support of permit program administration;

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

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

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

17 (a) Each permitting authority, including the department, acting in  
18 its capacity as a permitting authority, shall develop a fee schedule  
19 and mechanism for collecting fees from the permit program sources under  
20 its jurisdiction; the fees collected by each authority shall be  
21 sufficient to cover its costs of permit administration and its share of  
22 the department's costs of development and oversight. Each delegated  
23 local authority shall remit to the department its share of the  
24 department's development and oversight costs.

25 (b) Only those local air authorities to whom the department has  
26 delegated the authority to administer the program pursuant to RCW  
27 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to  
28 administer and collect operating permit fees. The department shall  
29 retain the authority to administer and collect such fees with respect  
30 to the sources within the jurisdiction of a local air authority until  
31 the effective date of program delegation to that air authority.

32 (c) The department shall allocate its development and oversight  
33 costs among all permitting authorities, including the department, in  
34 proportion to the number of permit program sources under the  
35 jurisdiction of each authority, except that extraordinary costs or  
36 other costs readily attributable to a specific permitting authority may  
37 be assessed that authority. For purposes of this subsection, all  
38 sources covered by a single general permit shall be treated as one  
39 source.

1 (4) The department and each delegated local air authority shall  
2 adopt by rule a general permit fee schedule for sources under their  
3 respective jurisdictions after such time as the department adopts  
4 provisions for general permit issuance. Within ninety days of the time  
5 that the department adopts a general permit fee schedule, the  
6 department shall report to the relevant standing committees of the  
7 legislature regarding the general permit fee schedules adopted by the  
8 department and by the delegated local air authorities. The permit  
9 administration costs of each general permit shall be allocated  
10 equitably among only those sources subject to that general permit. The  
11 share of development and oversight costs attributable to each general  
12 permit shall be determined pursuant to subsection (3)(c) of this  
13 section.

14 (5) The fee schedule developed by the department shall allocate  
15 among the sources for whom the department acts as a permitting  
16 authority, other than sources subject to a general permit, those  
17 portions of the department's permit administration costs and the  
18 department's share of the development and oversight costs which the  
19 department does not plan to recover under its general permit fee  
20 schedule or schedules as follows:

21 (a) The department shall allocate its permit administration costs  
22 and its share of the development and oversight costs not recovered  
23 through general permit fees according to a three-tiered model based  
24 upon:

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

26 (ii) The complexity of permit program sources under its  
27 jurisdiction; and

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

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

32 (c) The department may, in addition, allocate activities-based  
33 costs readily attributable to a specific source to that source under  
34 RCW 70.94.152(1) and section 8(7) of this act.

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

38 (6) The department shall, after opportunity for public review and  
39 comment, adopt rules that establish a process for development and

1 review of its operating permit program fee schedule, a methodology for  
2 tracking program revenues and expenditures and, for both the department  
3 and the delegated local air authorities, a system of fiscal audits,  
4 reports, and periodic performance audits.

5 (a) The fee schedule development and review process shall include  
6 the following:

7 (i) The department shall conduct a biennial workload analysis. The  
8 department shall provide the opportunity for public review of and  
9 comment on the workload analysis. The department shall review and  
10 update its workload analysis during each biennial budget cycle, taking  
11 into account information gathered by tracking previous revenues, time,  
12 and expenditures and other information obtained through fiscal audits  
13 and performance audits.

14 (ii) The department shall prepare a biennial budget based upon the  
15 resource requirements identified in the workload analysis for that  
16 biennium. In preparing the budget, the department shall take into  
17 account the projected operating permit account balance at the start of  
18 the biennium. The department shall provide the opportunity for public  
19 review of and comment on the proposed budget. The department shall  
20 review and update its budget each biennium.

21 (iii) The department shall develop a fee schedule allocating the  
22 department's permit administration costs and its share of the  
23 development and oversight costs among the department's permit program  
24 sources using the methodology described in subsection (5) of this  
25 section. The department shall provide the opportunity for public  
26 review of and comment on the allocation methodology and fee schedule.  
27 The department shall provide procedures for administrative resolution  
28 of disputes regarding the source data on which allocation  
29 determinations are based; these procedures shall be designed such that  
30 resolution occurs prior to the completion of the allocation process.  
31 The department shall review and update its fee schedule annually.

32 (b) The methodology for tracking revenues and expenditures shall  
33 include the following:

34 (i) The department shall develop a system for tracking revenues and  
35 expenditures that provides the maximum practicable information. At a  
36 minimum, revenues from fees collected under the operating permit  
37 program shall be tracked on a source-specific basis and time and  
38 expenditures required to administer the program shall be tracked on the  
39 basis of source categories and functional categories. Each general

1 permit will be treated as a separate source category for tracking and  
2 accounting purposes.

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

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

9 (iv) On or before December 1, 1996, the department shall report to  
10 the appropriate standing committees of the legislature recommendations  
11 on the administrative feasibility and benefits of source-specific  
12 tracking of time and expenditures. The report may include findings  
13 from demonstration projects wherein time and expenditures are tracked  
14 on a source-specific basis.

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

17 (i) The department and the delegated local air authorities shall  
18 prepare annual reports and shall submit the reports to, respectively,  
19 the appropriate standing committees of the legislature and the board of  
20 directors of the local air authority.

21 (ii) The department shall arrange for fiscal audits and routine  
22 performance audits and for periodic intensive performance audits of  
23 each permitting authority and of the department.

24 (7) Each local air authority requesting delegation shall, after  
25 opportunity for public review and comment, publish regulations which  
26 establish a process for development and review of its operating permit  
27 program fee schedule, and a methodology for tracking its revenues and  
28 expenditures. These regulations shall be submitted to the department  
29 for review and approval as part of the local authority's delegation  
30 request.

31 (8) As used in this section and in RCW 70.94.161(14), "regulated  
32 pollutant" shall have the same meaning as defined in section 502(b) of  
33 the federal clean air act as it exists on the effective date of this  
34 act, or its later enactment as adopted by reference by the director by  
35 rule.

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

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

6 (2) Permits for energy facilities subject to chapter 80.50 RCW  
7 shall be issued by the energy facility site evaluation council.  
8 However, the permits become effective only if the governor approves an  
9 application for certification and executes a certification agreement  
10 under chapter 80.50 RCW. The council shall have all powers necessary  
11 to administer an operating permits program pertaining to such  
12 facilities, consistent with applicable air quality standards  
13 established by the department or local air pollution control  
14 authorities, or both, and to obtain the approval of the United States  
15 environmental protection agency. The council's powers include, but are  
16 not limited to, all of the enforcement powers provided in RCW  
17 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and  
18 70.94.435 with respect to permit program sources required to obtain  
19 certification from the council under chapter 80.50 RCW. To the extent  
20 not covered under RCW 80.50.071, the council may collect fees as  
21 granted to delegated local air authorities under RCW 70.94.152,  
22 70.94.161 (14) and (15), and sections 6 and 8(7) of this act with  
23 respect to permit program sources required to obtain certification from  
24 the council under chapter 80.50 RCW. The council and the department  
25 shall each establish procedures that provide maximum coordination and  
26 avoid duplication between the two agencies in carrying out the  
27 requirements of this chapter.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.94 RCW  
29 to read as follows:

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

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

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

37 (a) As authorized by RCW 70.94.153;

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

1 (c) For sources in source categories containing fewer than three  
2 sources;

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

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

9 (4) By January 1, 1994, ecology shall develop a list of sources and  
10 source categories requiring RACT review and a schedule for conducting  
11 that review. Ecology shall review the list and schedule within six  
12 months of receiving the initial operating permit applications and at  
13 least once every five years thereafter. In developing the list to  
14 determine the schedule of RACT review, ecology shall consider emission  
15 reductions achievable through the use of new available technologies and  
16 the impacts of those incremental reductions on air quality, the  
17 remaining useful life of previously installed control equipment, the  
18 impact of the source or source category on air quality, the number of  
19 years since the last BACT, RACT, or LAER determination for that source  
20 and other relevant factors. Prior to finalizing the list and schedule,  
21 ecology shall consult with local air authorities, the regulated  
22 community, environmental groups, and other interested individuals and  
23 organizations. The department and local authorities shall revise RACT  
24 requirements, as needed, based on the review conducted under this  
25 subsection.

26 (5) In determining RACT, ecology and local authorities shall  
27 utilize the factors set forth in RCW 70.94.030 and shall consider RACT  
28 determinations and guidance made by the federal environmental  
29 protection agency, other states and local authorities for similar  
30 sources, and other relevant factors. In establishing or revising RACT  
31 requirements, ecology and local authorities shall address, where  
32 practicable, all air contaminants deemed to be of concern for that  
33 source or source category.

34 (6) Emission standards and other requirements contained in rules or  
35 regulatory orders in effect at the time of operating permit issuance or  
36 renewal shall be considered RACT for purposes of permit issuance or  
37 renewal, except as provided under subsection (3)(d) or (e) of this  
38 section. RACT determinations under subsections (2) and (3) of this

1 section shall be incorporated into operating permits as provided in RCW  
2 70.94.161 and rules implementing that section.

3 (7) The department and local air authorities are authorized to  
4 assess and collect a fee to cover the costs of developing,  
5 establishing, or reviewing categorical or case-by-case RACT  
6 requirements. The fee shall apply to determinations of RACT  
7 requirements as defined under this section and RCW 70.94.331(9). The  
8 amount of the fee may not exceed the direct and indirect costs of  
9 establishing the requirement for the particular source or the pro rata  
10 portion of the direct and indirect costs of establishing the  
11 requirement for the relevant source category. The department shall,  
12 after opportunity for public review and comment, adopt rules that  
13 establish a workload-driven process for determination and review of the  
14 fee covering the direct and indirect costs of its RACT determinations  
15 and a methodology for tracking revenues and expenditures. All such  
16 RACT determination fees collected by the department from permit program  
17 sources shall be deposited in the air operating permit account. All  
18 such RACT determination fees collected by the delegated local air  
19 authorities from permit program sources shall be deposited in the  
20 dedicated accounts of their respective treasuries. All such RACT fees  
21 collected by the department from nonpermit program sources shall be  
22 deposited in the air pollution control account. All such RACT fees  
23 collected by local air authorities from nonpermit program sources shall  
24 be deposited in their respective treasuries.

--- END ---