

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1866

Chapter 381, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

ENVIRONMENTAL EXCELLENCE PROGRAM AGREEMENTS

EFFECTIVE DATE: 7/27/97

Passed by the House April 22, 1997
Yeas 84 Nays 14

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 18, 1997
Yeas 30 Nays 15

BRAD OWEN
President of the Senate

Approved May 15, 1997, with the
exception of sections 11, 15, and 31,
which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1866** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 15, 1997 - 4:31 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1866

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Lisk, Delvin and Schoesler)

Read first time 03/10/97.

1 AN ACT Relating to the establishment of voluntary programs creating
2 environmental excellence program agreements; amending RCW 90.54.020;
3 adding a new section to chapter 43.21A RCW; adding a new section to
4 chapter 70.94 RCW; adding a new section to chapter 70.95 RCW; adding a
5 new section to chapter 70.105 RCW; adding a new section to chapter
6 70.119A RCW; adding a new section to chapter 75.20 RCW; adding a new
7 section to chapter 90.48 RCW; adding a new section to chapter 90.52
8 RCW; adding a new section to chapter 90.58 RCW; adding a new section to
9 chapter 90.64 RCW; adding a new section to chapter 90.71 RCW; adding a
10 new chapter to Title 43 RCW; and creating new sections.

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

12 NEW SECTION. **Sec. 1.** The purpose of this act is to create a
13 voluntary program authorizing environmental excellence program
14 agreements with persons regulated under the environmental laws of the
15 state of Washington, and to direct agencies of the state of Washington
16 to solicit and support the development of agreements that use
17 innovative environmental measures or strategies to achieve
18 environmental results more effectively or efficiently.

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

6 In enacting this act it is not the intent of the legislature that
7 state environmental standards be applied in a manner that could result
8 in these state standards being waived under section 121 of the federal
9 comprehensive environmental response, compensation, and liability act
10 (42 U.S.C. Sec. 9261).

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

13 (1) "State, regional, or local agency" means an agency, board,
14 department, authority, or commission that administers environmental
15 laws.

16 (2) "Coordinating agency" means the state, regional, or local
17 agency with the primary regulatory responsibility for the proposed
18 environmental excellence program agreement. If multiple agencies have
19 jurisdiction to administer state environmental laws affected by an
20 environmental excellence agreement, the department of ecology shall
21 designate or act as the coordinating agency.

22 (3) "Director" means the individual or body of individuals in whom
23 the ultimate legal authority of an agency is vested by any provision of
24 law. If the agency head is a body of individuals, a majority of those
25 individuals constitutes the director.

26 (4) "Environmental laws" means chapters 43.21A, 70.94, 70.95,
27 70.105, 70.119A, 75.20, 90.48, 90.52, 90.58, 90.64, and 90.71 RCW, and
28 RCW 90.54.020(3)(b) and rules adopted under those chapters and section.
29 The term environmental laws as used in this chapter does not include
30 any provision of the Revised Code of Washington, or of any municipal
31 ordinance or enactment, that regulates the selection of a location for
32 a new facility.

33 (5) "Facility" means a site or activity that is regulated under any
34 of the provisions of the environmental laws.

35 (6) "Legal requirement" includes any provision of an environmental
36 law, rule, order, or permit.

37 (7) "Sponsor" means the owner or operator of a facility, including
38 a municipal corporation, subject to regulation under the environmental

1 laws of the state of Washington, or an authorized representative of the
2 owner or operator, that submits a proposal for an environmental
3 excellence program agreement.

4 (8) "Stakeholder" means a person who has a direct interest in the
5 proposed environmental excellence program agreement or who represents
6 a public interest in the proposed environmental excellence program
7 agreement. Stakeholders may include communities near the project,
8 local or state governments, permittees, businesses, environmental and
9 other public interest groups, employees or employee representatives, or
10 other persons.

11 NEW SECTION. **Sec. 3.** An environmental excellence program
12 agreement entered into under this chapter must achieve more effective
13 or efficient environmental results than the results that would be
14 otherwise achieved. The basis for comparison shall be a reasonable
15 estimate of the overall impact of the participating facility on the
16 environment in the absence of an environmental excellence program
17 agreement. More effective environmental results are results that are
18 better overall than those that would be achieved under the legal
19 requirements superseded or replaced by the agreement. More efficient
20 environmental results are results that are achieved at reduced cost but
21 do not decrease the overall environmental results achieved by the
22 participating facility. An environmental excellence program agreement
23 may not authorize either (1) the release of water pollutants that will
24 cause to be exceeded, at points of compliance in the ambient
25 environment established pursuant to law, numeric surface water or
26 ground water quality criteria or numeric sediment quality criteria
27 adopted as rules under chapter 90.48 RCW; or (2) the emission of any
28 air contaminants that will cause to be exceeded any air quality
29 standard as defined in RCW 70.94.030(3); or (3) a decrease in the
30 overall environmental results achieved by the participating facility
31 compared with results achieved over a representative period before the
32 date on which the agreement is proposed by the sponsor. However, an
33 environmental excellence program agreement may authorize reasonable
34 increases in the release of pollutants to permit increases in facility
35 production or facility expansion and modification.

36 NEW SECTION. **Sec. 4.** (1) The director of a state, regional, or
37 local agency may enter into an environmental excellence program

1 agreement with any sponsor, even if one or more of the terms of the
2 environmental excellence program agreement would be inconsistent with
3 an otherwise applicable legal requirement. An environmental excellence
4 program agreement must meet the requirements of section 3 of this act.
5 Otherwise applicable legal requirements identified according to section
6 7(1) of this act shall be superseded and replaced in accordance with
7 section 9 of this act.

8 (2) The director of a state, regional, or local agency may enter
9 into an environmental excellence program agreement only to the extent
10 the state, regional, or local agency has jurisdiction to administer
11 state environmental laws either directly or indirectly through the
12 adoption of rules.

13 (3) Where a sponsor proposes an environmental excellence program
14 agreement that would affect legal requirements applicable to the
15 covered facility that are administered by more than one state,
16 regional, or local agency, the coordinating agency shall take the lead
17 in developing the environmental excellence program agreement with the
18 sponsor and other agencies administering legal requirements applicable
19 to the covered facility and affected by the agreement. The
20 environmental excellence program agreement does not become effective
21 until the agreement is approved by the director of each agency
22 administering legal requirements identified according to section 7(1)
23 of this act.

24 (4) No director may enter into an environmental excellence program
25 agreement applicable to a remedial action conducted under the
26 Washington model toxics control act, chapter 70.105D RCW, or the
27 federal comprehensive environmental response, compensation and
28 liability act (42 U.S.C. Sec. 9601 et seq.). No action taken under
29 this chapter shall be deemed a waiver of any applicable, relevant, or
30 appropriate requirements for any remedial action conducted under the
31 Washington model toxics control act or the federal comprehensive
32 environmental response, compensation and liability act.

33 (5) The directors of state, regional, or local agencies shall not
34 enter into an environmental excellence program agreement or a
35 modification of an environmental excellence program agreement
36 containing terms affecting legal requirements adopted to comply with
37 provisions of a federal regulatory program and to which the responsible
38 federal agency objects after notice under the terms of section 8(4) of
39 this act.

1 (6) The directors of regional or local governments may not enter
2 into an environmental excellence program agreement or a modification of
3 an environmental excellence program agreement containing terms
4 affecting legal requirements that are subject to review or appeal by a
5 state agency, including but not limited to chapters 70.94, 70.95, and
6 90.58 RCW, and to which the responsible state agency objects after
7 notice is given under the terms of section 8(4) of this act.

8 NEW SECTION. **Sec. 5.** (1) A sponsor may propose an environmental
9 excellence program agreement. A trade association or other authorized
10 representative of a sponsor or sponsors may propose a programmatic
11 environmental excellence program agreement for multiple facilities.

12 (2) A sponsor must submit, at a minimum, the following information
13 and other information that may be requested by the director or
14 directors required to sign the agreement:

15 (a) A statement that describes how the proposal is consistent with
16 the purpose of this chapter and the project approval criteria in
17 section 3 of this act;

18 (b)(i) For a site-specific proposal, a comprehensive description of
19 the proposed environmental excellence project that includes the nature
20 of the facility and the operations that will be affected, how the
21 facility or operations will achieve results more effectively or
22 efficiently, and the nature of the results anticipated; or

23 (ii) For a programmatic proposal, a comprehensive description of
24 the proposed environmental excellence project that identifies the
25 facilities and the operations that are expected to participate, how
26 participating facilities or operations will achieve environmental
27 results more effectively or efficiently, the nature of the results
28 anticipated, and the method to identify and document the commitments
29 made by individual participants;

30 (c) An environmental checklist, containing sufficient information
31 to reasonably inform the public of the nature of the proposed
32 environmental excellence program agreement and describing probable
33 significant adverse environmental impacts and environmental benefits
34 expected from implementation of the proposal;

35 (d) A draft environmental excellence program agreement;

36 (e) A description of the stakeholder process as provided in
37 section 6 of this act;

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

4 NEW SECTION. **Sec. 6.** (1) Stakeholder participation in and support
5 for an environmental excellence program agreement is vital to the
6 integrity of the environmental excellence program agreement and helps
7 to inform the decision whether an environmental excellence program
8 agreement can be approved.

9 (2) A proposal for an environmental excellence program agreement
10 shall include the sponsor's plan to identify and contact stakeholders,
11 to advise stakeholders of the facts and nature of the project, and to
12 request stakeholder participation and review. Stakeholder
13 participation and review shall occur during the development,
14 consideration, and implementation stages of the proposed environmental
15 excellence program agreement. The plan shall include notice to the
16 employees of the facility to be covered by the proposed environmental
17 excellence program agreement and public notice in the area of the
18 covered facility.

19 (3) The coordinating agency shall extend an invitation to
20 participate in the development of the proposal to a broad and
21 representative sector of the public likely to be affected by the
22 environmental excellence program agreement, including representatives
23 of local community, labor, environmental, and neighborhood advocacy
24 groups. The coordinating agency shall select participants to be
25 included in the stakeholder process that are representative of the
26 diverse sectors of the public that are interested in the agreement.
27 The stakeholder process shall include the opportunity for discussion
28 and comment at multiple stages of the process and access to the
29 information relied upon by the directors in approving the agreement.

30 (4) The coordinating agency will identify any additional provisions
31 for the stakeholder process that the director of the coordinating
32 agency, in the director's sole discretion, considers appropriate to the
33 success of the stakeholder process, and provide for notice to the
34 United States environmental protection agency or other responsible
35 federal agency of each proposed environmental excellence program
36 agreement that may affect legal requirements of any program
37 administered by that agency.

1 NEW SECTION. **Sec. 7.** An environmental excellence program

2 agreement must contain the following terms and conditions:

3 (1) An identification of all legal requirements that are superseded
4 or replaced by the environmental excellence program agreement;

5 (2) A description of all legal requirements that are enforceable as
6 provided in section 13(1) of this act that are different from those
7 legal requirements applicable in the absence of the environmental
8 excellence program agreement;

9 (3) A description of the voluntary goals that are or will be
10 pursued by the sponsor;

11 (4) A statement describing how the environmental excellence program
12 agreement will achieve the purposes of this chapter;

13 (5) A statement describing how the environmental excellence program
14 agreement will be implemented, including a list of steps and an
15 implementation schedule;

16 (6) A statement that the proposed environmental excellence program
17 agreement will not increase overall worker safety risks or cause an
18 unjust or disproportionate and inequitable distribution of
19 environmental risks among diverse economic and cultural communities;

20 (7) A summary of the stakeholder process that was followed in the
21 development of the environmental excellence program agreement;

22 (8) A statement describing how any participating facility shall
23 measure and demonstrate its compliance with the environmental
24 excellence program agreement including, without limitation, a
25 description of the methods to be used to monitor performance, criteria
26 that represent acceptable performance, and the method of reporting
27 performance to the public and local communities. The facility's
28 compliance with the agreement must be independently verifiable;

29 (9) A description of and plan for public participation in the
30 implementation of the environmental excellence program agreement and
31 for public access to information needed to assess the benefits of the
32 environmental excellence program agreement and the sponsor's compliance
33 with the environmental excellence program agreement;

34 (10) A schedule of periodic performance review of the environmental
35 excellence program agreement by the directors that signed the
36 agreement;

37 (11) Provisions for voluntary and involuntary termination of the
38 agreement;

1 (12) The duration of the environmental excellence program agreement
2 and provisions for renewal;

3 (13) Statements approving the environmental excellence program
4 agreement made by the sponsor and by or on behalf of directors of each
5 state, regional, or local agency administering legal requirements that
6 are identified according to section 7(1) of this act;

7 (14) Additional terms as requested by the directors signing the
8 environmental excellence program agreement and consistent with this
9 chapter;

10 (15) Draft permits or permit modifications as needed to implement
11 the environmental excellence program agreement;

12 (16) With respect to a programmatic environmental excellence
13 program agreement, a statement of the method with which to identify and
14 document the specific commitments to be made by individual
15 participants.

16 NEW SECTION. **Sec. 8.** (1) The coordinating agency shall provide at
17 least thirty days after notice has been published in a newspaper under
18 subsection (2) of this section for public comment on a proposal to
19 enter into or modify an environmental excellence program agreement.
20 The coordinating agency may provide for an additional period of public
21 comment if required by the complexity of the proposed environmental
22 excellence program agreement and the degree of public interest. Before
23 the start of the comment period, the coordinating agency shall prepare
24 a proposed agreement, a public notice and a fact sheet. The fact sheet
25 shall: (a) Briefly describe the principal facts and the significant
26 factual, legal, methodological and policy questions considered by the
27 directors signing the agreement, and the directors' proposed decisions;
28 and (b) briefly describe how the proposed action meets the requirements
29 of section 3 of this act.

30 (2) The coordinating agency shall publish notice of the proposed
31 agreement in the Washington State Register and in a newspaper of
32 general circulation in the vicinity of the facility or facilities
33 covered by the proposed environmental excellence program agreement.
34 The notice shall generally describe the agreement or modification; the
35 facilities to be covered; summarize the changes in legal requirements
36 that will result from the agreement; summarize the reasons for
37 approving the agreement or modifications; identify an agency person to
38 contact for additional information; state that the proposed agreement

1 or modification and fact sheet are available on request; and state that
2 comments may be submitted to the agency during the comment period. The
3 coordinating agency shall order a public informational meeting or a
4 public hearing to receive oral comments if the written comments during
5 the comment period demonstrate considerable public interest in the
6 proposed agreement.

7 (3) The coordinating agency shall prepare and make available a
8 responsiveness summary indicating the agencies' actions taken in
9 response to comments and the reasons for those actions.

10 (4) 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 coordinating agency shall provide a
13 copy of the environmental excellence program agreement, and a copy of
14 the notice required by subsection (1) of this section, to the federal
15 agency that is responsible for administering that program at least
16 thirty days before entering into or modifying the environmental
17 excellence program agreement, and shall afford the federal agency the
18 opportunity to object to those terms of the environmental excellence
19 program agreement or modification of an environmental excellence
20 program agreement affecting the legal requirements. The coordinating
21 agency shall provide similar notice to state agencies that have
22 statutory review or appeal responsibilities regarding provisions of the
23 environmental excellence program agreement.

24 NEW SECTION. **Sec. 9.** (1) Notwithstanding any other provision of
25 law, any legal requirement identified under section 7(1) of this act
26 shall be superseded or replaced in accordance with the terms of the
27 environmental excellence program agreement. Legal requirements
28 contained in a permit that are affected by an environmental excellence
29 program agreement will continue to be enforceable until such time as
30 the permit is revised in accordance with subsection (2) of this
31 section. With respect to any other legal requirements, the legal
32 requirements contained in the environmental excellence program
33 agreement are effective as provided by the environmental excellence
34 program agreement, and the facility or facilities covered by an
35 environmental excellence program agreement shall comply with the terms
36 of the environmental excellence program agreement in lieu of the legal
37 requirements that are superseded and replaced by the approved
38 environmental excellence program agreement.

1 (2) Any permits affected by an environmental excellence program
2 agreement shall be revised to conform to the environmental excellence
3 program agreement by the agency with jurisdiction. The permit
4 revisions will be completed within one hundred twenty days of the
5 effective date of the agreement in accordance with otherwise applicable
6 procedural requirements, including, where applicable, public notice and
7 the opportunity for comment, and the opportunity for review and
8 objection by federal agencies.

9 (3) Other than as superseded or replaced as provided in an approved
10 environmental excellence program agreement, any existing permit
11 requirements remain in effect and are enforceable.

12 (4) A programmatic environmental excellence program agreement shall
13 become applicable to an individual facility when all directors entering
14 into the programmatic agreement approve the owner or operator's
15 commitment to comply with the agreement. A programmatic agreement may
16 not take effect, however, until notice and an opportunity to comment
17 for the individual facility has been provided in accordance with the
18 requirements of section 8 (1) through (3) of this act.

19 NEW SECTION. **Sec. 10.** (1) A decision by the directors of state,
20 regional, or local agencies to approve a proposed environmental
21 excellence program agreement, or to terminate or modify an approved
22 environmental excellence program agreement, is subject to judicial
23 review in superior court. For purposes of judicial review, the court
24 may grant relief from the decision to approve or modify an
25 environmental excellence program agreement only if it determines that
26 the action: (a) Violates constitutional provisions; (b) exceeds the
27 statutory authority of the agency; (c) was arbitrary and capricious; or
28 (d) was taken without compliance with the procedures provided by this
29 chapter. However, the decision of the director or directors shall be
30 accorded substantial deference by the court. A decision not to enter
31 into or modify an environmental excellence program agreement and a
32 decision not to accept a commitment under section 9(4) of this act to
33 comply with the terms of a programmatic environmental excellence
34 agreement are within the sole discretion of the directors of the state,
35 regional, or local agencies and are not subject to review.

36 (2) An appeal from a decision to approve or modify a facility
37 specific or a programmatic environmental excellence program agreement
38 is not timely unless filed with the superior court and served on the

1 parties to the environmental excellence program agreement within thirty
2 days of the date on which the agreement or modification is signed by
3 the director. For an environmental excellence program agreement or
4 modification signed by more than one director, there is only one
5 appeal, and the time for appeal shall run from the last date on which
6 the agreement or modification is signed by a director.

7 (3) A decision to accept the commitment of a specific facility to
8 comply with the terms of a programmatic environmental excellence
9 program agreement, or to modify the application of an agreement to a
10 specific facility, is subject to judicial review as described in
11 subsection (1) of this section. An appeal is not timely unless filed
12 with the superior court and served on the directors signing the
13 agreement, the sponsor, and the owner or operator of the specific
14 facility within thirty days of the date the director or directors that
15 signed the programmatic agreement approve the owner or operator's
16 commitment to comply with the agreement. For a programmatic
17 environmental excellence program agreement or modification signed by
18 more than one director, there shall be only one appeal and the time for
19 appeal shall run from the last date on which a director approves the
20 commitment.

21 (4) The issuance of permits and permit modifications is subject to
22 review under otherwise applicable law.

23 (5) An appeal of a decision by a director under section 11 of this
24 act to terminate in whole or in part a facility specific or
25 programmatic environmental excellence program agreement is not timely
26 unless filed with the superior court and served on the director within
27 thirty days of the date on which notice of the termination is issued
28 under section 11(2) of this act.

29 ****NEW SECTION. Sec. 11. (1) In addition to any termination***
30 ***provisions contained in an environmental excellence program agreement,***
31 ***a director of an agency may terminate an environmental excellence***
32 ***program agreement in whole or in part with respect to a legal***
33 ***requirement administered by that agency, if the director finds: (a)***
34 ***That after notice and a reasonable opportunity to cure, the covered***
35 ***facility is in violation of a material requirement of the agreement;***
36 ***(b) that the facility has repeatedly violated any requirements of the***
37 ***agreement; (c) that the operation of the facility under the agreement***
38 ***has caused endangerment to public health or the environment that cannot***

1 be remedied by modification of the agreement; or (d) the facility has
2 failed to make substantial progress in achieving the voluntary goals
3 identified under section 6(4) of this act, and these goals are material
4 to the overall objectives of the agreement.

5 (2) A director of an agency terminating an environmental excellence
6 program agreement in any respect shall provide each of the parties to
7 the agreement with a written notice of that action specifying the
8 extent to which the environmental excellence program agreement is to be
9 terminated, the factual and legal basis for termination, and a
10 description of the opportunity for judicial review of the decision to
11 terminate the environmental excellence program agreement.

12 (3) If a director terminates less than the entire environmental
13 excellence program agreement, the owner or operator of the covered
14 facility may elect to terminate the entire agreement as it applies to
15 the facility.

16 (4) If a director decides to terminate an environmental excellence
17 program agreement because the facility has not been able to meet the
18 legal requirements established under the agreement, or because
19 operation of the facility under the agreement has caused endangerment
20 to public health or the environment, as provided in subsection (1)(c)
21 of this section, the director may establish in the notice of
22 termination: (a) Practical interim requirements for the facility that
23 are no less stringent than the legal requirements that would apply to
24 the facility in the absence of the agreement; and (b) a practical
25 schedule of compliance for meeting the interim requirements. The
26 interim requirements and schedule of compliance shall be subject to
27 judicial review under the provisions of section 10(5) of this act. The
28 facility shall comply with the interim requirements established under
29 this subsection after they are final and no longer subject to judicial
30 review until applicable permits or permit modifications have been
31 issued under section 12 of this act.

32 *Sec. 11 was vetoed. See message at end of chapter.

33 NEW SECTION. **Sec. 12.** After a termination under section 11 of
34 this act is final and no longer subject to judicial review, the sponsor
35 has sixty days in which to apply for any permit or approval affected by
36 any terminated portion of the environmental excellence program
37 agreement. An application filed during the sixty-day period shall be
38 deemed a timely application for renewal of a permit under the terms of

1 any applicable law. Except as provided in section 11(4) of this act,
2 the terms and conditions of the environmental excellence program
3 agreement and of permits issued will continue in effect until a final
4 permit or approval is issued. If the sponsor fails to submit a timely
5 or complete application, any affected permit or approval may be
6 modified at any time that is consistent with applicable law.

7 NEW SECTION. **Sec. 13.** (1) The legal requirements contained in the
8 environmental excellence program agreement in accordance with section
9 7(2) of this act are enforceable commitments of the facility covered by
10 the agreement. Any violation of these legal requirements is subject to
11 penalties and remedies to the same extent as the legal requirements
12 that they superseded or replaced.

13 (2) The voluntary goals stated in the environmental excellence
14 program agreement in accordance with section 7(3) of this act are
15 voluntary commitments of the facility covered by the agreement. If the
16 facility fails to meet these goals, it shall not be subject to any form
17 of enforcement action, including penalties, orders, or any form of
18 injunctive relief. The failure to make substantial progress in meeting
19 these goals may be a basis on which to terminate the environmental
20 excellence program agreement under section 11 of this act.

21 (3) Nothing in this chapter limits the authority of an agency, the
22 attorney general, or a prosecuting attorney to initiate an enforcement
23 action for violation of any applicable legal requirement. However, no
24 civil, criminal, or administrative action may be brought with respect
25 to any legal requirement that is superseded or replaced under the terms
26 of an environmental excellence program agreement.

27 (4) This chapter does not create any new authority for citizen
28 suits, and does not alter or amend other statutory provisions
29 authorizing citizen suits.

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

33 ****NEW SECTION. Sec. 15. A decision to approve an environmental***
34 ***excellence program agreement is not subject to the requirements of the***
35 ***state environmental policy act, chapter 43.21C RCW, including the***
36 ***requirement to prepare an environmental impact statement under RCW***

1 *43.21C.031. However, the consideration of a proposed environmental*
2 *excellence program agreement will integrate an assessment of*
3 *environmental impacts.*

4 *Sec. 15 was vetoed. See message at end of chapter.

5 NEW SECTION. **Sec. 16.** Any state, regional, or local agency
6 administering programs under an environmental law may adopt rules or
7 ordinances to implement this chapter. However, it is not necessary
8 that an agency adopt rules or ordinances in order to consider or enter
9 into environmental excellence program agreements.

10 NEW SECTION. **Sec. 17.** The director of the department of ecology
11 shall appoint an advisory committee to review the effectiveness of the
12 environmental excellence program agreement program and to make a
13 recommendation to the legislature concerning the continuation,
14 termination, or modification of the program. The committee also may
15 make recommendations it considers appropriate for revision of any
16 regulatory program that is affected by an environmental excellence
17 program agreement. The committee shall be composed of one
18 representative each from two state agencies, two representatives of the
19 regulated community, and two representatives of environmental
20 organizations or other public interest groups. The committee must
21 submit a report and its recommendation to the legislature not later
22 than October 31, 2001. The department of ecology shall provide the
23 advisory committee with such support as they may require.

24 NEW SECTION. **Sec. 18.** (1) Agencies authorized to enter into
25 environmental excellence program agreements may assess and collect a
26 fee to recover the costs of processing environmental excellence program
27 agreement proposals. The amount of the fee may not exceed the direct
28 and indirect costs of processing the environmental excellence program
29 agreement proposal. Processing includes, but is not limited to:
30 Working with the sponsor to develop the agreement, meeting with
31 stakeholder groups, conducting public meetings and hearings, preparing
32 a record of the decision to enter into or modify an agreement, and
33 defending any appeal from a decision to enter into or modify an
34 agreement. Fees also may include, to the extent specified by the
35 agreement, the agencies' direct costs of monitoring compliance with

1 those specific terms of an agreement not covered by permits issued to
2 the participating facility.

3 (2) Agencies assessing fees may graduate the initial fees for
4 processing an environmental excellence program agreement proposal to
5 account for the size of the sponsor and to make the environmental
6 excellence program agreement program more available to small
7 businesses. An agency may exercise its discretion to waive all or any
8 part of the fees.

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

11 NEW SECTION. **Sec. 19.** The authority of a director to enter into
12 a new environmental excellence program agreement program shall be
13 terminated June 30, 2002. Environmental excellence program agreements
14 entered into before June 30, 2002, shall remain in force and effect
15 subject to the provisions of this chapter.

16 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.21A
17 RCW to read as follows:

18 Notwithstanding any other provision of law, any legal requirement
19 under this chapter, including any standard, limitation, rule, or order
20 is superseded and replaced in accordance with the terms and provisions
21 of an environmental excellence program agreement, entered into under
22 chapter 43.-- RCW (sections 2 through 19 of this act).

23 NEW SECTION. **Sec. 21.** A new section is added to chapter 70.94 RCW
24 to read as follows:

25 Notwithstanding any other provision of law, any legal requirement
26 under this chapter, including any standard, limitation, rule, or order
27 is superseded and replaced in accordance with the terms and provisions
28 of an environmental excellence program agreement, entered into under
29 chapter 43.-- RCW (sections 2 through 19 of this act).

30 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.95 RCW
31 to read as follows:

32 Notwithstanding any other provision of law, any legal requirement
33 under this chapter, including any standard, limitation, rule, or order
34 is superseded and replaced in accordance with the terms and provisions

1 of an environmental excellence program agreement, entered into under
2 chapter 43.-- RCW (sections 2 through 19 of this act).

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

5 Notwithstanding any other provision of law, any legal requirement
6 under this chapter, including any standard, limitation, rule, or order
7 is superseded and replaced in accordance with the terms and provisions
8 of an environmental excellence program agreement, entered into under
9 chapter 43.-- RCW (sections 2 through 19 of this act).

10 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.119A
11 RCW to read as follows:

12 Notwithstanding any other provision of law, any legal requirement
13 under this chapter, including any standard, limitation, rule, or order
14 is superseded and replaced in accordance with the terms and provisions
15 of an environmental excellence program agreement, entered into under
16 chapter 43.-- RCW (sections 2 through 19 of this act).

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

19 Notwithstanding any other provision of law, any legal requirement
20 under this chapter, including any standard, limitation, rule, or order
21 is superseded and replaced in accordance with the terms and provisions
22 of an environmental excellence program agreement, entered into under
23 chapter 43.-- RCW (sections 2 through 19 of this act).

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

26 Notwithstanding any other provision of law, any legal requirement
27 under this chapter, including any standard, limitation, rule, or order
28 is superseded and replaced in accordance with the terms and provisions
29 of an environmental excellence program agreement, entered into under
30 chapter 43.-- RCW (sections 2 through 19 of this act).

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

33 Notwithstanding any other provision of law, any legal requirement
34 under this chapter, including any standard, limitation, rule, or order

1 is superseded and replaced in accordance with the terms and provisions
2 of an environmental excellence program agreement, entered into under
3 chapter 43.-- RCW (sections 2 through 19 of this act).

4 NEW SECTION. **Sec. 28.** A new section is added to chapter 90.58 RCW
5 to read as follows:

6 Notwithstanding any other provision of law, any legal requirement
7 under this chapter, including any standard, limitation, rule, or order
8 is superseded and replaced in accordance with the terms and provisions
9 of an environmental excellence program agreement, entered into under
10 chapter 43.-- RCW (sections 2 through 19 of this act).

11 NEW SECTION. **Sec. 29.** A new section is added to chapter 90.64 RCW
12 to read as follows:

13 Notwithstanding any other provision of law, any legal requirement
14 under this chapter, including any standard, limitation, rule, or order
15 is superseded and replaced in accordance with the terms and provisions
16 of an environmental excellence program agreement, entered into under
17 chapter 43.-- RCW (sections 2 through 19 of this act).

18 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.71 RCW
19 to read as follows:

20 Notwithstanding any other provision of law, any legal requirement
21 under this chapter, including any standard, limitation, rule, or order
22 is superseded and replaced in accordance with the terms and provisions
23 of an environmental excellence program agreement, entered into under
24 chapter 43.-- RCW (sections 2 through 19 of this act).

25 **Sec. 31. RCW 90.54.020 and 1989 c 348 s 1 are each amended to*
26 *read as follows:*

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

29 *(1) Uses of water for domestic, stock watering, industrial,*
30 *commercial, agricultural, irrigation, hydroelectric power production,*
31 *mining, fish and wildlife maintenance and enhancement, recreational,*
32 *and thermal power production purposes, and preservation of*
33 *environmental and aesthetic values, and all other uses compatible with*
34 *the enjoyment of the public waters of the state, are declared to be*
35 *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, any legal
26 requirement under subsection (3)(b) of this section is superseded and
27 replaced in accordance with the terms and provisions of an
28 environmental excellence program agreement, entered into under chapter
29 43.-- RCW (sections 2 through 19 of this act).

30 *Sec. 31 was vetoed. See message at end of chapter.

31 NEW SECTION. **Sec. 32.** The environmental excellence account is
32 hereby created in the state treasury. All fees and voluntary
33 contributions collected by state agencies under section 18 of this act
34 shall be deposited into the account. Moneys in the account may be
35 spent only after appropriation. Expenditures from the account may be
36 used only for purposes consistent with the environmental excellence
37 program created under sections 2 through 19 of this act. Moneys in the

1 account may be appropriated to each agency in an amount equal to the
2 amount each agency collects and deposits into the account.

3 NEW SECTION. **Sec. 33.** Sections 2 through 19 of this act
4 constitute a new chapter in Title 43 RCW.

Passed the House April 22, 1997.

Passed the Senate April 18, 1997.

Approved by the Governor May 15, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 11,
3 15, and 31, Engrossed Second Substitute House Bill No. 1866 entitled:

4 "AN ACT Relating to the establishment of voluntary programs
5 creating environmental excellence program agreements;"

6 Since I assumed office, I have emphasized the importance of
7 effective and efficient government. The two Executive Orders that I
8 have signed dealt with improving government service by working smarter
9 and finding ways to reduce costs.

10 One element of better performance is a willingness to be innovative
11 and creative in the pursuit of objectives. Engrossed Second Substitute
12 House Bill No. 1866 reflects just such an approach. It promotes a more
13 efficient and results-oriented regulatory system for state, local and
14 regional agencies that administer a host of environmental and resource
15 protection laws. The bill allows agencies - after careful consultation
16 with all affected stakeholders - to sign agreements with those they
17 regulate that contain conditions different from those that would be
18 imposed under existing statutes.

19 I am well aware that there is concern about this legislation and
20 that it is perceived to hold the potential for our losing ground in our
21 decades-long effort to protect Washington's precious environment.
22 However, I think there is substantial merit in this bill as adopted by
23 the 1997 Legislature. I am well aware of the tremendous effort that
24 went into amending it throughout the session to accommodate many of the
25 concerns expressed about the early versions.

26 At the same time as I act on this bill, I am charging the director
27 of the Department of Ecology with the difficult task of rebuilding some
28 of the trust that may have been lost during the course of the debate
29 over House Bill No. 1866. I have tremendous confidence in his ability
30 to bring together parties with strongly felt opposing views, and seek
31 common ground. I have asked the Director and his staff to initiate a
32 process of developing guidance for implementation of the Environmental
33 Excellence Program - guidance that can fill some gaps in the
34 legislation and help create confidence that the bill will not become a
35 path toward lower standards of resource protection.

36 While I have signed the majority of Engrossed Second Substitute
37 House Bill No. 1866, there are three provisions that necessitate a
38 veto. These are sections 11, 15, and 31.

1 Section 11 addresses termination of Environmental Excellence
2 Program Agreements. It specifies that one of the bases for such
3 termination decisions is that "the operation of the facility under the
4 agreement has caused endangerment to public health or the environment
5 that cannot be remedied by modification of the agreement...." It then
6 goes on to state that if an Agreement is terminated, the regulatory
7 agency can impose interim requirements no less stringent than those
8 which would apply in the absence of an agreement. However, the
9 facility is not obligated to comply with these interim requirements
10 until they have exhausted all judicial review.

11 This is simply unacceptable. If the operation of a facility is
12 endangering the public health or our environment, it cannot be allowed
13 to continue unchecked while an agency tries to modify the agreement to
14 remedy the problem, terminates the agreement and responds to possibly
15 years of legal challenges. A provision must be made for imposing
16 alternate regulatory requirements on a much shorter timetable than
17 specified in section 11. This is one of the issues I have asked
18 Director Fitzsimmons to explore in developing guidance for this
19 program.

20 Section 15 exempts Environmental Excellence Program Agreements from
21 the State Environmental Policy Act. SEPA allows the public and
22 decision-makers to become aware of the environmental consequences of
23 their decisions and to look at alternate ways of achieving the same
24 objective. If Agreements under this statute are to achieve equal or
25 better environmental performance, nothing that would be revealed
26 through the SEPA process should hamper completion of an agreement. The
27 added opportunity for public consultation should assuage some of the
28 fears expressed that agencies and project sponsors will reach decisions
29 without adequate consideration of the concerns of neighbors, employees,
30 or citizen groups.

31 Section 31 amends the 1971 Water Resources Act. For 26 years,
32 Washington has had one of the strongest laws in the nation to prevent
33 degradation of our water quality. Under this law, no discharges into
34 state waters are allowed if they would reduce existing water quality.
35 This seems a minimal standard to impose on any waste discharger. But
36 section 31 would allow an Environmental Excellence Program Agreement to
37 supersede this requirement. This is unacceptable and unnecessary in
38 light of section 3 of the bill. Under that section, every agreement to
39 be signed must produce results equal to or better than what would be
40 produced under current standards and requirements. Thus, no agreement
41 could ever arise that would result in a degradation of the state's
42 water quality. For this reason, I have vetoed section 31.

43 I have today sent a letter to the Director of the Department of
44 Ecology spelling out the issues and approach to be used in developing
45 guidance for implementing Engrossed Second Substitute House Bill No.
46 1866. This should address many of the concerns that have been raised
47 by opponents of the bill without undermining its objectives.

48 I emphasize to all those who have been involved with this
49 legislation that it is a 5-year trial. No new agreements can be made
50 after July 2002 unless the Legislature extends the program. Thus we
51 have a window of opportunity to change the way we do business and to
52 demonstrate that new ways are not necessarily worse than the old ways.
53 I urge those on all sides to keep in mind a shared objective of
54 environmental excellence for all of Washington's citizens in a healthy

1 economic climate where business and government operate with the
2 greatest possible efficiency.

3 For these reasons, I have vetoed sections 11, 15, and 31 of
4 Engrossed Second Substitute House Bill No. 1866.

5 With the exception of sections 11, 15, and 31, I am approving
6 Engrossed Second Substitute House Bill No. 1866."