

**HB 2636 - H AMD 705**

By Representative Smith

**ADOPTED 02/18/2014**

1           Beginning on page 5, line 1, strike all of section 5 and insert the  
2 following:

3           "**Sec. 5.** RCW 70.94.162 and 1998 c 245 s 129 are each amended to  
4 read as follows:

5           (1) The department and delegated local air authorities are  
6 authorized to determine, assess, and collect, and each permit program  
7 source shall pay, annual fees sufficient to cover the direct and  
8 indirect costs of implementing a state operating permit program  
9 approved by the United States environmental protection agency under the  
10 federal clean air act. However, a source that receives its operating  
11 permit from the United States environmental protection agency shall not  
12 be considered a permit program source so long as the environmental  
13 protection agency continues to act as the permitting authority for that  
14 source. Each permitting authority shall develop by rule a fee schedule  
15 allocating among its permit program sources the costs of the operating  
16 permit program, and may, by rule, establish a payment schedule whereby  
17 periodic installments of the annual fee are due and payable more  
18 frequently. All operating permit program fees collected by the  
19 department shall be deposited in the air operating permit account. All  
20 operating permit program fees collected by the delegated local air  
21 authorities shall be deposited in their respective air operating permit  
22 accounts or other accounts dedicated exclusively to support of the  
23 operating permit program. The fees assessed under this subsection  
24 shall first be due not less than forty-five days after the United  
25 States environmental protection agency delegates to the department the  
26 authority to administer the operating permit program and then annually  
27 thereafter.

28           The department shall establish, by rule, procedures for  
29 administrative appeals to the department regarding the fee assessed  
30 pursuant to this subsection.

1 (2) The fee schedule developed by each permitting authority shall  
2 fully cover and not exceed both its permit administration costs and the  
3 permitting authority's share of statewide program development and  
4 oversight costs.

5 (a) Permit administration costs are those incurred by each  
6 permitting authority, including the department, in administering and  
7 enforcing the operating permit program with respect to sources under  
8 its jurisdiction. Costs associated with the following activities are  
9 fee eligible as these activities relate to the operating permit program  
10 and to the sources permitted by a permitting authority, including,  
11 where applicable, sources subject to a general permit:

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

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

17 (iii) Acting on an application for a permit, permit revision, or  
18 renewal, including the costs of developing an applicable requirement as  
19 part of the processing of a permit, permit revision, or renewal,  
20 preparing a draft permit and fact sheet, and preparing a final permit,  
21 but excluding the costs of developing BACT, LAER, BART, or RACT  
22 requirements for criteria and toxic air pollutants;

23 (iv) Notifying and soliciting, reviewing and responding to comment  
24 from the public and contiguous states and tribes, conducting public  
25 hearings regarding the issuance of a draft permit and other costs of  
26 providing information to the public regarding operating permits and the  
27 permit issuance process;

28 (v) Modeling necessary to establish permit limits or to determine  
29 compliance with permit limits;

30 (vi) Reviewing compliance certifications and emissions reports and  
31 conducting related compilation and reporting activities;

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

35 (viii) Administrative enforcement activities and penalty  
36 assessment, excluding the costs of proceedings before the pollution  
37 control hearings board and all costs of judicial enforcement;

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

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

5 (xi) Training for permit administration and enforcement;

6 (xii) Fee determination, assessment, and collection, including the  
7 costs of necessary administrative dispute resolution and penalty  
8 collection;

9 (xiii) Required fiscal audits, periodic performance audits, and  
10 reporting activities;

11 (xiv) Tracking of time, revenues and expenditures, and accounting  
12 activities;

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

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

18 (xvii) Other activities required by operating permit regulations  
19 issued by the United States environmental protection agency under the  
20 federal clean air act.

21 (b) Development and oversight costs are those incurred by the  
22 department in developing and administering the state operating permit  
23 program, and in overseeing the administration of the program by the  
24 delegated local permitting authorities. Costs associated with the  
25 following activities are fee eligible as these activities relate to the  
26 operating permit program:

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

30 (ii) Conducting fiscal audits and periodic performance audits of  
31 delegated local authorities, and other oversight functions required by  
32 the operating permit program;

33 (iii) Administrative enforcement actions taken by the department on  
34 behalf of a permitting authority, including those actions taken by the  
35 department under RCW 70.94.785, but excluding the costs of proceedings  
36 before the pollution control hearings board and all costs of judicial  
37 enforcement;

- 1 (iv) Determination and assessment with respect to each permitting  
2 authority of the fees covering its share of the costs of development  
3 and oversight;
- 4 (v) Training and assistance for permit program administration and  
5 oversight, including training and assistance regarding technical,  
6 administrative, and data management issues;
- 7 (vi) Development of generally applicable regulations or guidance  
8 regarding the permit program or its implementation or enforcement;
- 9 (vii) State codification of federal rules or standards for  
10 inclusion in operating permits;
- 11 (viii) Preparation of delegation package and other activities  
12 associated with submittal of the state permit program to the United  
13 States environmental protection agency for approval, including ongoing  
14 coordination activities;
- 15 (ix) General administration and coordination of the state permit  
16 program, related support activities, and other agency indirect costs,  
17 including necessary data management and quality assurance;
- 18 (x) Required fiscal audits and periodic performance audits of the  
19 department, and reporting activities;
- 20 (xi) Tracking of time, revenues and expenditures, and accounting  
21 activities;
- 22 (xii) Public education and outreach related to the operating permit  
23 program, including the maintenance of a permit register;
- 24 (xiii) The share attributable to permitted sources of compiling and  
25 maintaining emissions inventories;
- 26 (xiv) The share attributable to permitted sources of ambient air  
27 quality monitoring, related technical support, and associated recording  
28 activities;
- 29 (xv) The share attributable to permitted sources of modeling  
30 activities;
- 31 (xvi) Provision of assistance to small business as required under  
32 section 507 of the federal clean air act as it exists on July 25, 1993,  
33 or its later enactment as adopted by reference by the director by rule;
- 34 (xvii) Provision of services by the department of revenue and the  
35 office of the state attorney general and other state agencies in  
36 support of permit program administration;
- 37 (xviii) A one-time revision to the state implementation plan to

1 make those administrative changes necessary to ensure coordination of  
2 the state implementation plan and the operating permit program; and

3 (xix) Other activities required by operating permit regulations  
4 issued by the United States environmental protection agency under the  
5 federal clean air act.

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

9 (a) Each permitting authority, including the department, acting in  
10 its capacity as a permitting authority, shall develop a fee schedule  
11 and mechanism for collecting fees from the permit program sources under  
12 its jurisdiction; the fees collected by each authority shall be  
13 sufficient to cover its costs of permit administration and its share of  
14 the department's costs of development and oversight. Each delegated  
15 local authority shall remit to the department its share of the  
16 department's development and oversight costs.

17 (b) Only those local air authorities to whom the department has  
18 delegated the authority to administer the program pursuant to RCW  
19 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to  
20 administer and collect operating permit fees. The department shall  
21 retain the authority to administer and collect such fees with respect  
22 to the sources within the jurisdiction of a local air authority until  
23 the effective date of program delegation to that air authority.

24 (c) The department shall allocate its development and oversight  
25 costs among all permitting authorities, including the department, in  
26 proportion to the number of permit program sources under the  
27 jurisdiction of each authority, except that extraordinary costs or  
28 other costs readily attributable to a specific permitting authority may  
29 be assessed that authority. For purposes of this subsection, all  
30 sources covered by a single general permit shall be treated as one  
31 source.

32 (4) The department and each delegated local air authority shall  
33 adopt by rule a general permit fee schedule for sources under their  
34 respective jurisdictions after such time as the department adopts  
35 provisions for general permit issuance. Within ninety days of the time  
36 that the department adopts a general permit fee schedule, the  
37 department shall report to the relevant standing committees of the  
38 legislature regarding the general permit fee schedules adopted by the

1 department and by the delegated local air authorities. The permit  
2 administration costs of each general permit shall be allocated  
3 equitably among only those sources subject to that general permit. The  
4 share of development and oversight costs attributable to each general  
5 permit shall be determined pursuant to subsection (3)(c) of this  
6 section.

7 (5) The fee schedule developed by the department shall allocate  
8 among the sources for whom the department acts as a permitting  
9 authority, other than sources subject to a general permit, those  
10 portions of the department's permit administration costs and the  
11 department's share of the development and oversight costs which the  
12 department does not plan to recover under its general permit fee  
13 schedule or schedules as follows:

14 (a) The department shall allocate its permit administration costs  
15 and its share of the development and oversight costs not recovered  
16 through general permit fees according to a three-tiered model based  
17 upon:

- 18 (i) The number of permit program sources under its jurisdiction;  
19 (ii) The complexity of permit program sources under its  
20 jurisdiction; and  
21 (iii) The size of permit program sources under its jurisdiction, as  
22 measured by the quantity of each regulated pollutant emitted by the  
23 source.

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

25 (c) The department may, in addition, allocate activities-based  
26 costs readily attributable to a specific source to that source under  
27 RCW 70.94.152(1) and 70.94.154(7).

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

31 (6) The department shall, after opportunity for public review and  
32 comment, adopt rules that establish a process for development and  
33 review of its operating permit program fee schedule, a methodology for  
34 tracking program revenues and expenditures, and, for both the  
35 department and the delegated local air authorities, a system of fiscal  
36 audits, reports, and periodic performance audits.

37 (a) The fee schedule development and review process shall include  
38 the following:

1 (i) The department shall conduct a biennial workload analysis. The  
2 department shall provide the opportunity for public review of and  
3 comment on the workload analysis. The department shall review and  
4 update its workload analysis during each biennial budget cycle, taking  
5 into account information gathered by tracking previous revenues, time,  
6 and expenditures and other information obtained through fiscal audits  
7 and performance audits.

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

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

26 (b) The methodology for tracking revenues and expenditures shall  
27 include the following:

28 (i) The department shall develop a system for tracking revenues and  
29 expenditures that provides the maximum practicable information. At a  
30 minimum, revenues from fees collected under the operating permit  
31 program shall be tracked on a source-specific basis and time and  
32 expenditures required to administer the program shall be tracked on the  
33 basis of source categories and functional categories. Each general  
34 permit will be treated as a separate source category for tracking and  
35 accounting purposes.

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

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

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

6 (i) The department and the delegated local air authorities shall  
7 ~~((prepare annual reports and shall submit the reports to, respectively,~~  
8 ~~the appropriate standing committees of the legislature and the board of~~  
9 ~~directors of the local air authority)) periodically report information  
10 about the air operating permit program on the department's web site.~~

11 (ii) The department shall arrange for fiscal audits and routine  
12 performance audits and for periodic intensive performance audits of  
13 each permitting authority and of the department.

14 (7) Each local air authority requesting delegation shall, after  
15 opportunity for public review and comment, publish regulations which  
16 establish a process for development and review of its operating permit  
17 program fee schedule, and a methodology for tracking its revenues and  
18 expenditures. These regulations shall be submitted to the department  
19 for review and approval as part of the local authority's delegation  
20 request.

21 (8) As used in this section and in RCW 70.94.161(14), "regulated  
22 pollutant" shall have the same meaning as defined in section 502(b) of  
23 the federal clean air act as it exists on July 25, 1993, or its later  
24 enactment as adopted by reference by the director by rule.

25 (9) Fee structures as authorized under this section shall remain in  
26 effect until such time as the legislature authorizes an alternative  
27 structure following receipt of the report required by this subsection."

EFFECT: Restores the Department of Ecology's air operating permit  
reporting requirements, but directs the Department to report the  
information online, rather than submit it to the Legislature.

--- END ---