
HOUSE BILL 2421

State of Washington 56th Legislature 2000 Regular Session

By Representatives Pennington, G. Chandler, Dunn, Schoesler and Delvin

Read first time . Referred to Committee on .

1 AN ACT Relating to air pollution control; amending RCW 70.94.030,
2 46.61.165, 70.120.170, 70.94.743, 70.94.745, 70.94.053, 70.94.130, and
3 70.94.100; adding a new section to chapter 19.112 RCW; and adding a new
4 section to chapter 46.16 RCW.

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

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

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

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

14 (2) "Air pollution" is presence in the outdoor atmosphere of one or
15 more air contaminants in sufficient quantities and of such
16 characteristics and duration as is, or is likely to be, injurious to
17 human health, plant or animal life, or property, or which unreasonably
18 interfere with enjoyment of life and property. For the purpose of this

1 chapter, air pollution shall not include air contaminants emitted in
2 compliance with chapter 17.21 RCW.

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

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

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

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

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

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

2 (9) "Clean fuels" means alternatives to ordinary gasoline or diesel
3 fuel that do not exceed the emission standards for passenger cars and
4 light duty trucks as provided in the federal clean air act amendments
5 of 1990 (42 U.S.C. 7583).

6 (10) "Control officer" means the air pollution control officer of
7 any authority.

8 (~~(10)~~) (11) "Department" or "ecology" means the department of
9 ecology.

10 (~~(11)~~) (12) "Emission" means a release of air contaminants into
11 the ambient air.

12 (~~(12)~~) (13) "Emission standard" and "emission limitation" mean a
13 requirement established under the federal clean air act or this chapter
14 that limits the quantity, rate, or concentration of emissions of air
15 contaminants on a continuous basis, including any requirement relating
16 to the operation or maintenance of a source to assure continuous
17 emission reduction, and any design, equipment, work practice, or
18 operational standard adopted under the federal clean air act or this
19 chapter.

20 (~~(13)~~) (14) "Lowest achievable emission rate" (LAER) means for
21 any source that rate of emissions that reflects:

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

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

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

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

1 (~~(15)~~) (16) "Multicounty authority" means an authority which
2 consists of two or more counties.

3 (~~(16)~~) (17) "New source" means (a) the construction or
4 modification of a stationary source that increases the amount of any
5 air contaminant emitted by such source or that results in the emission
6 of any air contaminant not previously emitted, and (b) any other
7 project that constitutes a new source under the federal clean air act.

8 (~~(17)~~) (18) "Permit program source" means a source required to
9 apply for or to maintain an operating permit under RCW 70.94.161.

10 (~~(18)~~) (19) "Person" means an individual, firm, public or private
11 corporation, association, partnership, political subdivision of the
12 state, municipality, or governmental agency.

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

25 (~~(20)~~) (21) "Silvicultural burning" means burning of wood fiber
26 on forest land consistent with the provisions of RCW 70.94.660.

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

33 (~~(22)~~) (23) "Stationary source" means any building, structure,
34 facility, or installation that emits or may emit any air contaminant.

35 NEW SECTION. Sec. 2. A new section is added to chapter 19.112 RCW
36 to read as follows:

37 The addition of methyl tertiary-butyl ether to any gasoline or
38 clean fuel as defined in RCW 70.94.030 is prohibited in Washington as

1 of the effective date of this section. Methyl tertiary-butyl ether may
2 not be a component of any gasoline or clean fuel sold in the state of
3 Washington after December 31, 2000.

4 **Sec. 3.** RCW 46.61.165 and 1999 c 206 s 1 are each amended to read
5 as follows:

6 (1) The state department of transportation and the local
7 authorities are authorized to reserve all or any portion of any highway
8 under their respective jurisdictions, including any designated lane or
9 ramp, for the exclusive or preferential use of public transportation
10 vehicles or private motor vehicles carrying no fewer than a specified
11 number of passengers when such limitation will increase the efficient
12 utilization of the highway or will aid in the conservation of energy
13 resources. Regulations authorizing such exclusive or preferential use
14 of a highway facility may be declared to be effective at all times or
15 at specified times of day or on specified days. Violation of a
16 restriction of highway usage prescribed by the appropriate authority
17 under this section is a traffic infraction.

18 (2) The state department of transportation and the local
19 authorities shall reserve the use of high-occupancy vehicle lanes for
20 motor vehicles that:

21 (a) Do not exceed emission standards as provided in RCW
22 70.94.030(9); or

23 (b) Are used to transport two or more persons.

24 (3) The department shall mark high-occupancy vehicle lane signs to
25 indicate that those lanes may be used by clean fuel vehicles regardless
26 of the number of occupants.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.16 RCW
28 to read as follows:

29 (1) A person who owns a motor vehicle that has either been
30 converted or manufactured to use clean fuel as defined in RCW 70.94.030
31 shall apply for clean fuel vehicle special plates pursuant to this
32 section.

33 (2) The department shall issue clean fuel vehicle special plates to
34 a person who owns a motor vehicle that is powered by a clean fuel and
35 that is registered under chapter 82.44 RCW. The department may
36 establish a fee in an amount not to exceed the cost of production of
37 the special license plates and the administration of this program.

1 Fees shall be deposited in the air pollution control account
2 established under RCW 70.94.015. Clean fuel vehicle special plates are
3 not transferable.

4 (3) The license number sequence for clean fuel vehicle special
5 plates shall begin with the letters CFV and shall be painted green over
6 the ordinary background for license plates issued by the department.
7 The clean fuel vehicle special plates may be distinguished through
8 other color or design features at the discretion of the department.

9 (4) A person may drive a motor vehicle with clean fuel vehicle
10 special plates in high-occupancy vehicle lanes at any time, regardless
11 of occupancy level, without penalty.

12 **Sec. 5.** RCW 70.120.170 and 1998 c 342 s 4 are each amended to read
13 as follows:

14 (1) The department shall administer a system for emission
15 inspections of all motor vehicles, except those described in RCW
16 46.16.015(2), that are registered within the boundaries of each
17 emission contributing area. Under such system a motor vehicle shall be
18 inspected biennially except where an annual program would be required
19 to meet federal law and prevent federal sanctions. In addition, motor
20 vehicles shall be inspected at each change of registered owner of a
21 licensed vehicle as provided under RCW 46.16.015.

22 (2) The director shall:

23 (a) Adopt procedures for conducting emission inspections of motor
24 vehicles. The inspections may include idle and high revolution per
25 minute emission tests, but may not include the transient emission test
26 known as the IM 240 test developed by the United States environmental
27 protection agency and authorized in 40 C.F.R. 51.357 as it exists on
28 the effective date of this section. The emission test for diesel
29 vehicles shall consist solely of a smoke opacity test.

30 (b) Adopt criteria for calibrating emission testing equipment.
31 Electronic equipment used to test for emissions standards provided for
32 in this chapter shall be properly calibrated. The department shall
33 examine frequently the calibration of the emission testing equipment
34 used at the stations.

35 (c) Authorize, through contracts, the establishment and operation
36 of inspection stations for conducting vehicle emission inspections
37 authorized in this chapter. No person contracted to inspect motor
38 vehicles may perform for compensation repairs on any vehicles. No

1 public body may establish or operate contracted inspection stations.
2 Any contracts must be let in accordance with the procedures established
3 for competitive bids in chapter 43.19 RCW.

4 (3) Subsection (2)(c) of this section does not apply to volunteer
5 motor vehicle inspections under RCW 70.120.020(1) if the inspections
6 are conducted for the following purposes:

7 (a) Auditing;

8 (b) Contractor evaluation;

9 (c) Collection of data for establishing calibration and performance
10 standards; or

11 (d) Public information and education.

12 (4)(a) The director shall establish by rule the fee to be charged
13 for emission inspections. The inspection fee shall be a standard fee
14 applicable state-wide or throughout an emission contributing area and
15 shall be no greater than fifteen dollars. Surplus moneys collected
16 from fees over the amount due the contractor shall be paid to the state
17 and deposited in the general fund. Fees shall be set at the minimum
18 whole dollar amount required to (i) compensate the contractor or
19 inspection facility owner, and (ii) offset the general fund
20 appropriation to the department to cover the administrative costs of
21 the motor vehicle emission inspection program.

22 (b) Before each inspection, a person whose motor vehicle is to be
23 inspected shall pay to the inspection station the fee established under
24 this section. The person whose motor vehicle is inspected shall
25 receive the results of the inspection. If the inspected vehicle
26 complies with the standards established by the director, the person
27 shall receive a dated certificate of compliance. If the inspected
28 vehicle does not comply with those standards, one reinspection of the
29 vehicle shall be afforded without charge.

30 (5) All units of local government and agencies of the state with
31 motor vehicles garaged or regularly operated in an emissions
32 contributing area shall test the emissions of those vehicles annually
33 to ensure that the vehicle's emissions comply with the emission
34 standards established by the director. All state agencies outside of
35 emission contributing areas with more than twenty motor vehicles housed
36 at a single facility or contiguous facilities shall test the emissions
37 of those vehicles annually to ensure that the vehicles' emissions
38 comply with standards established by the director. A report of the
39 results of the tests shall be submitted to the department.

1 **Sec. 6.** RCW 70.94.743 and 1998 c 68 s 1 are each amended to read
2 as follows:

3 (1) Consistent with the policy of the state to reduce outdoor
4 burning to the greatest extent practical:

5 (a) Outdoor burning shall not be allowed in any area of the state
6 where federal or state ambient air quality standards are exceeded for
7 pollutants emitted by outdoor burning.

8 (b) Outdoor burning shall not be allowed in (~~any urban growth area~~
9 ~~as defined by RCW 36.70A.030, or~~) any city of the state having a
10 population greater than ten thousand people, or any combination of
11 contiguous cities whose total populations are greater than ten thousand
12 people, if such cities are threatened to exceed state or federal air
13 quality standards, and alternative disposal practices consistent with
14 good solid waste management are reasonably available or practices
15 eliminating production of organic refuse are reasonably available. In
16 no event shall such burning be allowed after December 31, (~~2000,~~
17 ~~except that within the urban growth areas for cities having a~~
18 ~~population of less than five thousand people, that are neither within~~
19 ~~nor contiguous with any nonattainment or maintenance area designated~~
20 ~~under the federal clean air act, in no event shall such burning be~~
21 ~~allowed after December 31,~~) 2006.

22 (c) Notwithstanding any other provision of this section, outdoor
23 burning may be allowed for the exclusive purpose of managing storm or
24 flood-related debris. The decision to allow burning shall be made by
25 the entity with permitting jurisdiction as determined under RCW
26 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject
27 to (a) or (b) of this subsection, a permit shall be required, and a fee
28 may be collected to cover the expenses of administering and enforcing
29 the permit. All conditions and restrictions pursuant to RCW
30 70.94.750(1) and 70.94.775 apply to outdoor burning allowed under this
31 section.

32 (2) "Outdoor burning" means the combustion of material of any type
33 in an open fire or in an outdoor container without providing for the
34 control of combustion or the control of emissions from the combustion.

35 (3) This section shall not apply to silvicultural burning used to
36 improve or maintain fire dependent ecosystems for rare plants or
37 animals within state, federal, and private natural area preserves,
38 natural resource conservation areas, parks, and other wildlife areas.

1 **Sec. 7.** RCW 70.94.745 and 1995 c 206 s 1 are each amended to read
2 as follows:

3 (1) It shall be the responsibility and duty of the department of
4 natural resources, department of ecology, department of agriculture,
5 fire districts, and local air pollution control authorities to
6 establish, through regulations, ordinances, or policy, a limited
7 burning permit program.

8 (2) The permit program shall apply to residential and land clearing
9 burning in the following areas:

10 (a) In the nonurban areas of any county with an unincorporated
11 population of greater than fifty thousand; and

12 (b) In any city and urban growth area that is not otherwise
13 prohibited from burning pursuant to RCW 70.94.743.

14 (3) The permit program shall apply only to land clearing burning in
15 the nonurban areas of any county with an unincorporated population of
16 less than fifty thousand.

17 (4) The permit program may be limited to a general permit by rule,
18 or by verbal, written, or electronic approval by the permitting entity.

19 (5) Notwithstanding any other provision of this section, neither a
20 permit nor the payment of a fee shall be required for outdoor burning
21 for the purpose of disposal of tumbleweeds blown by wind. Such burning
22 shall not be conducted during an air pollution episode or any stage of
23 impaired air quality declared under RCW ((70.94.714)) 70.94.715. This
24 subsection (5) shall only apply within counties with a population less
25 than two hundred fifty thousand.

26 (6) Burning shall be prohibited in an area when an alternate
27 technology or method of disposing of the organic refuse is available,
28 reasonably economical as determined by the local air authority or the
29 local governing body where no local air authority exists, and less
30 harmful to the environment. It is the policy of this state to foster
31 and encourage development of alternate methods or technology for
32 disposing of or reducing the amount of organic refuse.

33 (7) Incidental agricultural burning must be allowed without
34 applying for any permit and without the payment of any fee if:

35 (a) The burning is incidental to commercial agricultural
36 activities;

37 (b) The operator notifies the local fire department within the area
38 where the burning is to be conducted;

1 (c) The burning does not occur during an air pollution episode or
2 any stage of impaired air quality declared under RCW 70.94.715; and

3 (d) Only the following items are burned:

4 (i) Orchard prunings;

5 (ii) Organic debris along fence lines or irrigation or drainage
6 ditches; or

7 (iii) Organic debris blown by wind.

8 (8) As used in this section, "nonurban areas" are unincorporated
9 areas within a county that is not designated as an urban growth area
10 under chapter 36.70A RCW.

11 (9) Nothing in this section shall require fire districts to enforce
12 air quality requirements related to outdoor burning, unless the fire
13 district enters into an agreement with the department of ecology,
14 department of natural resources, a local air pollution control
15 authority, or other appropriate entity to provide such enforcement.

16 **Sec. 8.** RCW 70.94.053 and 1995 c 135 s 5 are each amended to read
17 as follows:

18 (1) In each county of the state there is hereby created an air
19 pollution control authority, which shall bear the name of the county
20 within which it is located. The boundaries of each authority shall be
21 coextensive with the boundaries of the county within which it is
22 located. An authority shall include all incorporated and
23 unincorporated areas of the county within which it is located.

24 (2) Except as provided in RCW 70.94.262, all authorities which are
25 presently activated authorities shall carry out the duties and exercise
26 the powers provided in this chapter. Those activated authorities which
27 encompass contiguous counties are declared to be and directed to
28 function as a multicounty authority.

29 (3) All other air pollution control authorities are hereby
30 designated as inactive authorities.

31 (4) The boards of those authorities designated as activated
32 authorities by this chapter shall be comprised of such individuals as
33 is provided in RCW 70.94.100.

34 (5) The multicounty authority known as the southwest air pollution
35 control authority shall be divided into two local air authorities. As
36 of July 1, 2000, the southwest air pollution control authority shall be
37 comprised of Cowlitz, Lewis, and Wahkiakum counties and a new local air
38 authority shall be formed in Clark and Skamania counties.

1 **Sec. 9.** RCW 70.94.130 and 1998 c 342 s 1 are each amended to read
2 as follows:

3 The board shall exercise all powers of the authority except as
4 otherwise provided. The board shall conduct its first meeting within
5 thirty days after all of its members have been appointed or designated
6 as provided in RCW 70.94.100. The board shall meet at least ten times
7 per year. All meetings shall be publicly announced prior to their
8 occurrence. All meetings shall be open to the public. A majority of
9 the board shall constitute a quorum for the transaction of business and
10 shall be necessary for any action taken by the board. The board shall
11 elect from (~~its members~~) the elected officials on the board a chair
12 and such other officers as may be necessary. Any member of the board
13 may designate a regular alternate to serve on the board in his or her
14 place with the same authority as the member when he or she is unable to
15 attend. In no event may a regular alternate serve as the permanent
16 chair. Each member of the board, or his or her representative, shall
17 receive from the authority compensation consistent with such
18 authority's rates (but not to exceed one thousand dollars per year) for
19 time spent in the performance of duties under this chapter, plus the
20 actual and necessary expenses incurred by the member in such
21 performance. The board may appoint a control officer, and any other
22 personnel, and shall determine their salaries, and pay same, together
23 with any other proper indebtedness, from authority funds.

24 **Sec. 10.** RCW 70.94.100 and 1991 c 199 s 704 are each amended to
25 read as follows:

26 (1) The governing body of each authority shall be known as the
27 board of directors.

28 (2) In the case of an authority comprised of one county the board
29 shall be comprised of two appointees of the city selection committee,
30 at least one of whom shall represent the city having the most
31 population in the county, and two representatives to be designated by
32 the board of county commissioners. In the case of an authority
33 comprised of two, three, four, or five counties, the board shall be
34 comprised of one appointee from each county, who shall represent the
35 city having the most population in such county, to be designated by the
36 mayor and city council of such city, and one representative from each
37 county to be designated by the board of county commissioners of each
38 county making up the authority. In the case of an authority comprised

1 of six or more counties, the board shall be comprised of one
2 representative from each county to be designated by the board of county
3 commissioners of each county making up the authority, and three
4 appointees, one each from the three largest cities within the local
5 authority's jurisdiction to be appointed by the mayor and city council
6 of such city.

7 (3) If the board of an authority otherwise would consist of an even
8 number, the members selected as above provided shall agree upon and
9 elect an additional member who shall be either a member of the
10 governing body of one of the towns, cities or counties comprising the
11 authority, or a private citizen residing in the authority.

12 (4) The terms of office of board members shall be four years.

13 (5) Wherever a member of a board has a potential conflict of
14 interest in an action before the board, the member shall declare to the
15 board the nature of the potential conflict prior to ~~((participating in
16 the action))~~ the board's review of the action, and shall refrain from
17 voting on the action before the board. ~~((The board shall, if the
18 potential conflict of interest, in the judgment of a majority of the
19 board, may prevent the member from a fair and objective review of the
20 case, remove the member from participation in the action.))~~

21 (6) A member of a board of directors may not work in any capacity
22 for an entity that is regulated by a local air authority of which the
23 director is a member. If a member of a board of directors is offered
24 a position of employment with an entity that is, or in the past five
25 years has been, regulated by the local air authority of which the
26 director is a member, the member is required to choose between
27 continued service on the board or the employment position.

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