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ENGROSSED SUBSTITUTE HOUSE BILL 2479

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Kagi, Hinkle, Cooper and Upthegrove)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to setting pm 2.5 burn ban triggers and  
2 enforcement; and amending RCW 70.94.470, 70.94.473, and 70.94.030.

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

4 **Sec. 1.** RCW 70.94.470 and 1991 c 199 s 502 are each amended to  
5 read as follows:

6 (1) The department shall establish(~~(7)~~) by rule (~~under chapter~~  
7 ~~34.05 RCW,~~); (a) A statewide opacity level of twenty percent for  
8 (~~residential~~) solid fuel burning devices (~~for the purpose of~~  
9 ~~enforcement on a complaint basis~~); and (b) a statewide opacity of ten  
10 percent for purposes of public education.

11 (2) For the purpose of enforcement on a complaint basis in a wood  
12 smoke concentration area, it is unlawful for emissions, other than  
13 uncombined water vapor, from a solid fuel burning device to visibly  
14 enter that portion of a neighboring property that immediately surrounds  
15 a dwelling.

16 (3) Notwithstanding any other provision of this chapter which may  
17 allow an authority to adopt a more stringent opacity level, no  
18 authority shall adopt or enforce an opacity level for solid fuel  
19 burning devices other than established in this section.

1        ~~((3))~~ (4) Actions of the department and local air pollution  
2 control authorities under this section shall preempt actions of other  
3 state agencies and local governments for the purposes of controlling  
4 air pollution from solid fuel burning devices, except where authorized  
5 by chapter 199, Laws of 1991.

6        **Sec. 2.** RCW 70.94.473 and 1998 c 342 s 8 are each amended to read  
7 as follows:

8        (1)(a) Any person in a residence or commercial establishment which  
9 has an adequate source of heat without burning wood shall:

10        ~~((a))~~ (i) Not burn wood in any solid fuel burning device whenever  
11 the department has determined under RCW 70.94.715 that any air  
12 pollution episode exists in that area;

13        ~~((b))~~ (ii) Not burn wood in any solid fuel burning device except  
14 those which are either Oregon department of environmental quality phase  
15 II or United States environmental protection agency certified or  
16 certified by the department under RCW 70.94.457(1) or a pellet stove  
17 either certified or issued an exemption by the United States  
18 environmental protection agency in accordance with Title 40, Part 60 of  
19 the code of federal regulations, in the geographical area and for the  
20 period of time that a first stage of impaired air quality has been  
21 determined, by the department or any authority, for that area. A first  
22 stage of impaired air quality is reached when:

23        (A) Fine particulates ~~((ten microns and smaller in diameter))~~ are  
24 at an ambient level of ~~((sixty))~~ thirty-five micrograms per cubic meter  
25 measured on a twenty-four hour average ~~((or when carbon monoxide is at~~  
26 ~~an ambient level of eight parts of contaminant per million parts of air~~  
27 ~~by volume measured on an eight hour average))~~; and

28        (B) Forecasted meteorological conditions are not expected to allow  
29 levels of fine particulates to decline below thirty-five micrograms per  
30 cubic meter for a period of forty-eight hours or more from the time  
31 that the fine particulates are measured at the trigger level; and

32        ~~((c))~~ (iii) Not burn wood in any solid fuel burning device in a  
33 geographical area and for the period of time that a second stage of  
34 impaired air quality has been determined by the department or any  
35 authority, for that area. A second stage of impaired air quality is  
36 reached when ~~((particulates ten microns and smaller in diameter are at~~

1 ~~an ambient level of one hundred five micrograms per cubic meter~~  
2 ~~measured on a twenty four hour average)):~~

3 (A) A first stage of impaired air quality has been in force and not  
4 been sufficient to reduce the increasing fine particle pollution trend;  
5 and

6 (B) Fine particulates are at an ambient level of sixty micrograms  
7 per cubic meter measured on a twenty-four hour average; and

8 (C) Forecasted meteorological conditions are not expected to allow  
9 levels of fine particulates to decline below sixty micrograms per cubic  
10 meter for a period of forty-eight hours or more from the time that the  
11 fine particulates are measured at the trigger level.

12 (b) Visible emissions, other than uncombined water vapor, from a  
13 chimney, flue, or similar exhaust outlet three hours or more after the  
14 declaration of the episode or period of impaired air quality under this  
15 section or under RCW 70.94.715 constitutes prima facie evidence of  
16 unlawful operation of a solid fuel burning device prohibited under  
17 (a)(i), (ii), or (iii) of this subsection.

18 (2) Actions of the department and local air pollution control  
19 authorities under this section shall preempt actions of other state  
20 agencies and local governments for the purposes of controlling air  
21 pollution from solid fuel burning devices, except where authorized by  
22 chapter 199, Laws of 1991.

23 **Sec. 3.** RCW 70.94.030 and 1993 c 252 s 2 are each amended to read  
24 as follows:

25 ~~((Unless a different meaning is plainly required by the context,~~  
26 ~~the following words and phrases as hereinafter used in this chapter~~  
27 ~~shall have the following meanings:)) The definitions in this section  
28 apply throughout this chapter unless the context clearly requires  
29 otherwise.~~

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

33 (2) "Air pollution" is presence in the outdoor atmosphere of one or  
34 more air contaminants in sufficient quantities and of such  
35 characteristics and duration as is, or is likely to be, injurious to  
36 human health, plant or animal life, or property, or which unreasonably

1 interfere with enjoyment of life and property. For the purpose of this  
2 chapter, air pollution shall not include air contaminants emitted in  
3 compliance with chapter 17.21 RCW.

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

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

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

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

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

1 the source, the remaining useful life of the source, and the degree of  
2 improvement in visibility that might reasonably be anticipated to  
3 result from the use of the technology.

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

5 (9) "Control officer" means the air pollution control officer of  
6 any authority.

7 (10) "Department" or "ecology" means the department of ecology.

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

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

18 (13) "Fine particulate" means particulates with a diameter of two  
19 and one-half microns and smaller.

20 (14) "Lowest achievable emission rate" (LAER) means for any source  
21 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       (24) "Trigger level" means the ambient level of fine particulates,  
36 measured in micrograms per cubic meter, that must be detected prior to  
37 initiating a first or second state of impaired air quality under RCW  
38 70.94.473.

1       (25) "Wood smoke concentration area" means areas identified by a  
2 multicounty authority as having historically problematic wood smoke  
3 concentrations. A wood smoke concentration area may only be identified  
4 by a multicounty authority that has within its jurisdiction a county of  
5 greater than five hundred thousand residents.

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