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SENATE BILL 5878

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State of Washington

55th Legislature

1997 Regular Session

By Senators Morton, Rasmussen, Swecker and Oke

Read first time 02/18/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the establishment of voluntary programs creating  
2 environmental excellence program agreements; amending RCW 90.54.020,  
3 70.105D.070, 70.94.015, and 90.48.465; adding new sections to chapter  
4 43.131 RCW; adding a new section to chapter 43.21A RCW; adding a new  
5 section to chapter 70.94 RCW; adding a new section to chapter 70.95  
6 RCW; adding a new section to chapter 70.105 RCW; adding a new section  
7 to chapter 75.20 RCW; adding a new section to chapter 90.48 RCW; adding  
8 a new section to chapter 90.52 RCW; adding a new section to chapter  
9 90.56 RCW; adding a new section to chapter 90.58 RCW; adding a new  
10 section to chapter 90.64 RCW; adding a new section to chapter 90.71  
11 RCW; adding a new chapter to Title 43 RCW; creating a new section; and  
12 making appropriations.

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

14 NEW SECTION. **Sec. 1.** The purpose of this act is to create a  
15 voluntary program authorizing environmental excellence program  
16 agreements with persons regulated under the environmental laws of the  
17 state of Washington, or to direct agencies of the state of Washington  
18 to support and encourage the development of agreements that use  
19 innovative environmental measures or strategies not otherwise

1 recognized or allowed under existing laws and rules to achieve results  
2 that represent environmental excellence.

3 Agencies shall encourage environmental excellence program  
4 agreements that favor or promote pollution prevention, source  
5 reduction, or improvements in practices that are transferable to other  
6 interested entities and that can achieve better overall environmental  
7 results than required by otherwise applicable rules and requirements.

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

10 (1) "Agency of the state of Washington" means a state agency,  
11 board, department, authority, or commission that administers  
12 environmental laws.

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

17 (3) "Environmental laws" means chapters 43.21A, 70.94, 70.95,  
18 70.105, 75.20, 90.48, 90.52, 90.56, 90.58, 90.64, and 90.71 RCW, and  
19 RCW 90.54.020 and rules adopted under those chapters and section. The  
20 term environmental laws as used in this chapter does not include any  
21 provision of the Revised Code of Washington, or of any municipal  
22 ordinance or enactment, that regulates the selection of a location for  
23 a new facility.

24 (4) "Facility" means a site, a manufacturing or natural resource  
25 management operation, or a business or municipal activity that is  
26 regulated under any of the provisions of the environmental laws.

27 (5) "Sponsor" means a person owning or operating a facility subject  
28 to regulation under the environmental laws of the state of Washington,  
29 or an authorized representative of the owner or operator, that submits  
30 a proposal for an environmental excellence program agreement.

31 (6) "Stakeholder" means a person who has a direct interest in the  
32 proposed environmental excellence program agreement or who represents  
33 a public interest in the proposed environmental excellence program  
34 agreement. Stakeholders may include communities near the project,  
35 local or state governments, permittees, businesses, environmental and  
36 other public interest groups, or similar entities.

1        NEW SECTION.     **Sec. 3.**     (1) The governor may enter into an  
2 environmental excellence program agreement with any person regulated  
3 under the environmental laws of the state, even if one or more of the  
4 terms of the environmental excellence program agreement would be  
5 inconsistent with an otherwise applicable statute, rule, or  
6 environmental permit.

7        (2) The governor may designate the director of a state agency to  
8 act for the governor and exercise the authority to enter into  
9 environmental excellence program agreements affecting environmental  
10 requirements administered by that agency. Where a sponsor proposes an  
11 environmental excellence program agreement that would affect  
12 environmental requirements administered by more than one state agency,  
13 the governor shall designate one or more directors that have the  
14 authority to enter into such an environmental excellence program  
15 agreement. In making such a designation, the governor may provide that  
16 an environmental excellence program agreement will be effective only to  
17 the extent that it is approved by the director of each state agency  
18 administering environmental requirements affected by the environmental  
19 excellence program agreement.

20        (3) Notwithstanding the provisions of subsections (1) and (2) of  
21 this section, where a local or regional agency with jurisdiction over  
22 environmental matters of the state administers state environmental  
23 laws, either directly or through the adoption of rules, the director of  
24 that regional agency possesses all of the authority and duties assigned  
25 to the governor under this chapter including, without limitation, the  
26 power to approve an environmental excellence program agreement.  
27 However, any environmental excellence program agreement is limited to  
28 matters over which the regional agency otherwise exercises  
29 jurisdiction, or where an environmental excellence program agreement  
30 affects environmental rules administered by a state agency, the  
31 environmental excellence program agreement must be signed by one or  
32 more directors appointed by the governor in accordance with subsection  
33 (2) of this section.

34        NEW SECTION.     **Sec. 4.**     (1) Any person owning or operating a  
35 facility subject to regulation under the environmental laws of the  
36 state may propose an environmental excellence program agreement. A  
37 trade association or other authorized representative of owners or  
38 operators of facilities subject to the environmental laws of the state

1 may propose a programmatic environmental excellence program agreement  
2 for multiple facilities.

3 (2) A person who proposes an environmental excellence program  
4 agreement must submit, at a minimum, the following information and  
5 other information that may be requested by the governor or the  
6 governor's designee:

7 (a) A statement that describes how the proposal is consistent with  
8 the purpose of this chapter and the project approval criteria in  
9 section 7 of this act;

10 (b)(i) For a site-specific proposal, a comprehensive description of  
11 the proposed environmental excellence project that includes the nature  
12 of the facility and the operations that will be affected, how the  
13 facility or operations will achieve results that represent  
14 environmental excellence, and the nature of the results anticipated; or

15 (ii) For a programmatic proposal, a comprehensive description of  
16 the proposed environmental excellence project that identifies the  
17 facilities and the operations that are expected to participate, how  
18 participating facilities or operations will achieve results that  
19 represent environmental excellence, the nature of the results  
20 anticipated, and the method to identify and document the commitments  
21 made by individual participants;

22 (c) An environmental checklist, containing sufficient information  
23 to reasonably inform the public of the nature of the proposed  
24 environmental excellence program agreement, describing probable  
25 significant adverse environmental impacts and environmental benefits,  
26 and any tradeoffs between adverse impacts and benefits, expected from  
27 implementation of the proposal;

28 (d) A draft environmental excellence program agreement;

29 (e) A description of the stakeholder process as provided in  
30 section 5 of this act;

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

34 NEW SECTION. **Sec. 5.** Stakeholder participation in and support for  
35 an environmental excellence program agreement is vital to the integrity  
36 of the environmental excellence program agreement and informs the  
37 decision whether an environmental excellence program agreement can be  
38 approved. A proposal for an environmental excellence program agreement

1 shall include the sponsor's plan to identify and contact stakeholders,  
2 to advise stakeholders of the facts and nature of the project, and to  
3 request stakeholder participation and review during the development and  
4 implementation of the proposed environmental excellence program  
5 agreement. With respect to any environmental excellence program  
6 agreement that the sponsor anticipates will affect legal requirements  
7 adopted to comply with provisions of a federal regulatory program, the  
8 proposal also shall provide for notice of the proposed environmental  
9 excellence program agreement to the federal agency that is responsible  
10 for administering that program.

11 NEW SECTION. **Sec. 6.** An environmental excellence program  
12 agreement must contain the following terms and conditions:

13 (1) An identification of all legal requirements that are affected  
14 by the environmental excellence program agreement;

15 (2) A description of any alternative or innovative approach to the  
16 legal requirements affected by the environmental excellence program  
17 agreement, including a statement of any enforceable requirements  
18 different from those otherwise applicable in the absence of an  
19 environmental excellence program agreement;

20 (3) A statement that the civil and criminal penalties for the  
21 violation of legal requirements established under the environmental  
22 excellence program agreement shall be the same as would apply in the  
23 absence of an environmental excellence program agreement for the  
24 violation of the legal requirements that are superseded or replaced by  
25 the environmental excellence program agreement;

26 (4) A statement of any environmental excellence and innovation  
27 goals for the project, clearly identified as measures that the sponsor  
28 intends to pursue but that do not create legal rights or obligations  
29 and which, therefore, may not be the subject of any civil, criminal, or  
30 administrative enforcement action;

31 (5) A statement describing how the environmental excellence program  
32 agreement will achieve the purposes of this chapter;

33 (6) A statement describing how the environmental excellence program  
34 agreement will be implemented, including a list of steps and an  
35 implementation schedule;

36 (7) A statement that the proposed environmental excellence program  
37 agreement will not increase overall worker safety risks or impose  
38 unjust or disproportionate environmental impacts;

1 (8) A statement that the stakeholder plan was implemented in the  
2 development of the environmental excellence program agreement;

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

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

14 (11) A schedule of periodic performance review of the environmental  
15 excellence program agreement by the governor or the governor's  
16 designee;

17 (12) Provisions for voluntary and involuntary termination of the  
18 agreement;

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

21 (14) Statements approving the environmental excellence program  
22 agreement made by or on behalf of the governor and the sponsor;

23 (15) Additional terms as requested by the governor or the  
24 governor's designee and consistent with this chapter.

25 NEW SECTION. **Sec. 7.** An environmental excellence program  
26 agreement entered into under this chapter must: (1) Achieve emissions  
27 reductions, or reductions in the discharge of wastes, or reductions in  
28 environmental risk, that achieve better overall environmental results  
29 for the participating facility than required by otherwise applicable  
30 rules and requirements, or (2) achieve compliance with applicable  
31 environmental standards or limitations in a manner that is superior to  
32 the method of compliance, or the method to demonstrate compliance,  
33 compared to the method required by applicable statutory, regulatory, or  
34 permit provisions. A superior method can be demonstrated by an  
35 innovative approach or cost-effective results.

36 NEW SECTION. **Sec. 8.** (1) At least thirty days before entering  
37 into or modifying an environmental excellence program agreement, the

1 governor or the governor's designee shall publish notice of the  
2 proposed agreement in the Washington State Register and in a newspaper  
3 of general circulation in the vicinity of the facility or facilities  
4 covered by the proposed environmental excellence program agreement.  
5 The notice shall contain a general description of the agreement  
6 including, but not limited to, an identification of the facilities to  
7 be covered, the aspects of the project that constitute environmental  
8 excellence, the regulatory flexibility requested by the sponsor, and an  
9 announcement that the public has an opportunity to comment.

10 (2) With respect to an environmental excellence program agreement  
11 that affects legal requirements adopted to comply with provisions of a  
12 federal regulatory program, the governor or the governor's designee  
13 shall provide a copy of the environmental excellence program agreement,  
14 and a copy of the notice required by subsection (1) of this section, to  
15 the federal agency that is responsible for administering that program  
16 at least thirty days before entering into or modifying the  
17 environmental excellence program agreement, and shall afford the  
18 federal agency the opportunity to object to those terms of the  
19 environmental excellence program agreement or modification of an  
20 environmental excellence program agreement affecting the legal  
21 requirements. The governor or the governor's designee shall not enter  
22 into an environmental excellence program agreement or a modification of  
23 an environmental excellence program agreement containing terms  
24 affecting legal requirements adopted to comply with provisions of a  
25 federal regulatory program and to which the responsible federal agency  
26 objects.

27 NEW SECTION. **Sec. 9.** (1) Notwithstanding any other provision of  
28 law, any legal requirement under the environmental laws, including,  
29 without limitation, any standard, limitation, or order, shall be  
30 superseded and replaced under the terms and provisions of an approved  
31 environmental excellence program agreement to the extent that the  
32 environmental excellence program agreement provides alternative means  
33 to define and achieve compliance. Legal requirements contained in a  
34 permit that are affected by an environmental excellence program  
35 agreement will continue to be enforceable until such time as the permit  
36 is revised in accordance with subsection (2) of this section. With  
37 respect to any other legal requirements, the legal requirements  
38 contained in the environmental excellence program agreement are

1 effective as provided by the environmental excellence program agreement  
2 and the facility or facilities covered by an environmental excellence  
3 program agreement shall comply with the terms of the environmental  
4 excellence program agreement in lieu of the legal requirements that are  
5 superseded and replaced by the approved environmental excellence  
6 program agreement.

7 (2) Any permits affected by an environmental excellence program  
8 agreement shall be revised to conform to the environmental excellence  
9 program agreement by the agency with jurisdiction. The permit  
10 revisions will be completed as expeditiously as possible in accordance  
11 with otherwise applicable procedural requirements, including, where  
12 applicable, public notice and the opportunity for comment, and the  
13 opportunity for review and objection by federal agencies.

14 (3) Other than as revised as provided in an approved environmental  
15 excellence program agreement, any existing permit requirements remain  
16 in effect and are enforceable.

17 NEW SECTION. **Sec. 10.** (1) A decision by the governor or the  
18 governor's designee to approve a proposed environmental excellence  
19 program agreement, or to terminate or modify an approved environmental  
20 excellence program agreement, is subject to judicial review under RCW  
21 34.05.570. For purposes of judicial review, the decision to approve,  
22 terminate, or modify an environmental excellence program agreement is  
23 subject to review in the superior court in the same manner as an agency  
24 rule. However, the decision shall be accorded substantial deference by  
25 the court. A decision not to enter into or modify an environmental  
26 excellence program agreement is within the sole discretion of the  
27 governor or the governor's designee and is not subject to review.

28 (2) An appeal from a decision to approve, terminate, or modify an  
29 environmental excellence program agreement is not timely unless filed  
30 with the court and served on the parties to the environmental  
31 excellence program agreement within thirty days of the date of the  
32 decision.

33 (3) Permit modifications or revisions are subject to review under  
34 otherwise applicable law.

35 NEW SECTION. **Sec. 11.** In the event that a covered facility fails  
36 to perform any term or condition in an approved environmental  
37 excellence program agreement that prevents achievement of the stated



1 purposes of section 1 of this act, the governor or the governor's  
2 designee may, in accord with written notice, terminate the  
3 environmental excellence program agreement in whole or in part. The  
4 written notice shall specify the extent to which the environmental  
5 excellence program agreement is to be terminated, state the factual and  
6 legal basis for termination, and provide a description of the  
7 opportunity for judicial review of the decision to terminate the  
8 environmental excellence program agreement.

9 NEW SECTION. **Sec. 12.** After receipt of notice of termination in  
10 the manner provided in section 11 of this act, the sponsor has sixty  
11 days in which to apply for any permit or approval affected by any  
12 terminated portion of the environmental excellence program agreement.  
13 An application filed during the sixty-day period shall be deemed a  
14 timely application for renewal of a permit under the terms of any  
15 applicable law. The terms and conditions of the environmental  
16 excellence program agreement and of permits issued will continue in  
17 effect until a final permit or approval is issued. If the sponsor  
18 fails to submit a timely or complete application, any affected permit  
19 or approval may be modified at any time that is consistent with  
20 applicable law.

21 NEW SECTION. **Sec. 13.** (1) Nothing in this chapter limits the  
22 authority of an agency, the attorney general, or a prosecuting attorney  
23 to initiate an enforcement action for violation of any applicable legal  
24 requirement. However, (a) no civil, criminal, or administrative action  
25 may be brought with respect to any legal requirement that is superseded  
26 or replaced under the terms of an environmental excellence program  
27 agreement; and (b) no criminal, civil, or administrative sanction or  
28 action may be instituted or imposed for failure to meet any identified  
29 environmental excellence and innovation goal identified as an  
30 unenforceable target or plan in an environmental excellence program  
31 agreement.

32 (2) This chapter does not create any new authority for citizen  
33 suits, and does not alter or amend other statutory provisions  
34 authorizing citizen suits.

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

4        NEW SECTION.    **Sec. 15.**    A decision to approve an environmental  
5 excellence program agreement is not subject to the requirements of the  
6 state environmental policy act, chapter 43.21C RCW, including the  
7 requirement to prepare an environmental impact statement under RCW  
8 43.21C.031.    However, the consideration of a proposed environmental  
9 excellence program agreement by the governor or the governor's designee  
10 will integrate an assessment of environmental impacts.

11       NEW SECTION.    **Sec. 16.**    The governor or any state agency designated  
12 to enter into an environmental excellence program agreement may adopt  
13 rules to implement this chapter.

14       NEW SECTION.    **Sec. 17.**    The director of the department of ecology  
15 shall appoint an advisory committee to review the effectiveness of the  
16 environmental excellence program agreement program and to make a  
17 recommendation to the legislature concerning the continuation,  
18 termination, or modification of the program.    The committee shall be  
19 composed of one representative each from two state agencies, two  
20 representatives of the regulated community, and two representatives of  
21 environmental organizations.    The committee must submit a report and  
22 its recommendation to the legislature not later than October 31, 2001.  
23 The department of ecology shall provide the advisory committee with  
24 such support as they may require.

25       NEW SECTION.    **Sec. 18.**    (1) State, local, and regional agencies, as  
26 described in section 3 of this act, are authorized to assess and  
27 collect a fee to recover the costs of processing environmental  
28 excellence program agreement proposals.    The amount of the fee may not  
29 exceed the direct and indirect costs of processing the environmental  
30 excellence program agreement proposal.

31       (2) Agencies assessing fees shall graduate the initial fees for  
32 processing an environmental excellence program agreement proposal to  
33 account for the size of the business and to make the environmental  
34 excellence program agreement program more available to small

1 businesses. An agency may exercise its discretion to waive all or any  
2 part of the fees.

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

5 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.131  
6 RCW to read as follows:

7 The environmental excellence program agreement program shall be  
8 terminated June 30, 2002, as provided in section 20 of this act.

9 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.131  
10 RCW to read as follows:

11 The following acts or parts of acts, as now existing or hereafter  
12 amended, are each repealed, effective June 30, 2003:

- 13 (1) 1997 c . . . s 1 (section 1 of this act);
- 14 (2) RCW 43.---.--- and 1997 c . . . s 2 (section 2 of this act);
- 15 (3) RCW 43.---.--- and 1997 c . . . s 3 (section 3 of this act);
- 16 (4) RCW 43.---.--- and 1997 c . . . s 4 (section 4 of this act);
- 17 (5) RCW 43.---.--- and 1997 c . . . s 5 (section 5 of this act);
- 18 (6) RCW 43.---.--- and 1997 c . . . s 6 (section 6 of this act);
- 19 (7) RCW 43.---.--- and 1997 c . . . s 7 (section 7 of this act);
- 20 (8) RCW 43.---.--- and 1997 c . . . s 8 (section 8 of this act);
- 21 (9) RCW 43.---.--- and 1997 c . . . s 9 (section 9 of this act);
- 22 (10) RCW 43.---.--- and 1997 c . . . s 10 (section 10 of this act);
- 23 (11) RCW 43.---.--- and 1997 c . . . s 11 (section 11 of this act);
- 24 (12) RCW 43.---.--- and 1997 c . . . s 12 (section 12 of this act);
- 25 (13) RCW 43.---.--- and 1997 c . . . s 13 (section 13 of this act);
- 26 (14) RCW 43.---.--- and 1997 c . . . s 14 (section 14 of this act);
- 27 (15) RCW 43.---.--- and 1997 c . . . s 15 (section 15 of this act);
- 28 (16) RCW 43.---.--- and 1997 c . . . s 16 (section 16 of this act);
- 29 (17) RCW 43.---.--- and 1997 c . . . s 17 (section 17 of this act);
- 30 and
- 31 (18) RCW 43.---.--- and 1997 c . . . s 18 (section 18 of this act).

32 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.21A  
33 RCW to read as follows:

34 Notwithstanding any other provision of law, or any legal  
35 requirement under this chapter, any standard, limitation, or order is  
36 superseded and replaced under the terms and provisions of an approved

1 environmental excellence program agreement, created under chapter 43.--  
2 RCW (sections 2 through 18 of this act) to the extent that the  
3 environmental excellence program agreement provides alternative means  
4 to define and achieve compliance with this chapter.

5 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.94 RCW  
6 to read as follows:

7 Notwithstanding any other provision of law, or any legal  
8 requirement under this chapter, any standard, limitation, or order is  
9 superseded and replaced under the terms and provisions of an approved  
10 environmental excellence program agreement, created under chapter 43.--  
11 RCW (sections 2 through 18 of this act) to the extent that the  
12 environmental excellence program agreement provides alternative means  
13 to define and achieve compliance with this chapter.

14 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.95 RCW  
15 to read as follows:

16 Notwithstanding any other provision of law, or any legal  
17 requirement under this chapter, any standard, limitation, or order is  
18 superseded and replaced under the terms and provisions of an approved  
19 environmental excellence program agreement, created under chapter 43.--  
20 RCW (sections 2 through 18 of this act) to the extent that the  
21 environmental excellence program agreement provides alternative means  
22 to define and achieve compliance with this chapter.

23 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.105  
24 RCW to read as follows:

25 Notwithstanding any other provision of law, or any legal  
26 requirement under this chapter, any standard, limitation, or order is  
27 superseded and replaced under the terms and provisions of an approved  
28 environmental excellence program agreement, created under chapter 43.--  
29 RCW (sections 2 through 18 of this act) to the extent that the  
30 environmental excellence program agreement provides alternative means  
31 to define and achieve compliance with this chapter.

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

34 Notwithstanding any other provision of law, or any legal  
35 requirement under this chapter, any standard, limitation, or order is

1 superseded and replaced under the terms and provisions of an approved  
2 environmental excellence program agreement, created under chapter 43.--  
3 RCW (sections 2 through 18 of this act) to the extent that the  
4 environmental excellence program agreement provides alternative means  
5 to define and achieve compliance with this chapter.

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

8 Notwithstanding any other provision of law, or any legal  
9 requirement under this chapter, any standard, limitation, or order is  
10 superseded and replaced under the terms and provisions of an approved  
11 environmental excellence program agreement, created under chapter 43.--  
12 RCW (sections 2 through 18 of this act) to the extent that the  
13 environmental excellence program agreement provides alternative means  
14 to define and achieve compliance with this chapter.

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

17 Notwithstanding any other provision of law, or any legal  
18 requirement under this chapter, any standard, limitation, or order is  
19 superseded and replaced under the terms and provisions of an approved  
20 environmental excellence program agreement, created under chapter 43.--  
21 RCW (sections 2 through 18 of this act) to the extent that the  
22 environmental excellence program agreement provides alternative means  
23 to define and achieve compliance with this chapter.

24 NEW SECTION. **Sec. 28.** A new section is added to chapter 90.56 RCW  
25 to read as follows:

26 Notwithstanding any other provision of law, or any legal  
27 requirement under this chapter, any standard, limitation, or order is  
28 superseded and replaced under the terms and provisions of an approved  
29 environmental excellence program agreement, created under chapter 43.--  
30 RCW (sections 2 through 18 of this act) to the extent that the  
31 environmental excellence program agreement provides alternative means  
32 to define and achieve compliance with this chapter.

33 NEW SECTION. **Sec. 29.** A new section is added to chapter 90.58 RCW  
34 to read as follows:

1 Notwithstanding any other provision of law, or any legal  
2 requirement under this chapter, any standard, limitation, or order is  
3 superseded and replaced under the terms and provisions of an approved  
4 environmental excellence program agreement, created under chapter 43.--  
5 RCW (sections 2 through 18 of this act) to the extent that the  
6 environmental excellence program agreement provides alternative means  
7 to define and achieve compliance with this chapter.

8 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.64 RCW  
9 to read as follows:

10 Notwithstanding any other provision of law, or any legal  
11 requirement under this chapter, any standard, limitation, or order is  
12 superseded and replaced under the terms and provisions of an approved  
13 environmental excellence program agreement, created under chapter 43.--  
14 RCW (sections 2 through 18 of this act) to the extent that the  
15 environmental excellence program agreement provides alternative means  
16 to define and achieve compliance with this chapter.

17 NEW SECTION. **Sec. 31.** A new section is added to chapter 90.71 RCW  
18 to read as follows:

19 Notwithstanding any other provision of law, or any legal  
20 requirement under this chapter, any standard, limitation, or order is  
21 superseded and replaced under the terms and provisions of an approved  
22 environmental excellence program agreement, created under chapter 43.--  
23 RCW (sections 2 through 18 of this act) to the extent that the  
24 environmental excellence program agreement provides alternative means  
25 to define and achieve compliance with this chapter.

26 **Sec. 32.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read  
27 as follows:

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

30 (1) Uses of water for domestic, stock watering, industrial,  
31 commercial, agricultural, irrigation, hydroelectric power production,  
32 mining, fish and wildlife maintenance and enhancement, recreational,  
33 and thermal power production purposes, and preservation of  
34 environmental and aesthetic values, and all other uses compatible with  
35 the enjoyment of the public waters of the state, are declared to be  
36 beneficial.

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

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

7 (a) Perennial rivers and streams of the state shall be retained  
8 with base flows necessary to provide for preservation of wildlife,  
9 fish, scenic, aesthetic and other environmental values, and  
10 navigational values. Lakes and ponds shall be retained substantially  
11 in their natural condition. Withdrawals of water which would conflict  
12 therewith shall be authorized only in those situations where it is  
13 clear that overriding considerations of the public interest will be  
14 served.

15 (b) Waters of the state shall be of high quality. Regardless of  
16 the quality of the waters of the state, all wastes and other materials  
17 and substances proposed for entry into said waters shall be provided  
18 with all known, available, and reasonable methods of treatment prior to  
19 entry. Notwithstanding that standards of quality established for the  
20 waters of the state would not be violated, wastes and other materials  
21 and substances shall not be allowed to enter such waters which will  
22 reduce the existing quality thereof, except in those situations where  
23 it is clear that overriding considerations of the public interest will  
24 be served. Technology-based effluent limitations or standards for  
25 discharges for municipal water treatment plants located on the  
26 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted  
27 to reflect credit for substances removed from the plant intake water  
28 if:

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

31 (ii) The municipality demonstrates that no violation of receiving  
32 water quality standards or appreciable environmental degradation will  
33 result.

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

36 (5) Multiple-purpose impoundment structures are to be preferred  
37 over single-purpose structures. Due regard shall be given to means and  
38 methods for protection of fishery resources in the planning for and

1 construction of water impoundment structures and other artificial  
2 obstructions.

3 (6) Federal, state, and local governments, individuals,  
4 corporations, groups and other entities shall be encouraged to carry  
5 out practices of conservation as they relate to the use of the waters  
6 of the state. In addition to traditional development approaches,  
7 improved water use efficiency and conservation shall be emphasized in  
8 the management of the state's water resources and in some cases will be  
9 a potential new source of water with which to meet future needs  
10 throughout the state.

11 (7) Development of water supply systems, whether publicly or  
12 privately owned, which provide water to the public generally in  
13 regional areas within the state shall be encouraged. Development of  
14 water supply systems for multiple domestic use which will not serve the  
15 public generally shall be discouraged where water supplies are  
16 available from water systems serving the public.

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

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

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

25 (11) Notwithstanding any other provision of law, or any legal  
26 requirement under this section, any standard, limitation, or order is  
27 superseded and replaced under the terms and provisions of an approved  
28 environmental excellence program agreement, created under chapter 43.--  
29 RCW (sections 2 through 18 of this act) to the extent that the  
30 environmental excellence program agreement provides alternative means  
31 to define and achieve compliance with this section.

32 **Sec. 33.** RCW 70.105D.070 and 1994 c 252 s 5 are each amended to  
33 read as follows:

34 (1) The state toxics control account and the local toxics control  
35 account are hereby created in the state treasury.

36 (2) The following moneys shall be deposited into the state toxics  
37 control account: (a) Those revenues which are raised by the tax  
38 imposed under RCW 82.21.030 and which are attributable to that portion



1 of the rate equal to thirty-three one-hundredths of one percent; (b)  
2 the costs of remedial actions recovered under this chapter or chapter  
3 70.105A RCW; (c) penalties collected or recovered under this chapter;  
4 and (d) any other money appropriated or transferred to the account by  
5 the legislature. Moneys in the account may be used only to carry out  
6 the purposes of this chapter, including but not limited to the  
7 following activities:

8 (i) The state's responsibility for hazardous waste planning,  
9 management, regulation, enforcement, technical assistance, and public  
10 education required under chapter 70.105 RCW;

11 (ii) The state's responsibility for solid waste planning,  
12 management, regulation, enforcement, technical assistance, and public  
13 education required under chapter 70.95 RCW;

14 (iii) The hazardous waste cleanup program required under this  
15 chapter;

16 (iv) State matching funds required under the federal cleanup law;

17 (v) Financial assistance for local programs in accordance with  
18 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

19 (vi) State government programs for the safe reduction, recycling,  
20 or disposal of hazardous wastes from households, small businesses, and  
21 agriculture;

22 (vii) Hazardous materials emergency response training;

23 (viii) Water and environmental health protection and monitoring  
24 programs;

25 (ix) Programs authorized under chapter 70.146 RCW;

26 (x) A public participation program, including regional citizen  
27 advisory committees;

28 (xi) Public funding to assist potentially liable persons to pay for  
29 the costs of remedial action in compliance with cleanup standards under  
30 RCW 70.105D.030(2)(d) but only when the amount and terms of such  
31 funding are established under a settlement agreement under RCW  
32 70.105D.040(4) and when the director has found that the funding will  
33 achieve both (A) a substantially more expeditious or enhanced cleanup  
34 than would otherwise occur, and (B) the prevention or mitigation of  
35 unfair economic hardship; (~~and~~)

36 (xii) Development and demonstration of alternative management  
37 technologies designed to carry out the top two hazardous waste  
38 management priorities of RCW 70.105.150; and

1        (xiii) To meet the initial administrative costs of the  
2 environmental excellence program agreement program created under  
3 chapter 43.-- RCW (sections 2 through 18 of this act).

4        (3) The following moneys shall be deposited into the local toxics  
5 control account: Those revenues which are raised by the tax imposed  
6 under RCW 82.21.030 and which are attributable to that portion of the  
7 rate equal to thirty-seven one-hundredths of one percent.

8        (a) Moneys deposited in the local toxics control account shall be  
9 used by the department for grants or loans to local governments for the  
10 following purposes in descending order of priority: (i) Remedial  
11 actions; (ii) hazardous waste plans and programs under chapter 70.105  
12 RCW; and (iii) solid waste plans and programs under chapters 70.95,  
13 70.95C, 70.95I, and 70.105 RCW. Funds for plans and programs shall be  
14 allocated consistent with the priorities and matching requirements  
15 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

16        (b) Funds may also be appropriated to the department of health to  
17 implement programs to reduce testing requirements under the federal  
18 safe drinking water act for public water systems. The department of  
19 health shall reimburse the account from fees assessed under RCW  
20 70.119A.115 by June 30, 1995.

21        (4) Except for unanticipated receipts under RCW 43.79.260 through  
22 43.79.282, moneys in the state and local toxics control accounts may be  
23 spent only after appropriation by statute.

24        (5) One percent of the moneys deposited into the state and local  
25 toxics control accounts shall be allocated only for public  
26 participation grants to persons who may be adversely affected by a  
27 release or threatened release of a hazardous substance and to not-for-  
28 profit public interest organizations. The primary purpose of these  
29 grants is to facilitate the participation by persons and organizations  
30 in the investigation and remedying of releases or threatened releases  
31 of hazardous substances and to implement the state's solid and  
32 hazardous waste management priorities. No grant may exceed fifty  
33 thousand dollars though it may be renewed annually. Moneys  
34 appropriated for public participation from either account which are not  
35 expended at the close of any biennium shall revert to the state toxics  
36 control account.

37        (6) No moneys deposited into either the state or local toxics  
38 control account may be used for solid waste incinerator feasibility  
39 studies, construction, maintenance, or operation.

1 (7) The department shall adopt rules for grant or loan issuance and  
2 performance.

3 **Sec. 34.** RCW 70.94.015 and 1993 c 252 s 1 are each amended to read  
4 as follows:

5 (1) The air pollution control account is established in the state  
6 treasury. All receipts collected by or on behalf of the department  
7 from RCW 70.94.151(2), and receipts from nonpermit program sources  
8 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW  
9 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be deposited  
10 into the account. Moneys in the account may be spent only after  
11 appropriation. Expenditures from the account may be used only to  
12 develop and implement the provisions of chapters 70.94 and 70.120 RCW.

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

17 Portions of moneys received by the department of ecology from the  
18 air pollution control account shall be distributed by the department to  
19 local authorities based on:

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

22 (b) The costs associated with implementing air pollution regulatory  
23 programs by such authority; ~~((and))~~

24 (c) The amount of funding available to such authority from other  
25 sources, whether state, federal, or local, that could be used to  
26 implement such programs; and

27 (d) The initial administrative costs of the environmental  
28 excellence program agreement program created under chapter 43.-- RCW  
29 (sections 2 through 18 of this act).

30 (3) The air operating permit account is created in the custody of  
31 the state treasurer. All receipts collected by or on behalf of the  
32 department from permit program sources under RCW 70.94.152(1),  
33 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the  
34 account. Expenditures from the account may be used only for the  
35 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and  
36 70.94.154(7). Moneys in the account may be spent only after  
37 appropriation.

1       **Sec. 35.** RCW 90.48.465 and 1996 c 37 s 3 are each amended to read  
2 as follows:

3       (1) The department shall establish annual fees to collect expenses  
4 for issuing and administering each class of permits under RCW  
5 90.48.160, 90.48.162, 90.48.260, and 70.95J.020 through 70.95J.090. An  
6 initial fee schedule shall be established by rule within one year of  
7 March 1, 1989, and thereafter the fee schedule shall be adjusted no  
8 more often than once every two years. This fee schedule shall apply to  
9 all permits, regardless of date of issuance, and fees shall be assessed  
10 prospectively. All fees charged shall be based on factors relating to  
11 the complexity of permit issuance and compliance and may be based on  
12 pollutant loading and toxicity and be designed to encourage recycling  
13 and the reduction of the quantity of pollutants. Fees shall be  
14 established in amounts to fully recover and not to exceed expenses  
15 incurred by the department in processing permit applications and  
16 modifications, monitoring and evaluating compliance with permits,  
17 conducting inspections, securing laboratory analysis of samples taken  
18 during inspections, reviewing plans and documents directly related to  
19 operations of permittees, overseeing performance of delegated  
20 pretreatment programs, and supporting the overhead expenses that are  
21 directly related to these activities.

22       (2) The annual fee paid by a municipality, as defined in 33 U.S.C.  
23 Sec. 1362, for all domestic wastewater facility permits issued under  
24 RCW 90.48.162, 90.48.260, and 70.95J.020 through 70.95J.090 shall not  
25 exceed the total of a maximum of fifteen cents per month per residence  
26 or residential equivalent contributing to the municipality's wastewater  
27 system. The department shall adopt by rule a schedule of credits for  
28 any municipality engaging in a comprehensive monitoring program beyond  
29 the requirements imposed by the department, with the credits available  
30 for five years from March 1, 1989, and with the total amount of all  
31 credits not to exceed fifty thousand dollars in the five-year period.

32       (3) The department shall ensure that indirect dischargers do not  
33 pay twice for the administrative expense of a permit. Accordingly,  
34 administrative expenses for permits issued by a municipality under RCW  
35 90.48.165 are not recoverable by the department.

36       (4) In establishing fees, the department shall consider the  
37 economic impact of fees on small dischargers and the economic impact of  
38 fees on public entities required to obtain permits for storm water  
39 runoff and shall provide appropriate adjustments.

1 (5) All fees collected under this section shall be deposited in the  
2 water quality permit account hereby created in the state treasury.  
3 Moneys in the account may be appropriated only for purposes of  
4 administering permits under RCW 90.48.160, 90.48.162, 90.48.260, and  
5 70.95J.020 through 70.95J.090, and for the initial administrative costs  
6 of the environmental excellence program agreement program created under  
7 chapter 43.-- RCW (sections 2 through 18 of this act).

8 (6) Beginning with the biennium ending June 30, 1997, the  
9 department shall present a biennial progress report on the use of  
10 moneys from the account to the legislature. The report will be due  
11 December 31 of the odd-numbered year. The report shall consist of  
12 information on fees collected, actual expenses incurred, and  
13 anticipated expenses for the current and following fiscal years.

14 NEW SECTION. Sec. 36. The sum of one hundred twenty thousand  
15 dollars, or as much thereof as may be necessary, is appropriated for  
16 the biennium ending June 30, 1999, from the state toxics control  
17 account to the department of ecology for the purposes of this act.

18 NEW SECTION. Sec. 37. The sum of one hundred twenty thousand  
19 dollars, or as much thereof as may be necessary, is appropriated for  
20 the biennium ending June 30, 1999, from the air pollution control  
21 account to the department of ecology for the purposes of this act.

22 NEW SECTION. Sec. 38. The sum of one hundred twenty thousand  
23 dollars, or as much thereof as may be necessary, is appropriated for  
24 the biennium ending June 30, 1999, from the water quality permit  
25 account to the department of ecology for the purposes of this act.

26 NEW SECTION. Sec. 39. Sections 2 through 18 of this act  
27 constitute a new chapter in Title 43 RCW.

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