



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**DRAFT**

# **Washington State Implementation Plan Revision**

## **Infrastructure SIP Certification for the 2008 Lead National Ambient Air Quality Standard**

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*Fulfilling Sections 110(a) (1) – (2)  
of the Clean Air Act*

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**Infrastructure SIP Certification for the  
2008 Lead National Ambient Air Quality Standard**

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Washington State Implementation Plan Revision

by

Air Quality Program  
Washington State Department of Ecology  
Olympia, Washington

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## Acronyms

AQS	EPA's Air Quality System
BACT	Best Available Control Technology
BART	Best Available Retrofit Technology
CAA	Federal Clean Air Act
CAAA	Federal Clean Air Act Amendments
Ecology	Washington State Department of Ecology
EFSEC	Energy Facility Site Evaluation Council
EPA	U.S. Environmental Protection Agency
NAA	Nonattainment Area
NAAQS	National Ambient Air Quality Standards
NCORE	National Core Monitoring Sites
NSR	New Source Review
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technologies
RCW	Revised Code of Washington
SIP	State Implementation Plan
SLAMS	State and Local Ambient Monitoring Sites
TPY	Tons Per Year
TSP	Total Suspended Particulate
WAC	Washington Administrative Code
$\mu\text{g}/\text{m}^3$	micrograms per cubic meter

## Executive Summary

EPA sets standards for lead air pollution because lead exposure can cause health and developmental problems, especially in children. Exposures to low levels of lead early in life have been linked to effects on IQ, learning, memory and behavior. Lead persists in the environment and accumulates in soils.

EPA strengthened the federal air quality standard on October 15, 2008 by lowering it from the 1978 standard of 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to  $0.15 \mu\text{g}/\text{m}^3$  — ten times more protective than the previous standard. Monitored areas with 3-month rolling averages below this level comply with the standard. There are no areas in Washington identified as out of compliance with the lead standard.

Each time the EPA issues or revises a standard, Washington must review existing rules, laws and programs and submit an infrastructure State Implementation Plan (SIP) within 3 years. This infrastructure SIP documents the existing legal authority and programs in Washington that show we have the means to meet the more protective lead standard. No new rules are proposed.

Nationwide, lead pollution levels dropped sharply when lead was phased out of gasoline starting in the 1970s. Metals manufacturers, lead-based paint and soil from contaminated legacy industrial sites are some sources of lead. The highest air concentrations of lead around the country are usually found near ore processing or lead smelters in the East and Midwest. There are no large smelters in Washington State.

In Washington, we don't currently have many lead sources. Battery recyclers, wood products facilities, pulp and paper mills, glass manufacturers, refineries and piston-engine aircraft operating on leaded aviation gasoline are a few sources that emit lead at very low levels. Past sources of lead in Washington include a lead smelter on Harbor Island in South Seattle and the ASARCO copper smelters in Everett and Tacoma. These facilities ceased operations by the mid-eighties.

Washington conducts lead ambient air monitoring in Seattle at Beacon Hill. The values measured are far below the 2008 standard. EPA requires monitoring near sources that emit over half a ton of lead. When EPA requires sources to report emissions over this threshold, we may identify other areas where monitoring is required. There are currently no known sources that emit lead over this threshold.

Some small aircraft that run on leaded aviation gasoline still emit lead, but when we measured the air for a year in 2012 around two airports – Auburn Municipal Airport and Harvey Field in Snohomish –we found very low concentrations, so further monitoring at airports wasn't required.

When EPA approves this plan, Washington will have satisfied the Clean Air Act requirements for infrastructure elements covered in this certification. Some elements, not required here, will be covered in future revisions.

## Introduction

The EPA sets National Ambient Air Quality Standards (NAAQS) to protect public health and welfare and to prevent adverse effects from air pollutants under authority of the Clean Air Act (CAA or the Act). The CAA requires that states review their rules and programs each time a NAAQS is established or revised. This requirement stems from section 110(a)(2)<sup>1</sup> of the Act and directs states to show they have the authority and means to enforce, implement and maintain these standards. States do this by submitting infrastructure state implementation plans (SIPs). Washington has met many of the basic program elements required through previous SIP submissions. This document shows how the current provisions in Washington's State Implementation Plan (SIP)<sup>2</sup>, and the existing supporting laws and programs, fulfill the infrastructure requirements — except for transport and nonattainment elements—for the 2008 Lead (Pb) NAAQS(2008 lead rule)<sup>3</sup>.

The first primary (health) and secondary (welfare) lead standard, established in 1978 was set at 1.5  $\mu\text{g}/\text{m}^3$  per calendar quarter, as measured as Total Suspended Particulate (TSP). The 2008 standard level for lead was set at 0.15  $\mu\text{g}/\text{m}^3$ , for a rolling 3-month average for both the primary and secondary standard.

Lead exposure is associated with cardiovascular effects in adults and neurological effects in children and may be associated with learning disabilities.<sup>4</sup> Since lead was removed from automobile gasoline in the late 1970s, lead from the transportation sector declined dramatically. Between 1980 and 1999 levels of lead in the air decreased by 94 percent.<sup>5</sup> However, lead persists in the environment and accumulates in soils.

### Infrastructure State Implementation Plan Certification

This submittal certifies and demonstrates how the rules in Washington's SIP — and the laws that underlie them — meet the Clean Air Act infrastructure requirements for the 2008 Lead (Pb) NAAQS, except for some transport and nonattainment elements.

Washington's air quality program is well established and provides the basis for compliance with this NAAQS. Between the existing provisions in Washington's SIP and recently submitted rules at Chapter 173-476 WAC, *Ambient Air Quality Standards*, Washington's provisions meet the requirements for infrastructure elements included in this plan. This submittal does not propose any changes to the SIP and therefore is a "certification". This differs from a submittal that

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<sup>1</sup> Section 110(a)(2) A. through M.

<sup>2</sup> Found at 40 CFR Part 52, Subpart WW

<sup>3</sup> Final rule, 73 FR 66964, November 12, 2009, effective January 12, 2009

<sup>4</sup> <http://www.epa.gov/airquality/lead/health.html>

<sup>5</sup> <http://www.epa.gov/airquality/lead/>

includes revised regulations or programs submitted to EPA for their approval and incorporation into the SIP.

## **Document Structure**

This SIP certification is in order by infrastructure elements and does not include some transport and nonattainment area elements. Rules and laws that support compliance are listed under each element. Appendix A:

- lists and describes each element,
- itemizes the laws and rules,
- includes state and EPA effective dates and Federal Register citations for rules.

Appendix B contains the laws that underlie Washington's authority to implement, maintain and enforce this standard.

## **Infrastructure Elements**

An infrastructure SIP must fulfill the requirements under sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA). Section 110(a)(1) requires this plan to be submitted to EPA after a reasonable public notice and comment period and within three years after the promulgation or revision of a national ambient air quality standard. Section 110(a) (2) contains the infrastructure elements, which are:

- A. Emission limits and other control measures
- B. Ambient air quality monitoring and data analysis system
- C. Program to enforce control measures, regulate modification and construction of stationary sources and a permit program
- D. Interstate transport and interstate and international pollution abatement\*
- E. Adequate personnel, funding and authority to carry out plan; comply with state boards; oversee local and regional governmental agencies
- F. Stationary source emissions monitoring and reporting system
- G. Authority to declare air pollution emergency and notify public
- H. Future SIP revisions
- I. Nonattainment areas\*
- J. §121 consultation; §127 public notification; and PSD and visibility protection
- K. Air quality modeling / data
- L. Major stationary source permitting fees
- M. Consultation / participation by affected local entities

\*This submittal does not include information on the following parts of two elements listed under section 110(a)(2):

- **D. Interstate Transport:** Section 110(a)(2)(D)(i) pertains to interstate transport. Since the *EME Homer City* decision<sup>6</sup>, states are not required to submit transport SIPs addressing Section 110(a)(2)(D)(i)(I), also known as Prongs 1 (significant contribution) and 2 (interfere with maintenance), until EPA identifies each state's contribution to other states' nonattainment or maintenance areas. Requirements in Section 110(a)(2)(D)(i)II, known as Prongs 3 (prevention of significant deterioration) and 4 (protect visibility), are covered by a separate Regional Haze plan and a separate PSD-delegated program. Once EPA identifies Washington's contribution, Ecology will address prongs 1 (significant contribution) and 2 (interfere with maintenance) of Subpart D in a separate, future submittal. Although lead emissions do not travel far in the atmosphere, Ecology will evaluate emission sources near the state and international borders in the separate transport SIP.
- **I. Nonattainment Planning:** Section 110(a)(2)(I), Part D, title I of CAA pertains to the nonattainment planning requirements. Washington state must fulfill these requirements when the state has a nonattainment area for the standard in question. There are no nonattainment areas in Washington for lead.

## Background Information

Washington State's SIP — found at 40 CFR Part 52, Subpart WW — contains the rules that demonstrate the state's authority and ability to implement, maintain and enforce federal air quality standards. This document demonstrates how Washington's SIP – and the underlying laws that support the state's authority and other programs - satisfies the required elements of section 110(a)(2)(A)-(M) of the Clean Air Act for the 2008 lead NAAQS, except for transport and nonattainment planning as discussed in the introduction above.

EPA revised the lead NAAQS in 2008. The final rule was issued to revise the primary and secondary lead NAAQS on November 12, 2008. The level was set at 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), measured as a rolling three-month average (75 FR 81126). This new standard is 10 times more stringent than the previous standard of 1.5  $\mu\text{g}/\text{m}^3$ , based on a quarterly average promulgated in 1978.

Washington State was designated unclassifiable/attainment (76 FR 72097) for the 2008 Pb standard on November 22, 2011. *There were no areas in Washington determined to be in violation of the 1978 or 2008 standard.*

Lead infrastructure SIP submittal for the new standard was due by October 15, 2011.

Washington missed the deadline and on February 26, 2013, EPA issued a Finding of Failure

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<sup>6</sup> *EME Homer City Generation, LP v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted, 2013 U.S. LEXIS 4801(2013)

(FOF)<sup>7</sup> to submit this SIP. The EPA set a deadline of February 2015. This document fulfills the submittal requirement.

## Previous Lead Plans

Washington submitted its first lead control plan for the area around the Harbor Island smelter and along the Interstate 5 corridor in Seattle on July 30, 1980. EPA approved the SIP submittal for lead (49 FR 27943) on July 9, 1984 after Washington submitted an attainment demonstration that included lead emissions from the ASARCO copper smelter in Tacoma. After the Harbor Island smelter in Seattle closed later that same year, Washington submitted another revision to the SIP that documented the area met the 1978 standard for lead. This revision was approved on January 29, 1985 (50 FR 3907).

## Washington Laws and Rules

The laws and rules that support Washington's ability to implement, enforce and maintain the NAAQS are provided below and in the Appendices. Appendix A provides an element-by-element summary and the Washington SIP-approved rules and the laws that correspond to the element requirements. Appendix A includes the State effective date, EPA effective date, and Federal Register (FR) citation for each SIP-approved rule. The specific portions of Washington's Clean Air Act that support the infrastructure elements are included in Appendix B for illustrative purposes.

## Washington Laws

To support Washington's assurance of adequate authorities to develop rules and programs to implement infrastructure SIP elements Ecology references the following laws found in the Revised Code of Washington (RCW):

- [Chapter 34.05 RCW](#): *Administrative procedure act*
- [Chapter 42.17 RCW](#): *Public disclosure act*
- [Chapter 42.30 RCW](#): *Open public meetings act*
- [Chapter 43.21A RCW](#): *Department of ecology*
- [Chapter 70.94 RCW](#): *Washington clean air act*
- [Chapter 80.50 RCW](#): *Energy facilities – site locations*

Except for some changes to Washington's Clean Air Act, Chapter 70.94 RCW, the laws listed above are the same versions of laws that were provided to EPA for reference as a part of the *Infrastructure SIP Certification for the 1997 8-hour Ozone National Ambient Air Quality*

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<sup>7</sup> 78 FR 12961, effective March 28, 2013. This FOF started a 24-month clock. If EPA does not receive Washington's lead infrastructure SIP before March 28, 2015, EPA is obligated to issue a Federal Implementation Plan.

*Standard*<sup>8</sup> in January, 2012. None of the changes made to Washington's Clean Air Act since this last SIP submittal are relevant to implementation of the New Source Review Program or Washington's authority to control lead emissions. The laws that illustrate and support Washington's authority are provided for reference in Appendix B.

## Washington Rules

The rules approved into the SIP that provide authority for Washington and support the infrastructure elements are listed in sections that follow with their corresponding element and in Appendix A.

### Chapter 173-476 WAC Ambient Air Quality Standards

Washington State recently completed rulemaking to consolidate and incorporate the National Ambient Air Quality Standards in Washington rules at Chapter 173-476 WAC, Ambient Air Quality Standards. This rule — which contains the state ambient air quality standard for lead that is equal to the 2008 lead NAAQS — was submitted to EPA for approval and inclusion in the SIP in December 2013.<sup>9</sup>

## Infrastructure Elements

### §110(a)(2)(A) Emission limits and other control measures

*Element summary: Include enforceable emission limitations permits and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.*

EPA's requirement for this element requires that Washington identify the existing or new provisions that limit emissions of the relevant pollutants, including precursors. Washington has provisions for complying with this element in the state Clean Air Act and our regulations, found in Washington's Administrative Code (WAC).

Washington State has an EPA-approved air quality permitting program for minor sources which ensures that all applicable requirements are included in the source's permit. The requirement that sources utilize Reasonably Available Control Technology (RACT) for emission control under our minor new source review (NSR) program and the Best Available Control Technology (BACT) requirement of our delegated Prevention of Significant Deterioration (PSD) program are the primary methods used to limit lead emissions from stationary sources. See Element C for more discussion of the minor NSR program.

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<sup>8</sup>*Infrastructure SIP Certification for the 1997 8-hour Ozone National Ambient Air Quality Standard is at <http://www.ecy.wa.gov/programs/air/sips/plans/infrastructure.htm>; submitted to EPA January 2012 and approved May 24, 2012 (77 FR 30902)*

<sup>9</sup> Proposed approval of rule published December 31, 2013 (78 FR 79652)

For major sources, Washington has a delegated PSD program through a Federal Implementation Plan (FIP).<sup>10</sup> This means that major stationary sources are subject to the federal PSD requirements of 40 CFR 52.21<sup>11</sup>.

Washington's emission reporting requirements and permitting programs will ensure any sources of lead do not cause an area to violate the 2008 NAAQS.

## Washington Requirement

Washington's SIP-approved provisions are at 40 CFR 52, Subpart WW<sup>12</sup>.

## Washington Rules

Washington has provisions for complying with the emissions limitation requirements that apply to lead in WACs 173-400. These regulations as shown in Washington's SIP, are listed below and in Appendix A.

- WAC 173-400-040 *General standards for maximum emissions*
- WAC 173-400-050 *Emission standards for combustion and incineration units*
- WAC 173-400-060 *Emission standards for general process units*
- WAC 173-400-070 *Emission standards for certain source categories*
- WAC 173-400-105 *Records, monitoring, and reporting*
- WAC 173-400-434 *Solid waste incinerator facilities*

## New Washington Rule

The new Washington rule — *WAC 173-476-120, Ambient air quality standards for lead (Pb)* – contains the state ambient air quality standard and is the same as the federal lead NAAQS. This rule was submitted to EPA in December 2013 for inclusion in the SIP.

## Washington Laws

The Washington Clean Air Act – RCW 70.94 — provides general authority to adopt enforceable emission standards and limitations and other measures necessary for the attainment and maintenance of NAAQS. The following sections of the law support various components of the state's emissions control measures and permitting program:

- RCW 70.94.081 *Powers and duties of authorities*

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<sup>10</sup> 40 CFR 52.2497, Full approval of Washington's Title V program effective September 12, 2001, 66 FR 42439 (August 13, 2001), with a revision approved on January 2, 2003.

<sup>11</sup> Pursuant to 40 CFR 52.21(u), EPA has delegated authority to implement and enforce the federal PSD program to the Energy Facility Site Evaluation Council (EFSEC) and the Washington State Department of Ecology (Ecology) in separate delegation agreements: Agreement for the Delegation of the Federal Prevention of Significant Deterioration (PSD) Regulations by the EPA, Region 10 to the State of Washington Department of Ecology, Nov. 17, 2011. Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program, between EPA and EFSEC dated January 25, 1993. Ecology applies PSD regulations to most facilities in Washington; EFSEC applies PSD regulations to large energy industry facilities.

<sup>12</sup> 40 CFR part 52.2470(c)

- RCW 70.94.141 *Air pollution control authority — Power and duties of activated authority*
- RCW 70.94.151 *Classification of air contaminant sources —Registration — Fee — Registration program defined — Adoption of rules requiring persons to report emissions of greenhouse gases*
- RCW 70.94.152 *Notice may be required of construction of proposed new contaminant source — Submission of plans — Approval, disapproval — Emission control — "De minimis new sources" defined.*
- RCW 70.94.153 *Existing stationary source — Replacement or substantial alteration of emission control technology.*
- RCW 70.94.331 *Powers and duties of department.*
- RCW 70.94.380 *Emission control requirements.*
- RCW 70.94.395 *Air contaminant sources — Regulation by department; authorities may be more stringent — Hearing — Standards.*
- RCW 70.94.850 *Emission credits banking program — Amount of credit.*
- RCW 70.94.860 *Department of ecology may accept delegation of programs*

These laws are provided in Appendix B.

### **§110(a)(2)(B) Ambient air quality monitoring and data analysis system**

*Element summary: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator.*

Washington certifies that our existing authority and commitment are adequate to implement required changes to the monitoring network resulting from passage of the 2008 Lead NAAQS.

Our statewide surveillance system consists of a network of State and Local Air Monitoring Stations (SLAMS)<sup>13</sup>, a number of Special Purpose Monitors, and two National Core (NCore) sites. Ecology maintains these stations with the assistance of local agencies. The network meets the requirements of 40 CFR Part 58; our methods are consistent with 40 CFR Part 53. Ecology conducts periodic systems and performance audits as well as annual network reviews of the air quality surveillance system. EPA performs a technical audit every three years.

Ecology generally<sup>14</sup> determines an area's compliance with the state and federal standards as well as develops air quality trends with data obtained by the Washington State monitoring network. This data is reported to the Administrator, through EPA's Air Quality System (AQS) database in accordance with 40 CFR 58.16.

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<sup>13</sup> Ecology maintains an on-line map of the Washington air monitoring sites at <https://fortress.wa.gov/ecy/enviwa/Default.htm>.

<sup>14</sup> Sometimes Washington uses modeling, such as in permitting modeling or uses some other approved EPA method.

Any changes to the network are requested through the annual network report. Any planned changes to the sites or network are done consistent with 40 CFR 58.14 “System Modification”.

The annual network report is due every year before July 1. EPA Region 10 reviews and approves Ecology’s plan. EPA approved the 2012 plan on October 25, 2012<sup>15</sup>. Ecology submitted the 2013 plan before the July 1, 2013 deadline.

## Historic Lead Monitoring

Ecology and its partners conducted lead monitoring at many locations across the state in the ‘70s and ‘80s. Past sources of lead in Washington include a lead smelter on Harbor Island in South Seattle and the ASARCO copper smelters in Everett and Tacoma. While lead remains in the soils and sediments in these areas, direct release to the air from these facilities is no longer a concern; both facilities ceased operations by the mid-eighties.

## Ambient Monitoring Requirements for Lead

After the 2008 lead standard was finalized, EPA was asked to reconsider the emission rate at which monitoring near lead sources is required; the ‘emission threshold’ was set at 1.0 ton per year (tpy).

EPA reconsidered and the *Revisions to Lead Ambient Monitoring Requirements* ( or 2010 monitoring rule), was published December 27, 2010 (75 FR 81126) in which EPA:

- lowered the monitoring threshold to 0.5 tpy near industrial sources of lead.
- maintained the emission threshold for airports at 1.0 rather than promulgating the proposed lowering of the threshold to 0.50 tpy.
- limited non-source-oriented monitors to NCore sites, rather than require monitoring in every core based statistical area (CBSA) with a population over 500,000.
- implemented an airport monitoring study, requiring a minimum of one year of monitoring at 15 additional airports to determine the need for monitoring at airports that emitted less than 1.0 tpy of lead.

## Washington’s lead monitoring

The 2010 monitoring rule did require action and a temporary addition to Washington’s monitoring network. Washington was already monitoring for lead at the NCore site at Beacon Hill using various methods. Ecology worked with EPA Region 10 to settle on an approved method that fulfilled the lead NAAQS monitoring requirements. Lead monitoring for the Seattle-Tacoma-Bellevue area began at the Beacon Hill site using the agreed-upon method<sup>16</sup> on

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<sup>15</sup> [Washington State Department of Ecology, 2013 Ambient Air Monitoring Network Report, Ecology publication number 13-02-007](#)

<sup>16</sup> Per John Williamson, Washington State Department of Ecology, using field method Thermo Scientific Partisol®-Plus 2025 PM10 Sequential Air Sampler or Thermo Fisher Scientific Partisol® 2025i PM10 Sequential Air Sampler or Rupprecht and Patashnick Partisol®-Plus 2025 PM10 Sequential Air Sampler, Manual Reference Method: RFPS-

January 1, 2013. The first year's results are far below the level of the standard<sup>17</sup>. The need for monitoring in areas near lead sources (source oriented monitoring) in the future will be assessed during the permit application process and based on future emission reporting. Washington has the capacity to evaluate sources and conduct monitoring for areas that have sources found to emit or report emissions of half a ton of lead or more.

## Airport Monitoring Study

The 2010 monitoring rule also required that monitors be deployed at several airports around the country, two in Washington. Lead monitoring was done at the Auburn Municipal and Harvey Field Airports from December 2011 to December 2012.

Table 1 – Locations of Airport Lead Monitoring in Washington

Airport	AQS Site No.	Address
Auburn Municipal	530330029	23 <sup>rd</sup> St. NE, Auburn
Harvey Field	530610013	9900 Airport Way, Snohomish

Since draft results of the study found that the maximum three-month rolling average at both airports was less than ½ the NAAQS, monitoring was no longer required.<sup>18</sup> The final report for 2012 Airport Lead Monitoring Study provides a summary of the data<sup>19</sup>.

The final report was issued in June 2013<sup>20</sup>. The maximum three-month rolling average at the Auburn Airport was 0.055 µg/m<sup>3</sup> (37% of NAAQS) and at Harvey Field was 0.032 µg/m<sup>3</sup> (21% of NAAQS). Since neither airport measured a three-month rolling average that exceeded 50 percent of the NAAQS, the lead monitoring at both airports was concluded December 2012. Additional monitoring is not required for airports that emit less than 1 ton per year of lead.

## Washington Requirement

**Washington rules:** The relevant SIP-approved regulations that implement the monitoring program are found in:

- WAC 173-400-105 *Records, Monitoring and Reporting*

**Washington laws:** The state law that requires Ecology either conduct or arrange for others to conduct a continuous surveillance (monitoring) program is:

- RCW 70.94.331(5) *Powers and duties of department*

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1298-127 ; lab method Inductively Coupled Plasma- Mass Spectrometry (Eastern Research Group, Inc.) Manual Equivalent Method: EQL-0512-201

<sup>17</sup> See at EPA's AirData Monitor Values Report, for 2013 at [http://www.epa.gov/airquality/airdata/ad\\_rep\\_mon.html](http://www.epa.gov/airquality/airdata/ad_rep_mon.html)

<sup>18</sup> per 40 CFR part 58, paragraph 4.5(c)

<sup>19</sup> Williamson, John, Washington State Department of Ecology, 2012 Airport Lead Study, Auburn Municipal Airport and Harvey Field, Final Report, April 3, 2013

<sup>20</sup> Environmental Protection Agency, Program Update: *Airport Lead Monitoring*, [EPA-420-F-13-032](#), June 2013

This program:

- Monitors the quality of the ambient atmosphere,
- Monitors the concentrations and movements of air contaminants, and
- Determines the quantity of emissions to the atmosphere.

**§110(a)(2)(C) Program to enforce control measures, regulate modification and construction of stationary sources and a permit program**

*Element summary: Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.*

There are no major PSD sources for lead in Washington. Washington has established regulations that govern the enforcement of control measures, including permitting programs that regulate construction and modification of stationary sources that apply statewide. Any new sources of lead would be subject to these requirements. State law requires the use of Best Available Control Technology (BACT) to control all emissions from new and modified sources, including stationary sources. BACT is implemented through approval conditions in minor NSR permits and PSD permits issued under terms of our PSD Delegation Agreement.

An existing PSD FIP implements major source permitting for PSD sources through delegated agreements between EPA and Ecology and Energy Facility Site Evaluation Council (EFSEC). Enforcement authority is divided between EPA, Ecology and EFSEC as described in these agreements.

Washington's current SIP-approved rules for NSR Minor Source permitting comply with 40 CFR Part 51, Subpart I, Review of New Sources and Modifications.

**Washington Requirement**

Washington's permitting and enforcement powers are found in the following rules and laws.

***Washington rules:***

- WAC 173-400-020 *Applicability*
- WAC 173-400-110 *New source review*
- WAC 173-400-200 *Creditable Stack Height & Dispersion Techniques*
- WAC 173-400-230 *Regulatory Actions*
- WAC 173-400-240 *Criminal Penalties*

**Washington laws:**

- RCW 70.94.141 *Powers and duties of activated authority*
- RCW 70.94.200 *Investigation of conditions by control officer or department – Entering private, public property.*
- RCW 70.94.211 *Enforcement actions by air authority – Notice to violators*
- RCW 70.94.331 *Powers and duties of department*
- RCW 70.94.332 *Enforcement actions by department – Notice to violators.*
- RCW 70.94.425 *Restraining orders – Injunctions.*
- RCW 70.94.430 *Penalties.*
- RCW 70.94.431 *Civil penalties – Excusable excess emissions – (except (8))<sup>21</sup>.*
- RCW 70.94.435 *Additional means for enforcement of chapter*

EFSEC’s authority resides in state law at Chapter 80.50 RCW, *Energy Facilities – Site Locations*. See:

- RCW 80.50.040 *Energy facility site evaluation council – Powers enumerated*
- RCW 80.50.150 *Enforcement of compliance – Penalties*

**§110(a)(2)(D)(ii) Interstate and international pollution abatement**

*Element summary: Contain adequate provisions ensuring compliance with the applicable requirements of sections 126<sup>22</sup> and 115<sup>23</sup> (relating to interstate and international pollution abatement).*

Element D pertains to interstate and international transport of pollutants. Some parts of Element D are not required at this time. Since the EME Homer City decision<sup>24</sup>, states are not required to submit transport SIPs addressing Section 110(a)(2)(D)(i)(I), also known as Prongs 1 (significant contribution) and 2 (interfere with maintenance), until EPA identifies each state’s contribution to other states’ nonattainment or maintenance areas.

Requirements in Section 110(a)(2)(D)(i)II, known as Prongs 3 (prevention of significant deterioration) and 4 (protect visibility), are covered by a separate PSD-delegated program and a separate Regional Haze plan. Washington does not have any outstanding obligations under sections 126 or 115. The notification requirements of CAA section 126(a) pertain only to major proposed new or modified sources.

<sup>21</sup> [Modification Of Settlement Agreement, Sierra Club et al. v. Jackson, No. 3:10-cv-04060-CRB \(N.D. Cal.\), September 26, 2013](#)

<sup>22</sup> §126 [Interstate pollution abatement](#)

<sup>23</sup> §115 [International air pollution](#)

<sup>24</sup> EME Homer City Generation, LP v. EPA, 696 F.3d 7 (D.C. Cir. 2012), cert. granted, 2013 U.S. LEXIS 4801(2013)

As previously discussed, the major source PSD program in Washington is operated under a Federal Implementation Plan.

EPA has determined that lead emissions are not likely to contribute significantly to visibility impairment<sup>25</sup>. Lead is a near-field pollutant – any emissions impact nearby areas. EPA notes that sources that emit less than 0.5 tpy or located more than 2 miles from a border are not likely to contribute to nonattainment in another state<sup>26</sup>. There are currently no known sources emitting over 0.5 tpy. Washington submitted our Regional Haze plan in December, 2010. EPA will take action on the this SIP submittal separately from the infrastructure SIP review

Should the Administrator notify the state about an issue triggering the requirements under the section 110(a)(2)(H)(ii) to revise the SIP, Washington has the authority and intends to meet its CAA obligations to nearby states and countries.

Washington law includes a commitment to comply with the federal Clean Air Act. This declaration is noted below.

**Washington laws:**

- RCW 70.94.011 Declaration of public policies and purpose

**§110(a)(2)(E) Adequate personnel, funding and authority to carry out plan; comply with state boards; oversee local and regional governmental agencies.**

*Element summary: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof); (ii) requirements that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.*

How Washington fulfills this element is described below.

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<sup>25</sup> Schmidt, Mark, Environmental Protection Agency, Memo, *The Estimated Contribution of Ambient Lead (Pb) to Class I Area Visibility Impairment*, November 7, 2011.

<sup>26</sup> *Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)* foot note 7, page 8, September 13, 2013

**Subelement (i) Personnel, funding and authority:** The Washington provisions that provide Ecology's authority to carry out the plan, assure funding and hire the necessary people are shown below.

Ecology's Air Quality Program is funded through the following sources:

- State General Fund
- Model Toxics Control Accounts
- Section 105 of the CAA grant program
- Air Operating Permit Account (permit fees from large industrial sources)
- Air Pollution Control Account (permit fees for burning and annual fees for small industrial air pollution sources)<sup>27</sup>

**Subelement (ii) State Boards:** Clean Air Act Section 128(a) describes the requirements for state boards. Ecology and each participating agency have provisions to ensure their boards shall represent the public interest, do not draw a significant portion of their income from permittees and disclose potential conflicts of interest. Local clean air agency boards and other officials that act or vote on decisions affecting air pollution sources are in compliance with these provisions. The Pollution Control Hearings Board has authority to hear appeals. These provisions can be found in Washington's rules at WAC 173-400-220 and 260.

**Subelement (iii) State responsibility:** The state retains responsibility for implementing the SIP. For Washington, this assurance is found in state law at RCW 70.94.370, which states that no provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation on the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer. Implementation of the PSD FIP has been delegated by EPA to Ecology and EFSEC.

The following provisions cover Element E:

## Washington Requirement

### *Washington rules:*

- WAC 173-400-220 *Requirements for board members*
- WAC 173-400-240 *Criminal penalties*
- WAC 173-400-260 *Conflict of interest*

### *Washington laws:*

- RCW 34.05.425 *Administrative procedure act*

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<sup>27</sup> Also see "Department of Ecology Budget & Program Overview 2009-2013" at <https://fortress.wa.gov/ecy/publications/publications/1101009.pdf>

- RCW 42.17 *Public disclosure act*
- RCW 43.21A *Department of ecology*

*Washington Clean Air Act*

- RCW 70.94.100 *Composition of local air authorities' board; Conflict of interest requirements.*
- RCW 70.94 .151 *Classification of air contaminant sources – Registration – Fee – Registration program defined*
- RCW 70.94.152 *Notice may be required of construction*
- RCW 70.94.161 *Operating permits for air contaminants sources – Fees, report to legislature*
- RCW 70.94.370 *Powers and rights of governmental units and persons are not limited by act or recommendations*

**§110(a)(2)(F) Stationary source emissions monitoring and reporting system**

*Element summary: Require, as may be prescribed by the Administrator*

*(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,*

*(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and*

*(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.*

Washington has provisions to require sources to install, maintain and replace equipment statewide, as well as authority to require emissions monitoring and reporting. The requirements are implemented through permits and compliance orders issued under Washington's Clean Air Act.

As previously discussed, the major source PSD program in Washington is operated under a Federal Implementation Plan. Stationary source compliance monitoring is submitted to the regulatory agency with enforcement jurisdiction and is available on request.

**Subelement (i)** – EPA rules<sup>28</sup> require states to:

- have a program of periodic testing and inspection of stationary sources,
- establish a system for detecting violations and investigating complaints, and

<sup>28</sup> 40 CFR 51.212 “Testing inspection, enforcement and complaints” 51.212 “Testing inspection, enforcement and complaints”, 51.211 “Emissions reporting and recordkeeping”, 51.321-323 - Source emissions and state action reporting, Subpart A, Air Emissions Reporting Requirements, Subpart L, Assignment of legal authority to local agencies 51.45(b) Electronic reporting of emissions data.

- provide for the identification of allowable, enforceable test methods and not have any provision that would prevent the use of any credible evidence of noncompliance.

Washington's program for stationary sources includes requirements for periodic testing of sources when required. These provisions, as well as allowable test methods, are found in Chapter 173-400 WAC as listed below and in the section for this Element in Appendix A. Permits specify testing frequency and methods.

Washington certifies that there is not a state law or rule in the approved SIP that prevents the use of any credible evidence in enforcement proceedings.

**Subelement (ii)** – Subelement (ii) requires states have periodic source reporting of emissions and emission inventory reporting practices.<sup>29</sup> Washington's reporting requirements are found in the WACs listed below and in Appendix A. Washington has existing authority and commitments to require changes in reporting and inventory requirements associated with the new or revised NAAQS. EPA proposed a change to the lead emission reporting threshold in June 2013<sup>30</sup>. A new threshold was set to support the requirement to monitor the air or request an exemption near sources that emit half a ton or more per year of lead. Historically, sources have not had to report at these low levels. Once this rule is finalized, Washington may identify other sources. Ecology will assess areas with identified sources of lead emissions over half a ton.

Any changes in reporting or inventory requirements associated with the new NAAQS are identified during permitting actions.

The language of WAC 173-400-105(1) on emission reporting is general and only lists some of the pollutants that can be required to be reported in annual emission inventories. Meanwhile, WAC 173-400-105(2) allows Ecology to require stack testing and/or ambient air monitoring, even if not required in a permit or other enforceable requirement as part of our continuous surveillance program to protect air quality.

The standards of performance for sources of lead in [40 CFR Part 60](#) have not changed since Washington's last SIP was approved. Therefore, the existing SIP-approved methods are adequate for the 2008 lead standard.

**Subelement (iii)** – Subelement (iii) requires emissions and monitoring data be available. EPA rules<sup>31</sup> require states to maintain detailed data and calculations used in preparation of each plan and make them available for public inspection and submit to EPA administrator on request. Source inspection reports are available from the regulating agency on request.

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<sup>29</sup> 51.211 "Emissions reporting and recordkeeping", 51.321-323 - Source emissions and state action reporting, EPA's Air Emissions Reporting Rule, 40 CFR part 51, Subpart A, Air Emissions Reporting Requirements

<sup>30</sup> 78 FR 37164, <http://www.gpo.gov/fdsys/pkg/FR-2013-06-20/pdf/2013-14628.pdf>

<sup>31</sup> 40 CFR 51.116, "Data availability"

## Washington Requirement

### *Washington rules:*

- WAC 173-400-105 *Records, Monitoring, and Reporting*
- WAC 173-400-110 *New Source Review*
- WAC 173-400-112 *Requirements for New Sources in Nonattainment Areas*
- WAC 173-400-113 *Requirements for New Sources in Attainment or Unclassifiable Areas*

### *Washington laws:*

- RCW 42.17 *Public disclosure act*
- RCW 70.94 .151 *Classification of air contaminant sources – Registration – Fee – Registration program defined*
- RCW 70.94.152 *Notice may be required of construction*
- RCW 70.94.161 *Operating permits for air contaminants sources – Fees, report to legislature*
- RCW 70.94.331 *Powers and duties of department*
- RCW 70.94.405 *Air pollution control authority — Review by department of program*

### **§110(a)(2)(G) Authority to declare air pollution emergency and notify public**

*Element summary: Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.*

Washington's existing Emergency Episode Plan provisions are consistent with EPA's regulatory requirements for the lead NAAQS. CAA Subpart H, Prevention of Air Pollution Emergency Episodes has no significant harm levels listed for lead, consequently the Washington rule does not have one either. Therefore, no emergency response episode contingency plans are required.<sup>32</sup>

Based on our inventory of lead sources and historical and recent airport monitoring data, Washington does not need a more specific contingency plan beyond having the authority to restrain any source from causing or contributing to an imminent and substantial endangerment found in existing laws and rules.

## Washington Requirement

Washington requirements for general air pollution emergency response are described below.

### *Washington rules:*

- WAC 173-435 *Emergency episode plan*

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<sup>32</sup> Subpart H, Prevention of Air Pollution Emergency Episodes, 51.150 Classification of regions for episode plans, 51.151 Significant harm levels, 51.152 Contingency Plans, 51.153 Reevaluation of episode plans

**Washington laws:** State laws providing for the air pollution emergency response authority are located in state law at RCW 70.94.710 through 70.94.730.

- RCW 70.94.710 *Air pollution episodes – Legislative finding – Declaration of policy*
- RCW 70.94.715 *Air pollution episodes – Episode avoidance plan – Contents – Source emission reduction plans – Authority – Considered orders*
- RCW 70.94.720 *Air pollution episodes – Declaration of air pollution emergency by governor*
- RCW 70.94.725 *Air pollution episodes – Restraining orders, temporary injunctions to enforce orders – Procedure.*
- RCW 70.94.730 *Air pollution episodes – Orders to be effective immediately*

### **§110(a)(2)(H) Future SIP revisions**

*Element summary: Each plan shall (H) Provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act.*

Under the Washington Clean Air Act, Ecology has the authority to promulgate rules and regulations to maintain and protect Washington’s air quality and to comply with the federal requirements, including revisions of NAAQS, SIPs, and to respond to EPA’s findings<sup>33</sup>.

### **Washington Requirement**

Washington’s law at RCW 70.94.510<sup>34</sup> specifies Washington’s policy to cooperate with the federal government in order to coordinate and take actions necessary to secure the benefits of the federal clean air act for the state.

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<sup>33</sup> RCW 70.94.011. Declaration of public policies and purpose. “It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington’s inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.”

<sup>34</sup> RCW 70.94.510 Policy to cooperate with federal government.

It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows: (1) To accept and administer grants from the federal government for carrying out the provisions of this chapter. (2) To take all action necessary to secure to the state the benefits of the federal clean air act.

Washington utilized this authority in developing the SIP-approved rules specified throughout this submittal. This and other SIP submittals are the result of Washington's ability to provide for SIP revisions as specified in CAA.

### **§110(a)(2)(I) – Plan revisions for nonattainment area**

Note: Element I – Section 110(a)(2)(I) – is not included in this document as separate sections of the CAA list the requirements for nonattainment areas. Nonattainment area (NAA) requirements are set on a different schedule and submitted under different rules so it is not relevant to include requirements pertaining to NAA areas in an infrastructure SIP. There are no lead nonattainment areas in Washington. If this should change, Washington is prepared with SIP-approved rules at 173-400-112, Requirements for new sources in nonattainment areas.

### **§110(a)(2)(J) §121 consultation; §127 public notification; and PSD and visibility protection**

*Element summary: Meet the applicable requirements of section 121 (relating to consultation), meet the applicable requirements of section 127 (relating to public notification), meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection).*

The statutory authorities and requirements for consultation and public notification and involvement are found in Washington's *Clean Air Act, Administrative Procedure Act, Open Public Meetings Act, Consultation, and Air Pollution Advisory Council Laws*. Washington rules that address the requirements of this element are listed below and in Appendix A.

**Consultation:** Washington law authorizes Ecology to advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups<sup>35</sup>.

After drafting a plan for regulating emissions, such as a SIP revision, Ecology must issue a public notice informing the residents and other affected parties of the proposed changes. The public and all interested parties are then provided with an opportunity to review and comment on the proposal and request a public hearing. In addition to the formal public involvement procedures, Ecology often hosts workshops or creates advisory committees to solicit input from those affected.

**Public Notification**<sup>36</sup>: Washington's SIP-approved rule WAC 173-400-171, *Public involvement*, codifies the public participation process for both SIPs and rulemaking. The Ecology website

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<sup>35</sup> RCW Section 70.94.141(10)

<sup>36</sup> Requirements at 40 CFR 51.825

describes upcoming opportunities to comment on its Public Involvement Calendar<sup>37</sup>, which provides notice of these activities and information on how the public can participate.

Washington has existing SIP-approved provisions for regularly notifying the public of instances or areas where any primary NAAQS was exceeded during the preceding calendar year through the annual monitoring network report available online<sup>38</sup>. A lead NAAQS exceedance is unlikely.

The Action Procedures under WAC 173-435-050 provide public warnings during periods of adverse air quality. In addition to these SIP measures, Ecology uses the Washington Air Quality Advisory (WAQA) tool for informing people about the levels and health effects of an exceedance air pollution<sup>39</sup>. The public can access up-to-date WAQA information on-line at <https://fortress.wa.gov/ecy/enviwa/Default.htm>.

Also, Ecology provides the public with information of the health hazards associated with exceedances on the Air Quality Program website<sup>40</sup>. The website also provides timely access to monitoring data and explanations on how the public may participate in regulatory and other efforts to improve air quality.

**Prevention of Significant Deterioration:** As discussed in Element A, ongoing review of new major sources under Washington's delegated major source PSD permitting program is operated under a FIP. Washington's PSD FIP is at 40 CFR 52.2470-2499, subpart WW<sup>41</sup>. Sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and J (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Washington through this existing PSD FIP that remains in place.

Washington's PSD program Delegation Agreement<sup>42</sup> describes how Ecology uses the detailed public involvement process in state rules at WAC 173-400-740. This rule meets the requirements of 40 CFR 51.166(q) and provides for public involvement for PSD permitting projects.

**Visibility Protection:** Since the visibility requirements do not change after EPA establishes a new or revises an existing NAAQS, they are not addressed in this certification.

Washington's SIP-approved visibility protection regulations are found in WAC 173-400-151. In 2003, EPA approved Ecology's 1999 Visibility Plan (68 FR 34821). Washington protects visibility through the ongoing review of new major sources under the permitting program (PDS

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<sup>37</sup> <http://apps.ecy.wa.gov/pubcalendar/calendar.asp>

<sup>38</sup> Annually under Publications & Forms at [www.ecy.wa.gov/](http://www.ecy.wa.gov/)

<sup>39</sup> Fulfills 51.285(b)

<sup>40</sup> <http://www.ecy.wa.gov/programs/air/airhome.html>

<sup>41</sup> Washington's PSD FIP fulfills the requirements from §52.28, Protection of visibility from sources in nonattainment areas.

<sup>42</sup> [Agreement for the Delegation of the Federal Prevention of Significant Deterioration \(PSD\) Regulations by the EPA, Region 10 to the State of Washington Department of Ecology, December 10, 2013.](#)

FIP) and the long-term Regional Haze program. The most current visibility protection requirements are included in Washington's Regional Haze SIP submitted to EPA in 2010.

## Washington Requirement

### *Washington rules:*

- WAC 173-435-050 *Action procedures*
- WAC 173-400-151 *Retrofit requirements for visibility*
- WAC 173-400-171 *Public involvement*

### *Washington laws:*

- RCW 34.05 *Administrative procedures act*
- RCW 42.30 *Open public meetings*
- RCW 70.94.141- *Consultation*
- RCW 70.94.240 *Air pollution control advisory council*

### **§110(a)(2)(K) Air quality modeling data**

*Element summary: Provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.*

Washington does dispersion modeling to assess the impact of emissions on ambient air quality for new source review permitting and as part of area-wide modeling requirements for attainment demonstrations. Washington uses appropriate models, has demonstrated capacity and adequate resources to conduct modeling using methods in Appendix W40 CFR 51, Appendix W (Guideline on Air Quality Models). If Appendix W is not appropriate, Section 51.166 states the model may be modified or another model used upon written approval from EPA and following notice and opportunity for public comment.

There are no areas of the state that violate the standards for lead. Therefore, Washington will not need to prepare attainment modeling for lead.

**Submitting modeling data:** Washington's Clean Air Act directs Ecology to cooperate with the federal government in order to coordinate and implement federal and state clean air acts, which includes the submission of data related to air quality modeling to the Administrator.

**Minor New Source Review:** Washington's SIP-approved provisions for minor source NSR permitting are in WAC 173-400-110, -112, and -113. Modeling estimates pollutant concentrations in the ambient air and are based on EPA's latest guidance, methods and techniques and are compliant with Appendix W.

**Prevention of Significant Deterioration:** In addition, Ecology does modeling work for the major source program under the PSD delegation agreement (see response to §110(a)(2)(A) above). The protocol used to conduct the modeling is provided to EPA for review and comment.

Should a new facility that emits lead apply for a permit, Ecology intends to use EPA-approved models to establish the effect of emissions on air quality and report the results to EPA, when required.

## Washington Requirements

Washington provisions for air quality modeling capacity meet the requirements above.

### *Washington rules:*

- WAC 173-400-110 *New source review*
- WAC 173-400-112 *Requirements for new sources in nonattainment areas*
- WAC 173-400-113 *Requirements for new sources in attainment or unclassifiable areas*

### *Washington laws:*

- RCW 70.94.011 *Declaration of public policies and purpose*
- RCW70.94.510 *Policy to cooperate with federal government*

### **§110(a)(2)(L) Major stationary source permitting fees**

*Element summary: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.*

There are no major stationary sources or nonattainment areas for lead in Washington. Any facilities subject to PSD are covered under Washington's delegated PSD program through a Federal Implementation Plan (FIP). Washington's permitting program (see element A) provides provisions for any new lead source meeting the definition of a major source. The fee requirements of this Element are met by the EPA-approved fee program under Title V<sup>43</sup>. These fees support the agency's efforts to determine compliance with and enforcement of emission limitations for major stationary sources.

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<sup>43</sup> 40 CFR 70.9 "fee determination and certification" and 40 CFR part 70, Appendix A. "approval status of state and local operating permits programs"

EPA granted Ecology and EFSEC interim approval of its Title V program effective December 9, 1994, and full approval effective September 12, 2001, (66 FR 42439, August 13, 2001), with a revision approved on January 2, 2003. EPA periodically reviews Ecology's Title V fee program to ensure the collected fees are sufficient and used to cover the costs of developing and administering the program.

The state regulations that require collecting permitting fees under the state's EPA-approved, Title V operating permit program are at 173-401 and 173-455 WAC and are not part of the SIP<sup>44</sup>. The Ecology fee regulation is periodically revised to reflect actual permitting costs. Ecology must make a completeness determination on any major source application, which includes the requirement that a fee must be paid. A permit will not be issued unless the application fee is paid<sup>45</sup>.

## Washington Requirement

### *Washington laws:*

- RCW 70.94.151 *Classification of air contaminant sources – Registration – Fee – Registration program defined – Adoption of rules requiring persons to report emissions of greenhouse gases.*
- RCW 70.94.152 *Notice may be required of construction of proposed new contaminant source – Submission of plants – Approval, disapproval – Emission control – “De minimis new sources” defined.*
- RCW 70.94.162 *Annual fees from operating permit program source to cover cost of program.*

### **§110(a)(2)(M) Consultation and participation**

*Element summary: Provide for consultation and participation by local political subdivisions affected by the plan.*

After drafting a regulatory document such as a SIP revision, Ecology must issue a public notice informing the residents and affected parties of the proposed changes. The public and all interested parties are then provided with an opportunity to review and comment on the proposal and participate at a public hearing(s). In addition to the formal public involvement procedures, Ecology often hosts workshops or creates advisory committees to solicit input from the affected stakeholders, such as clean air agencies and cities and towns, prior to development, adoption and submission of a SIP revision. Leaders of political subdivisions have the opportunity to participate during the public process. For PSD sources, Washington rule WAC 173-400-740

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<sup>44</sup> WAC 173-401 Operating permit regulation, (last update November 2011); WAC 173-455 Air quality fee registration, (last update November 2012).

<sup>45</sup> WAC 173-400-111(1)(e), Processing notice of construction applications for sources, stationary sources and portable sources and WAC 173-400-111(3)(i) (Requirements for new sources in attainment or unclassifiable areas).

*PSD permitting public involvement requirements*, contains the public involvement requirements for these larger sources.

## **Washington Requirement**

### ***Washington rules:***

- WAC 173-400-171 *Public involvement*

### ***Washington laws:***

- RCW 34.05 *Administrative procedure act.*
- RCW 42.30 *Open public meetings act.*
- RCW 70.94.240 *Air pollution control advisory council.*

# **Appendix A. Washington State Rules and Laws by Element**

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<p><b>§110(a)(2)(A) Emission limits and other control measures</b></p>	<p><i>Include enforceable emission limitations (permits and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</i></p>	<p>Washington State SIP-approved rules</p> <ul style="list-style-type: none"> <li>• WAC 173-400-040 <i>General standards for maximum emissions (9/20/93; 6/2/95; 60 FR 28726)</i></li> <li>• WAC 173-400-050 <i>Emission standards for combustion and incineration units (3/22/91; 6/2/95; 60 FR 28726)</i></li> <li>• WAC 173-400-060 <i>Emission standards for general process units (3/22/91; 6/2/95; 60 FR 28726)</i></li> <li>• WAC 173-400-070 <i>Emission standards for certain source categories (3/22/91; 6/2/95; 60 FR 28726)</i></li> <li>• WAC 173-400-105 <i>Records, Monitoring and Reporting (9/20/93; 6/2/95; 60 FR 28726).</i></li> <li>• WAC 173-434 <i>Solid Waste Incinerator Facilities (various dates from 12/16/87 to 1/22/04; 1/15/93; 58 FR 4578)</i></li> </ul> <p>Recently submitted/not yet approved:</p> <ul style="list-style-type: none"> <li>• WAC 173-476-120 – <b><i>Ambient air quality standards for lead submitted to EPA November 20, 2013, proposed approval posted December 27, 2013, EPA accepted comments through January 30, 2014.</i></b></li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.081 <i>Powers and duties of authorities</i></li> <li>• RCW 70.94.141 <i>Air pollution control authority -- Power and duties of activated authority</i></li> <li>• RCW 70.94.151 <i>Classification of air contaminant sources – Registration – Fee – Registration program defined - Adoption of rules requiring persons to report emissions of greenhouse gases</i></li> <li>• RCW 70.94.152 <i>Notice may be required of construction</i></li> <li>• RCW 70.94.153 <i>Existing stationary source – Replacement or substantial alteration of emission control technology</i></li> <li>• RCW 70.94.331 <i>Powers and duties of department</i></li> <li>• RCW 70.94.380 <i>Emission control requirements</i></li> <li>• RCW 70.94.395 <i>Air contaminant sources – Regulation by department; authorities may be more stringent – Hearing – Standards</i></li> <li>• RCW 70.94.850 <i>Emission credits banking program – Amount of credit</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
			<ul style="list-style-type: none"> <li data-bbox="1478 237 1911 342">• RCW 70.94.860 <i>Department of ecology may accept delegation of programs</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<b>§110(a)(2)(B) Ambient air quality monitoring and data analysis system</b>	<i>Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator.-</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-105 <i>Records, Monitoring and Reporting</i> (9/20/93; 6/2/95; 60 FR 28726).</li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.331(5) <i>Powers and duties of department.</i></li> </ul>
<b>§110(a)(2)(C) Program to enforce control measures, regulate modification and construction of stationary sources and a permit program</b>	<i>Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-020 <i>Applicability</i> 3/22/91; 6/2/95; 60 FR 28726)</li> <li>• WAC 173-400-110 <i>New source review</i> (9/20/93; 6/2/95;60 FR 28726)</li> <li>• WAC 173-400-200 <i>Creditable Stack Height &amp; Dispersion Techniques</i> (3/22/91; 6/2/95; 60 FR 28726)</li> <li>• WAC 173-400-230 <i>Regulatory Actions</i> (3/20/93; 6/2/95; 60 FR 28726)</li> <li>• WAC 173-400-240 <i>Criminal Penalties</i> (3/22/91; 6/2/95; 60 FR 28726)</li> <li>• WAC 173-440-113 <i>Requirements for New Sources in Attainment or Unclassifiable Area</i> (9/20/93;6/21/95;60FR 28726)</li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.141 <i>Air pollution control authority — Powers and duties of activated authority</i></li> <li>• RCW 70.94.200 <i>Investigation of conditions by control officer or department -- Entering private, public property</i></li> <li>• RCW 70.94.211 <i>Enforcement actions by air authority -- Notice to violators</i></li> <li>• RCW 70.94.331 <i>-Powers and duties of department</i></li> <li>• RCW 70.94.332 <i>Enforcement actions by department -- Notice to violators</i></li> <li>• RCW 70.94.425 <i>Restraining orders -- Injunctions.</i></li> <li>• RCW 70.94.430 <i>Penalties.</i></li> <li>• RCW 70.94.431 <i>Civil penalties — Excusable excess emissions</i></li> <li>• RCW 70.94.435 <i>Additional means for enforcement of chapter</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
			<p><i>Other Washington Laws</i></p> <ul style="list-style-type: none"> <li>➤ RCW 80.50.040 Energy facility site evaluation council — Powers enumerated</li> <li>➤ RCW 80.50.150 Enforcement of compliance - Penalties</li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<b>110(a)(2)(D)(ii), Interstate and international pollution abatement (transport)</b>	<p><i>Transport elements Prongs 1 (significant contribution) and 2 (interfere with maintenance) will be addressed in separate submittal</i></p> <p><i>Prongs 3 (prevention of significant deterioration) and 4 (protect visibility)</i></p>	<p>Prongs 1 and 2 elements are on hold due to EME Homer City until EPA determines each state’s contribution to nonattainment or interference with maintenance to neighboring states</p> <p>Covered by Regional Haze SIP and PSD FIP.</p>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.011 <i>Declaration of public policies and purpose</i></li> </ul>
<b>110(a)(2)(E), Adequate personnel, funding and authority to carry out plan; comply with state boards; oversee local and regional governmental agencies</b>	<p><i>Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);</i></p>	<ul style="list-style-type: none"> <li>• WAC 173-400-220 <i>Requirements for Board Members*</i></li> <li>• WAC 173-400-240 <i>Criminal Penalties*</i></li> <li>• WAC 173-400-260 <i>Conflict of Interest*</i></li> </ul> <p>*State effective date 3/22/91; EPA effective date 6/2/95; 60 FR 28726)</p>	<p><i>Washington Clean Air Act Laws</i></p> <p>RCW 70.94.100 <i>Composition of Local Air Authorities’ Board; Conflict of Interest Requirements</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.151 <i>Classification of air contaminant sources – Registration – Fee – Registration program defined - Adoption of rules requiring persons to report emissions of greenhouse gases</i></li> <li>• RCW 70.94.152 <i>Notice may be required of construction</i></li> <li>• RCW 70.94.161 <i>Operating permits for air contaminants sources – Fees, report to legislature</i></li> <li>• RCW 70.94.370 <i>Powers and rights of governmental units and persons are not limited by act or recommendations</i></li> </ul> <p><i>Other Washington Laws</i></p> <ul style="list-style-type: none"> <li>➤ RCW 34.05.425 <i>Administrative Procedure Act;</i></li> <li>➤ RCW 42.17 <i>Public Disclosure</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
			<i>Act</i> ➤ RCW 43.21A <i>Department of ecology</i>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<b>110(a)(2)(F) Stationary source emissions monitoring and reporting system</b>	<i>Require, as may be prescribed by the Administrator</i> <i>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</i> <i>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</i> <i>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-105 <i>Records, Monitoring, and Reporting</i> *</li> <li>• WAC 173-400-110 <i>New Source Review (NSR)</i> *</li> <li>• WAC 173-400-113 <i>Requirements for New Sources in Attainment or Unclassifiable Areas</i>*</li> </ul> <p>*(9/20/93;6/2/95; 60 FR 28726)</p>	<p><i>Washington Clean Air Act Laws -</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.151 <i>Classification of air contaminant sources – Registration – Fee – Registration program defined - adoption of rules requiring persons to report emissions of greenhouse gases</i></li> <li>• RCW 70.94.152 <i>Notice may be required of construction</i></li> <li>• RCW 70.94.161 <i>Operating permits for air contaminants sources – Fees, report to legislature</i></li> <li>• RCW 70.94.331 <i>Powers and duties of department</i></li> <li>• RCW 70.94.405 - <i>Air pollution control authority — Review by department of program</i></li> </ul> <p><i>Other Washington Laws</i></p> <ul style="list-style-type: none"> <li>➤ RCW 42.17 <i>Public Disclosure Act</i></li> </ul>
<b>110(a)(2)(G) Authority to declare air pollution emergency and notify public</b>	<i>Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.</i>	<ul style="list-style-type: none"> <li>• WAC 173-435 <i>Emergency Episode Plan</i> (1/3/89; 1/15/1993; 58 FR 4578.)</li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.710 <i>Air pollution episodes -- Legislative finding -- Declaration of polic.</i></li> <li>• RCW 70.94.715 <i>Air pollution episodes -- Episode avoidance plan -- Contents -- Source emission reduction plans -- Authority --Considered orders</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
			<ul style="list-style-type: none"> <li data-bbox="1486 240 1885 370">• RCW 70.94.720 <i>Air pollution episodes -- Declaration of air pollution emergency by governor</i></li> <li data-bbox="1486 391 1896 521">• RCW 70.94.725 <i>Air pollution episodes -- Restraining orders, temporary injunctions to enforce orders - Procedure</i></li> <li data-bbox="1486 542 1881 638">• RCW 70.94.730 <i>Air pollution episodes -- Orders to be effective immediately</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<b>110(a)(2)(H) Future SIP Revisions</b>	<i>Provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act.</i>		<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.510 – <i>Policy to cooperate with the federal government</i></li> </ul>
<b>110(a)(2)(I) Nonattainment Areas</b>	<i>Nonattainment area requirements</i>	<ul style="list-style-type: none"> <li>• No lead NAA</li> </ul>	NA
<b>110(a)(2)(J) Consultation, Public Notification and PSD and visibility protection</b>	<i>Meet the applicable requirements of section 121 (relating to consultation), meet the applicable requirements of section 127 (relating to public notification), meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection).</i>	<ul style="list-style-type: none"> <li>• WAC 173-435-050 <i>Action Procedures</i>(1/3/89; 1/15/93; 58 FR 4578)</li> <li>• WAC 173-400-151 <i>Retrofit requirements for visibility protection</i> (3/22/91; 6/2/95; 60 FR 28726).</li> <li>➤ WAC 173-400-171 <i>Public involvement</i> (9/20/93; 6/2/95; 60 FR 28726)</li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.141 <i>Consultation</i></li> <li>• RCW 70.94.240 <i>Air pollution control advisory council</i></li> </ul> <p><i>Other Washington Laws</i></p> <ul style="list-style-type: none"> <li>➤ RCW 34.05 <i>Administrative procedures act</i></li> <li>➤ RCW 42.30 <i>Open public meetings act</i></li> </ul>
<b>110(a)(2)(K) Air quality modeling/data</b>	<i>Provide for: (i) the performance of such air quality modeling as the</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-110 <i>New Source Review (NSR) *</i></li> </ul>	<p><i>Washington Clean Air Act Laws</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.011 <i>Declaration of</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
	<i>Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-113 <i>Requirements for New Sources in Attainment or Unclassifiable Areas*</i></li> </ul> <p>*(9/20/93;6/2/95; 60 FR 28726</p>	<p><i>public policies and purpose</i></p> <ul style="list-style-type: none"> <li>• RCW 70.94.510 <i>Policy to cooperate with federal government</i></li> </ul>

**DRAFT** Appendix A. Washington State Infrastructure Provisions by Element

Infrastructure Element	<i>Element summary:</i>	Washington State SIP-approved rules	Washington State laws
<b>110(a)(2)(L) Major stationary source permitting fees/</b>	<i>Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.</i>	➤ (under delegated PSD program and FIP)	<i>Washington Clean Air Act Laws</i> <ul style="list-style-type: none"> <li>• RCW 70.94.151 <i>Classification of air contaminant sources – Registration – Fee – Registration program defined</i></li> <li>• RCW 70.94.152 <i>Notice may be required of construction</i></li> <li>• RCW 70.94.162 <i>Annual fees from operating permit program source to cover cost of program</i></li> </ul>
<b>110(a)(2)(M) Consultation and participation</b>	<i>Provide for consultation and participation by local political subdivisions affected by the plan</i>	<ul style="list-style-type: none"> <li>• WAC 173-400-171 <i>Public involvement (9/20/93; 6/2/95; 60 FR 28726)</i></li> </ul> ➤ (under state delegated PSD program and FIP)	<i>Washington Clean Air Act Laws - proposed for the SIP</i> <ul style="list-style-type: none"> <li>• RCW 70.94.240 <i>Air pollution control advisory council</i></li> </ul> <i>Other Washington laws</i> ➤ RCW 34.05 <i>Administrative procedures act</i> ➤ RCW 42.30 <i>Open public meetings act</i>

## **Appendix B. Washington State Clean Air Act Laws**

## Appendix B: Washington Clean Air Laws

### [RCW 70.94.011](#)

#### **Declaration of public policies and purpose.**

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage

coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies.

[1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

Notes:

**Finding -- 1991 c 199:** "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthful. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

**Alternative fuel and solar powered vehicles -- 1991 c 199:** "The department of ecology shall contract with Western Washington University for the biennium ending June 30, 1993, for research and development of alternative fuel and solar powered vehicles. A report on the progress of such research shall be presented to the standing environmental committees and the department by January 1, 1994." [1991 c 199 § 230.]

[RCW 70.94.081](#)

Powers and duties of authorities.

An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes.

[1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.100>

## RCW 70.94.100

Air pollution control authority — Board of directors — Composition — Term.

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

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater

than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

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

(5) If an appointee is unable to complete his or her term as a board member, the vacancy for that office must be filled by the same method as the original appointment, except for the appointment by the city selection committee, which must use the method in RCW [70.94.120](#)(1) for replacements. The person appointed as a replacement will serve the remainder of the term for that office.

(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

[2009 c 254 § 1; 2006 c 227 § 1; 1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.141>

RCW 70.94.141

Air pollution control authority — Powers and duties of activated authority.

The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter [42.30](#) RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW [34.05.320](#), those provisions of RCW [34.05.325](#) that are not in conflict with chapter [42.30](#) RCW, and with the procedures of RCW [34.05.340](#), \*[34.05.355](#) through [34.05.380](#), and with chapter [34.08](#) RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter [34.05](#) RCW. An air pollution control authority shall not be deemed to be a state agency.

- (2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.
- (3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.
- (4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.
- (5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.
- (6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.
- (7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.
- (8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.
- (9) Collect and disseminate information and conduct educational and training programs relating to air pollution.
- (10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.
- (11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.
- (12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter.

[1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

Notes:

**\*Reviser's note:** RCW [34.05.355](#) was repealed by 1995 c 403 § 305.

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Savings -- Effective date -- Severability -- 1970 ex.s. c 62:** See notes following RCW [43.21A.010](#).  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.151>

RCW 70.94.151

Classification of air contaminant sources — Registration — Fee — Registration program defined — Adoption of rules requiring persons to report emissions of greenhouse gases.

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW [70.235.010](#) the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW [70.235.010](#) must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities

shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter [22.09](#) RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter [22.09](#) RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW [70.235.010](#) where those emissions from a single facility, source, or site, or from fossil fuels sold in Washington by a single supplier meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass;

(ii) Reporting will start in 2010 for 2009 emissions. Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by October 31st of the year in which the report is due. However, starting in 2011, a person who is required to report greenhouse gas emissions to the United States environmental protection agency under 40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the report required under this section to the department concurrent with the submission to the United States environmental protection agency. Except as otherwise provided in this section, the data for emissions in Washington and any corrections thereto that are reported to the United States environmental protection agency

must be the emissions data reported to the department; and

(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under \*RCW [82.36.031](#) or special fuel sales under \*\*RCW [82.38.150](#), or each distributor of aircraft fuel required to file periodic tax reports under \*\*\*RCW [82.42.040](#) must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

(ii) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW [70.235.010](#) only if the gas has been designated as a greenhouse gas by the United States congress or by the United States environmental protection agency. Prior to including additional gases to the definition of "greenhouse gas" in RCW [70.235.010](#), the department shall notify the appropriate committees of the legislature. Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.

(iii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ten thousand metric tons carbon dioxide equivalent annually.

(iv) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c) The department shall review and if necessary update its rules whenever the United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases. However, the department shall not amend its rules in a manner that conflicts with (a) of this subsection.

(d) The department shall share any reporting information reported to it with the local air authority in which the person reporting under the rules adopted by the department operates.

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved under this section are authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in state, regional, or national greenhouse gas reduction programs or strategies. Furthermore, aircraft fuel purchased in the state may not be considered equivalent to aircraft fuel combusted in the state.

(h)(i) The definitions in RCW [70.235.010](#) apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in \*RCW [82.36.010](#); (B) a special fuel supplier or a special fuel importer, as those terms are defined in \*\*\*\*RCW [82.38.020](#); and (C) a distributor of aircraft fuel, as those terms are defined in RCW [82.42.010](#).

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and (B) a supplier.

[2010 c 146 § 2; 2008 c 14 § 5; 2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

Notes:

**Reviser's note:** \*(1) Chapter [82.36](#) RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

\*\* (2) RCW [82.38.150](#) was amended by 2013 c 225 § 116, deleting the term "special fuel,"

effective July 1, 2015.

\*\*\*<sup>(3)</sup> RCW [82.42.040](#) was amended by 2013 c 225 § 304, removing the requirement of "periodic tax reports," effective July 1, 2015. See RCW [82.42.140](#).

\*\*\*\*<sup>(4)</sup> RCW [82.38.020](#) was amended by 2013 c 225 § 102, deleting the definitions of "special fuel supplier" and "special fuel importer," effective July 1, 2015.

**Findings -- Intent -- Scope of chapter 14, Laws of 2008 -- Severability -- 2008 c 14:** See RCW [70.235.005](#), [70.235.900](#), and [70.235.901](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.152>

RCW 70.94.152

Notice may be required of construction of proposed new contaminant source — Submission of plans — Approval, disapproval — Emission control — "De minimis new sources" defined.

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single-family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the

proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW [70.94.161](#) and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more

stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment.

[1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Notes:

**Reviser's note:** This section was amended by 1996 c 29 § 1 and by 1996 c 67 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW [1.12.025\(2\)](#). For rule of construction, see RCW [1.12.025\(1\)](#).

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

Use of emission credits to be consistent with new source review program: RCW [70.94.850](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.153>

RCW 70.94.153

Existing stationary source — Replacement or substantial alteration of emission control technology.

Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW [70.94.152](#), the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be

deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction.

[1991 c 199 § 303.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.161>

RCW 70.94.161

Operating permits for air contaminant sources — Generally — Fees, report to legislature.

The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter [80.50](#) RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended

and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW [70.94.030](#), the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter [43.21B](#) RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by

rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter [70.98](#) RCW and rules adopted thereunder; and

(e) Chapter [80.50](#) RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW [70.94.395](#) shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter [80.50](#) RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal-fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter [82.32](#) RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW [82.32.160](#) and [82.32.170](#). All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW [70.94.161](#) do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW [70.94.161](#) (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Emissions of greenhouse gases as defined in RCW [70.235.010](#) must be reported as required by RCW [70.94.151](#). The reporting provisions of RCW [70.94.151](#) shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program.

[2008 c 14 § 6; 1993 c 252 § 5; 1991 c 199 § 301.]

Notes:

**Findings -- Intent -- Scope of chapter 14, Laws of 2008 -- Severability -- 2008 c 14:** See RCW [70.235.005](#), [70.235.900](#), and [70.235.901](#).

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

Air operating permit account: RCW [70.94.015](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.162>

RCW 70.94.162

Annual fees from operating permit program source to cover cost of program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xi) Training for permit administration and enforcement;

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

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

- (xiv) Tracking of time, revenues and expenditures, and accounting activities;
  - (xv) Administering the permit program including the costs of clerical support, supervision, and management;
  - (xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and
  - (xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.
- (b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:
- (i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW [70.94.161\(2\)](#) and [70.94.860](#);
  - (ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;
  - (iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW [70.94.785](#), but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;
  - (iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;
  - (v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;
  - (vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
  - (vii) State codification of federal rules or standards for inclusion in operating permits;
  - (viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;
  - (ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

- (x) Required fiscal audits and periodic performance audits of the department, and reporting activities;
  - (xi) Tracking of time, revenues and expenditures, and accounting activities;
  - (xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;
  - (xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;
  - (xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;
  - (xv) The share attributable to permitted sources of modeling activities;
  - (xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;
  - (xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;
  - (xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and
  - (xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.
- (3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:
- (a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.
  - (b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW [70.94.161](#)(2) (b) and (c) and [70.94.860](#) shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

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

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

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

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

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

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

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

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

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

audits.

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

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

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

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

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

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

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

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

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

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

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

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

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

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

[1998 c 245 § 129; 1993 c 252 § 6.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.200>

RCW 70.94.200

Investigation of conditions by control officer or department — Entering private, public property.

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

[1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

Notes:

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.211>

RCW 70.94.211

Enforcement actions by air authority — Notice to violators.

At least thirty days prior to the commencement of any formal enforcement action under RCW [70.94.430](#) or [70.94.431](#) a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action.

[1991 c 199 § 309; 1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Savings -- Effective date -- Severability -- 1970 ex.s. c 62:** See notes following RCW [43.21A.010](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.240>

RCW 70.94.240

Air pollution control advisory council.

The board of any authority may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter.

[1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.331>

## RCW 70.94.331

## Powers and duties of department.

- (1) The department shall have all the powers as provided in RCW [70.94.141](#).
- (2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters [42.30](#) and [34.05](#) RCW shall:
  - (a) Adopt rules establishing air quality objectives and air quality standards;
  - (b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;
  - (c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.
- (3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.
- (4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air

pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter [34.05](#) RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies.

[1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Severability -- 1987 c 405:** See note following RCW [70.94.450](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

**Severability -- 1985 c 372:** See note following RCW [70.98.050](#).

Listed separately:

70.94.331(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.332>

RCW 70.94.332

Enforcement actions by department — Notice to violators.

At least thirty days prior to the commencement of any formal enforcement action under RCW [70.94.430](#) and [70.94.431](#), the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action.

[1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.370>

RCW 70.94.370

Powers and rights of governmental units and persons are not limited by act or recommendations.

No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

- (1) On the power of any city, town or county to declare, prohibit and abate nuisances.
- (2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter

prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution.

[1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.380>

RCW 70.94.380

Emission control requirements.

(1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter [42.30](#) RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new woodstoves and the opacity levels for residential solid fuel burning devices shall be statewide.

[1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Notes:

**Severability -- 1987 c 405:** See note following RCW [70.94.450](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.395>

## RCW 70.94.395

Air contaminant sources — Regulation by department; authorities may be more stringent — Hearing — Standards.

If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source.

[1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.405>

## RCW 70.94.405

Air pollution control authority — Review by department of program.

At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters [42.30](#) and [34.05](#) RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively

accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department.

[1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.425>

RCW 70.94.425

Restraining orders — Injunctions.

Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

[1987 c 109 § 48; 1967 c 238 § 60.]

Notes:

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.430>

RCW 70.94.430

Penalties.

(1) Any person who knowingly violates any of the provisions of chapter [70.94](#) or [70.120](#) RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW [70.94.100](#) is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars.

[2011 c 96 § 49; 2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

Notes:

**Findings -- Intent -- 2011 c 96:** See note following RCW [9A.20.021](#).

**Intent -- Effective date -- 2003 c 53:** See notes following RCW [2.48.180](#).

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.431>

RCW 70.94.431

Civil penalties — Excusable excess emissions.

(1) Except as provided in RCW [43.05.060](#) through [43.05.080](#) and [43.05.150](#), and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter [70.120](#) RCW, chapter [70.310](#) RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall

be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW [19.52.020](#) on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW [43.21B.300](#).

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW [70.94.015](#) or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW [60.36.050](#).

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

[2013 c 51 § 6; 1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Notes:

**Findings -- Short title -- Intent -- 1995 c 403:** See note following RCW [34.05.328](#).

**Part headings not law -- Severability -- 1995 c 403:** See RCW [43.05.903](#) and [43.05.904](#).

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.435>

RCW 70.94.435

Additional means for enforcement of chapter.

As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW [70.94.425](#).

[1967 c 238 § 62.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.510>

RCW 70.94.510

Policy to cooperate with federal government.

It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act.

[1987 c 109 § 49; 1969 ex.s. c 168 § 45.]

Notes:

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW [43.21B.001](#).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.710>

RCW 70.94.710

Air pollution episodes — Legislative finding — Declaration of policy.

The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety.

[1971 ex.s. c 194 § 1.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.715>

RCW 70.94.715

Air pollution episodes — Episode avoidance plan — Contents — Source emission reduction plans — Authority — Considered orders.

The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective statewide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter [34.05](#) RCW, shall include, but not be limited to, the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of preplanned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to

accumulation of air contaminants and is the first stage of an episode. The department shall not call a forecast episode prior to the department or an authority calling a first stage impaired air quality condition as provided by RCW [70.94.473](#)(1)(b) or calling a single-stage impaired air quality condition as provided by \*RCW [70.94.473](#)(2). "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his or her authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW [70.94.720](#).

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter [43.21B](#) RCW.

[2012 c 117 § 409; 1990 c 128 § 4; 1971 ex.s. c 194 § 2.]

Notes:

\***Reviser's note:** RCW [70.94.473](#) was amended by 1995 c 205 § 1, which deleted subsection (2).

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.720>

RCW 70.94.720

Air pollution episodes — Declaration of air pollution emergency by governor.

Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he or she may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures, and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations, and orders authorized by this section may be made and issued by his or her authorized representative.

[2012 c 117 § 410; 1971 ex.s. c 194 § 3.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.725>

RCW 70.94.725

Air pollution episodes — Restraining orders, temporary injunctions to enforce orders — Procedure.

Whenever any order has been issued pursuant to RCW [70.94.710](#) through [70.94.730](#), the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety.

[1971 ex.s. c 194 § 4.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.730>

RCW 70.94.730

Air pollution episodes — Orders to be effective immediately.

Orders issued to declare any stage of an air pollution episode avoidance plan under RCW [70.94.715](#), and to declare an air pollution emergency, under RCW [70.94.720](#), and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW [70.94.715](#) and [70.94.720](#) shall be effective immediately and shall not be stayed pending completion of review.

[1971 ex.s. c 194 § 5.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.850>

RCW 70.94.850

Emission credits banking program — Amount of credit.

The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded, sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW [70.94.860](#), the bubble program under RCW [70.94.155](#), and the new source review program under RCW [70.94.152](#), if there will be no net adverse impact on air quality.

[1984 c 164 § 1.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94.860>

RCW 70.94.860

Department of ecology may accept delegation of programs.

The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction in a given area.

[1991 c 199 § 312; 1984 c 164 § 2.]

Notes:

**Finding -- 1991 c 199:** See note following RCW [70.94.011](#).