
HOUSE BILL 1434

State of Washington

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2013 Regular Session

By Representatives Pollet, Upthegrove, McCoy, Fitzgibbon, Ryu, Moscoso, Reykdal, Orwall, Fey, Hudgins, Llias, and Kagi

Read first time 01/28/13. Referred to Committee on Environment.

1 AN ACT Relating to the inclusion of community involvement in
2 environmental decision making; amending RCW 70.94.161; reenacting and
3 amending RCW 70.105D.070; adding new sections to chapter 90.48 RCW;
4 adding new sections to chapter 70.105 RCW; adding a new section to
5 chapter 70.105D RCW; adding a new section to chapter 70.94 RCW; adding
6 new sections to chapter 43.21A RCW; adding a new section to chapter
7 43.23 RCW; adding a new section to chapter 43.30 RCW; adding a new
8 section to chapter 43.31 RCW; adding a new section to chapter 43.300
9 RCW; adding a new section to chapter 47.01 RCW; adding a new chapter to
10 Title 70 RCW; and providing an effective date.

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

12 NEW SECTION. **Sec. 1.** (1) The legislature finds that every
13 individual in the state has a fundamental right to a healthful
14 environment, and a right to the pursuit of commonplace activities such
15 as breathing, drinking, eating, working, and recreating without risking
16 their health as a result of environmental degradation. There are
17 vulnerable communities throughout the state that bear a
18 disproportionate burden of pollution problems. Residents of these
19 communities face higher rates of cancer and other life-threatening

1 public health problems. All residents of the state, regardless of
2 race, color, culture, national origin, or income level, have a right to
3 participate meaningfully and receive fair treatment during the
4 implementation and enforcement of environmental laws, rules, and
5 policies. The improvement of environmental law and policy decision-
6 making processes helps state agencies meet their responsibility to
7 adhere to Title VI of the federal civil rights act of 1964. These
8 important objectives and responsibilities are satisfied by the passage
9 of this act.

10 (2) Pursuant to the policy declared in this section, and consistent
11 with federal executive order 12898, state agencies shall, to the extent
12 practical, make achieving environmental justice part of their mission
13 by identifying and addressing, as appropriate, the disproportionately
14 high and adverse human health or environmental effects of their
15 programs, policies, and activities on minority populations and low-
16 income populations in Washington state.

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

19 (1) "Authority" has the same meaning as defined in RCW 70.94.030.

20 (2) "Community dialogue process" means the process described in
21 sections 5 and 6 of this act.

22 (3) "Community organization" means a group composed of residents of
23 a highly impacted community recognized by the city, county, or the
24 department as a group that has:

25 (a) Collectively indicated a concern regarding the environmental or
26 public health of the highly impacted community;

27 (b) A history of work with, or a plan to involve, targeted
28 populations within the community; and

29 (c) Designated at least one person to serve as a point of contact
30 for the group.

31 (4) "Department" means the department of ecology.

32 (5) "Environmental permit" means a permit issued by the department
33 under chapter 90.48, 70.105, 70.105D RCW or sources permitted under RCW
34 70.94.161 as well as major and synthetic minor sources permitted under
35 RCW 70.94.151. "Environmental permit" includes industrial storm water
36 permits, sand and gravel permits, and permits issued to concentrated
37 animal feeding operations, but does not include individual coverage

1 under other general permits issued pursuant to the federal clean water
2 act, 33 U.S.C. Sec. 1251 et seq. or general permits issued pursuant to
3 the federal court of appeals decision in *Headwaters, Inc. v. Talent*
4 *Irrigation District*, 243 F.3rd 526 (9th Cir. 2001).

5 (6) "Good neighbor agreement" means an agreement or contract
6 between a community organization and person in a highly impacted
7 community seeking an environmental permit or the approval of a clean-up
8 plan or remedial action.

9 (7) "Highly impacted community" means a community that the
10 department has determined is likely to bear a disproportionate burden
11 of public health risks from environmental pollution.

12 (8) "Person" has the same meaning as defined in RCW 90.48.020.

13 (9) "Potentially liable person" has the same meaning as defined in
14 RCW 70.105D.020.

15 (10) "Supplemental environmental project" means an environmentally
16 beneficial project that a person agrees to undertake in settlement of
17 an enforcement action, but which the person is not otherwise obligated
18 to perform.

19 NEW SECTION. **Sec. 3.** (1) The department must identify and
20 maintain a list of highly impacted communities in this state.

21 (2)(a) In identifying highly impacted communities, the department
22 shall include, at minimum, United States census tracts that meet the
23 following criteria: (i) A census tract that has an unemployment rate
24 that is twenty percent above the state average for the immediately
25 previous three years; and (ii) a census tract that has a median
26 household income that is less than seventy-five percent of the state
27 median household income for the previous three years.

28 (b) In determining whether a community is a highly impacted
29 community under this section, the department may also, to the maximum
30 extent practicable, use existing tools such as the federal
31 environmental protection agency's EJVIEW mapping tool. In addition,
32 the department may develop additional processes for the purpose of
33 identifying highly impacted communities. The department may consider,
34 at a minimum, the following factors in its determination of whether a
35 community is a highly impacted community:

36 (i) The community's public health impacts, such as asthma or risk
37 of cancer deaths;

1 (ii) The community's cultural practices; and
2 (iii) The percentage of community residents who are minorities,
3 foreign born, or who lack proficiency in the English language.
4 (3) In determining whether a community is a highly impacted
5 community under this section, the department may rely on existing
6 scientific or public health data, including public health data compiled
7 by the department of health.

8 NEW SECTION. **Sec. 4.** (1) If requested by a community
9 organization, the department or authority shall, to the extent
10 feasible, provide notification no later than fifteen days after the
11 department initiates the review of an environmental permit application
12 for completeness or is otherwise first formally notified of a person's
13 intent to renew or apply for a permit issued or reissued under RCW
14 70.94.161, 70.105.130, or 90.48.160 for a facility or multiple
15 facilities located within a highly impacted community or multiple
16 highly impacted communities. This subsection is not intended to create
17 a duplication of existing notification requirements previously
18 developed by rule by the department. If the existing notification
19 requirements developed by rule establish substantially similar, or
20 earlier or more frequent requirements for notification than the
21 standards specified in this section, the department may utilize those
22 existing notification procedures.

23 (2) If requested by a community organization, the department shall,
24 to the extent feasible, provide notification no later than fifteen days
25 prior to the anticipated completion of a draft remedial investigation
26 and feasibility study required by the department under RCW 70.105D.030
27 regarding a property located within a highly impacted community.

28 (3) The department shall maintain a list of community organizations
29 and persons who have requested to receive notification of environmental
30 permitting activities in highly impacted communities and shall use the
31 list to provide notification in accordance with subsections (1) and (2)
32 of this section.

33 NEW SECTION. **Sec. 5.** (1)(a)(i) No later than thirty days after
34 the department or authority's completion of a review of an
35 environmental permit application for completeness under RCW 70.94.161,
36 70.105.130, or 90.48.160, the department or authority shall determine

1 whether the permit, if approved, would be issued to a facility
2 operating within a highly impacted community. Upon a determination
3 that a permit application is complete, the department shall provide
4 notice to a highly impacted community that has requested notification
5 under section 4 of this act. The notice shall include: (A) The
6 determination of the permit application's completeness; (B) an
7 explanation of the community dialogue process; and (C) the process by
8 which the department will decide if it plans to require a community
9 dialogue process. If the department or authority determines that the
10 facility is located within a highly impacted community, the department
11 may require the permit applicant to enter into a community dialogue
12 process as outlined in section 6 of this act.

13 (ii) In deciding whether to require a community dialogue process,
14 the department shall, at a minimum, consider the following factors:
15 (A) Whether the normal public comment process will adequately
16 incorporate the concerns of the highly impacted community; (B) the
17 likelihood that a community dialogue process will lead to a productive
18 dialog among the parties; and (C) the likelihood that a community
19 dialogue process will reduce conflict among the parties.

20 (b) The department may not require a facility with multiple
21 environmental permits to participate in more than one community
22 dialogue process within a five-year period. The community dialogue
23 process for a facility holding multiple permits may simultaneously
24 address the multiple permits held by the facility. If the department
25 anticipates that it will require a facility holding multiple
26 environmental permits to enter into a community dialogue process, the
27 department should attempt to initiate the community dialogue process
28 during the permitting process of a permit with a substantial public
29 health impact on the highly impacted community.

30 (2) No later than ninety days prior to the anticipated issuance of
31 a draft clean-up plan under RCW 70.105D.030, the department may
32 determine whether the proposed clean-up action is located within a
33 highly impacted community. If the department determines that the site
34 is located within a highly impacted community, the department may
35 require a potentially liable person to enter into a community dialogue
36 process as outlined in section 6 of this act. In deciding whether to
37 require a community dialogue process, the department shall, at a
38 minimum, consider the following factors: (a) Whether the normal public

comment process will adequately incorporate the concerns of the highly impacted community; (b) the likelihood that a community dialogue process will lead to a productive dialog among the parties; and (c) the likelihood that a community dialogue process will reduce conflict among the parties.

(3) If multiple community organizations within the same highly impacted community or adjacent highly impacted communities have requested notification pursuant to section 4 of this act with respect to a facility or site, the department may authorize the permit applicant or potentially liable person to enter into a community dialogue process with multiple community organizations as outlined in section 6 of this act.

NEW SECTION. **Sec. 6.** (1) A community dialogue process required by the department or authority under section 5 of this act must, at a minimum, include at least one community dialogue meeting conducted or facilitated by a neutral professional mediator, chosen by mutual consent of the community organization or organizations and the environmental permit applicant, project proponent, or potentially liable person, and hired by the department using moneys from the state and local toxics control accounts in RCW 70.105D.070(5)(b).

(2)(a) At the end of the community dialogue process, the mediator must prepare a report for the department that identifies both unresolved issues and areas of agreement between the community organization or organizations and the environmental permit applicant, project proponent, or potentially liable person.

(b) If the parties involved so choose, the permit applicant, project proponent, or potentially liable person may enter into a good neighbor agreement with the community organization or organizations.

(c) A good neighbor agreement is a private contract between the parties and the department or local government authorities may not be party to a good neighbor agreement. The department or local government authority does not have authority to enforce the terms of a good neighbor agreement nor may the department incorporate the good neighbor agreement as a part of a permit or order.

(d) The requirements of this section and section 5 of this act may not delay or extend the department's issuance of a permit or adoption of a clean-up plan.

1 NEW SECTION. **Sec. 7.** In deciding whether to approve a permit
2 application affected by this chapter or in selecting a final clean-up
3 plan under RCW 70.105D.030, the department or authority may consider
4 the contents of the final report described in section 6(2)(a) of this
5 act or the contents of any final good neighbor agreement described in
6 section 6(2)(b) of this act, or both. In considering the contents of
7 a good neighbor agreement or mediation report under this section, the
8 department shall treat these documents as a formal public comment on
9 the permit under chapter 34.05 RCW, and may incorporate provisions of
10 the document as appropriate.

11 NEW SECTION. **Sec. 8.** (1) This section applies to the settlement,
12 registered with a judicial or quasi-judicial body, of an enforcement
13 action based upon a violation of a permit issued under chapter 70.94,
14 70.105, or 90.48 RCW or a violation of an order under RCW 70.105D.050.
15 In conjunction with the settlement of an enforcement action, the
16 department may require a person whose activity negatively affects
17 public health in a highly impacted community to contribute in-kind
18 services or otherwise fund a supplemental environmental project under
19 the following circumstances:

20 (a) A supplemental environmental project may include projects to
21 protect human health, prevent pollution, reduce pollution, protect or
22 restore natural or man-made environments, assessments or audits of
23 environmental quality or pollution prevention, efforts to promote
24 environmental compliance, or emergency preparedness efforts.

25 (b) A supplemental environmental project authorized by the
26 department must:

27 (i) (A) Take place within the same highly impacted community in
28 which the violation occurred; or

29 (B) Primarily benefit the highly impacted community in which the
30 violation occurred, and

31 (ii) (A) Be designed to reduce the likelihood that similar
32 violations will occur in the future;

33 (B) Reduce the adverse impact to public health or the environment
34 to which the violation at issue contributes within the highly impacted
35 community; or

36 (C) Reduce the overall risk to public health or the environment
37 potentially affected by the violation at issue;

1 (iii) Be of a scope and type defined in the signed settlement
2 agreement between the department and the person in violation of an
3 environmental permit or department order; and

4 (iv) Include deadlines and quantifiable performance metrics for the
5 achievement of intermediate deliverables or objectives towards the
6 completion of the supplemental environmental project.

7 (2)(a) If the department requires a person to perform or fund a
8 supplemental environmental project in conjunction with the settlement
9 of an enforcement action related to the violation of an environmental
10 permit or department order, the department or authority shall also
11 recover a monetary penalty in accordance with RCW 70.94.430, 70.94.431,
12 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW.

13 (b) In determining the monetary amount to be recovered in the
14 settlement, in addition to the current factors considered in
15 determining the amounts of a penalty under RCW 70.94.430, 70.94.431,
16 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW, the
17 department or authority shall consider:

18 (i) The cost to the person of the supplemental environmental
19 project; and

20 (ii) The environmental or public health benefits anticipated to
21 accrue from the supplemental environmental project.

22 (3) To the maximum extent practicable, the department shall seek
23 the input of the highly impacted community in the development of a
24 proposed supplemental environmental project. After the department has
25 decided to consider the inclusion of a supplemental environmental
26 project in conjunction with the settlement of an enforcement action,
27 the department shall, to the maximum extent practicable, seek to
28 provide information to the highly impacted community regarding:

29 (a) The proposed supplemental environmental project; and

30 (b) The process the department plans to follow in making a final
31 determination regarding the details of the supplemental environmental
32 project.

33 **Sec. 9.** RCW 70.94.161 and 2008 c 14 s 6 are each amended to read
34 as follows:

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

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

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

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

33 (c) Except for the authority granted the energy facility site
34 evaluation council to issue permits for the new construction,
35 reconstruction, or enlargement or operation of new energy facilities
36 under chapter 80.50 RCW, the department may exercise the authority, as
37 delegated by the environmental protection agency, to administer Title

1 IV of the federal clean air act as amended and to delegate such
2 administration to local authorities as applicable pursuant to (b) of
3 this subsection.

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

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

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

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

32 (7) (a) All draft permits shall be subject to public notice and
33 comment. The rules adopted pursuant to subsection (2) of this section
34 shall specify procedures for public notice and comment. Such
35 procedures shall provide the permitting agency with an opportunity to
36 respond to comments received from interested parties prior to the time
37 that the proposed permit is submitted to the environmental protection
38 agency for review pursuant to section 505(a) of the federal clean air

1 act. In the event that the environmental protection agency objects to
2 a proposed permit pursuant to section 505(b) of the federal clean air
3 act, the permitting authority shall not issue the permit, unless the
4 permittee consents to the changes required by the environmental
5 protection agency.

6 (b) If the department or board of an authority determines that a
7 permit application pertains to a facility located in a highly impacted
8 community as defined in section 2 of this act, the department or
9 authority may require the permit applicant to initiate the procedures
10 described in sections 5 and 6 of this act.

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

19 (9) After the effective date of any permit program promulgated
20 under this section, it shall be unlawful for any person to: (a)
21 Operate a permitted source in violation of any requirement of a permit
22 issued under this section; or (b) fail to submit a permit application
23 at the time required by rules adopted under subsection (2) of this
24 section.

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

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

31 (b) This chapter and rules adopted thereunder;

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

34 (d) Chapter 70.98 RCW and rules adopted thereunder; and

35 (e) Chapter 80.50 RCW and rules adopted thereunder.

36 (11) Consistent with the provisions of the federal clean air act,
37 the permitting authority may issue general permits covering categories

1 of permitted sources, and temporary permits authorizing emissions from
2 similar operations at multiple temporary locations.

3 (12) Permit program sources within the territorial jurisdiction of
4 an authority delegated the operating permit program shall file their
5 permit applications with that authority, except that permit
6 applications for sources regulated on a statewide basis pursuant to RCW
7 70.94.395 shall be filed with the department. Permit program sources
8 outside the territorial jurisdiction of a delegated authority shall
9 file their applications with the department. Permit program sources
10 subject to chapter 80.50 RCW shall, irrespective of their location,
11 file their applications with the energy facility site evaluation
12 council.

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

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

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

28 (i) The number of sources;

29 (ii) The complexity of sources; and

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

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

35 (d) Each local authority may, in addition, allocate its fiscal year
36 1994 operating permit program development costs among the sources under
37 its jurisdiction emitting one hundred tons or more per year of a
38 regulated pollutant during calendar year 1992 and may collect an

1 interim fee from these sources. A fee assessed pursuant to this
2 subsection (14)(d) shall be collected at the same time as the fee
3 assessed pursuant to (c) of this subsection.

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

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

25 (b) All fees identified in this section shall be due and payable on
26 March 1, 1994, except that the local air pollution control authorities
27 may adopt by rule an earlier date on which fees are to be due and
28 payable. The section 5, chapter 252, Laws of 1993 amendments to RCW
29 70.94.161 do not have the effect of terminating, or in any way
30 modifying, any liability, civil or criminal, incurred pursuant to the
31 provisions of RCW 70.94.161 (15) and (17) as they existed prior to July
32 25, 1993.

33 (16) For sources or source categories not required to obtain
34 permits under subsection (4) of this section, the department or local
35 authority may establish by rule control technology requirements. If
36 control technology rule revisions are made by the department or local
37 authority under this subsection, the department or local authority
38 shall consider the remaining useful life of control equipment

1 previously installed on existing sources before requiring technology
2 changes. The department or any local air authority may issue a general
3 permit, as authorized under the federal clean air act, for such
4 sources.

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

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.48 RCW
12 to read as follows:

13 Prior to issuing an individual wastewater permit under RCW
14 90.48.160, if the department determines that the permit application
15 pertains to a facility in a highly impacted community as defined in
16 section 2 of this act, the department may require the permit applicant
17 to initiate the procedures described in sections 5 and 6 of this act.

18 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.105
19 RCW to read as follows:

20 Prior to issuing a permit for the treatment, storage, or disposal
21 of dangerous wastes pursuant to RCW 70.105.130, if the department
22 determines that the permit application pertains to a facility in a
23 highly impacted community as defined in section 2 of this act, the
24 department may require the permit applicant to initiate the procedures
25 described in sections 5 and 6 of this act.

26 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.105D
27 RCW to read as follows:

28 Prior to the anticipated issuance of a draft clean-up plan
29 authorized pursuant to this chapter and located in a highly impacted
30 community as defined in section 2 of this act, the department may
31 require a potentially liable person to initiate the procedures
32 described in sections 5 and 6 of this act.

33 **Sec. 13.** RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd
34 sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

1 (1) The state toxics control account and the local toxics control
2 account are hereby created in the state treasury.

3 (2) The following moneys shall be deposited into the state toxics
4 control account: (a) Those revenues which are raised by the tax
5 imposed under RCW 82.21.030 and which are attributable to that portion
6 of the rate equal to thirty-three one-hundredths of one percent; (b)
7 the costs of remedial actions recovered under this chapter or chapter
8 70.105A RCW; (c) penalties collected or recovered under this chapter;
9 and (d) any other money appropriated or transferred to the account by
10 the legislature. Moneys in the account may be used only to carry out
11 the purposes of this chapter, including but not limited to the
12 following activities:

13 (i) The state's responsibility for hazardous waste planning,
14 management, regulation, enforcement, technical assistance, and public
15 education required under chapter 70.105 RCW;

16 (ii) The state's responsibility for solid waste planning,
17 management, regulation, enforcement, technical assistance, and public
18 education required under chapter 70.95 RCW;

19 (iii) The hazardous waste cleanup program required under this
20 chapter;

21 (iv) State matching funds required under the federal cleanup law;

22 (v) Financial assistance for local programs in accordance with
23 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

24 (vi) State government programs for the safe reduction, recycling,
25 or disposal of hazardous wastes from households, small businesses, and
26 agriculture;

27 (vii) Hazardous materials emergency response training;

28 (viii) Water and environmental health protection and monitoring
29 programs;

30 (ix) Programs authorized under chapter 70.146 RCW;

31 (x) A public participation program, including regional citizen
32 advisory committees;

33 (xi) Public funding to assist potentially liable persons to pay for
34 the costs of remedial action in compliance with cleanup standards under
35 RCW 70.105D.030(2)(e) but only when the amount and terms of such
36 funding are established under a settlement agreement under RCW
37 70.105D.040(4) and when the director has found that the funding will

1 achieve both (A) a substantially more expeditious or enhanced cleanup
2 than would otherwise occur, and (B) the prevention or mitigation of
3 unfair economic hardship;

4 (xii) Development and demonstration of alternative management
5 technologies designed to carry out the hazardous waste management
6 priorities of RCW 70.105.150;

7 (xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline
8 update technical assistance;

9 (xiv) During the 2009-2011 fiscal biennium, multijurisdictional
10 permitting teams;

11 (xv) During the 2011-2013 fiscal biennium, actions for reducing
12 public exposure to toxic air pollution, and actions taken through the
13 family forest fish passage program to correct barriers to fish passage
14 on privately owned small forest lands; and

15 (xvi) During the 2011-2013 fiscal biennium, the department of
16 ecology's water quality, shorelands and environmental assessment,
17 hazardous waste, waste to resources, nuclear waste, and air quality
18 programs.

19 (3) The following moneys shall be deposited into the local toxics
20 control account: Those revenues which are raised by the tax imposed
21 under RCW 82.21.030 and which are attributable to that portion of the
22 rate equal to thirty-seven one-hundredths of one percent.

23 (a) Moneys deposited in the local toxics control account shall be
24 used by the department for grants or loans to local governments for the
25 following purposes in descending order of priority:

26 (i) Remedial actions;

27 (ii) Hazardous waste plans and programs under chapter 70.105 RCW;

28 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,
29 70.95I, and 70.105 RCW;

30 (iv) Funds for a program to assist in the assessment and cleanup of
31 sites of methamphetamine production, but not to be used for the initial
32 containment of such sites, consistent with the responsibilities and
33 intent of RCW 69.50.511; and

34 (v) Cleanup and disposal of hazardous substances from abandoned or
35 derelict vessels, defined for the purposes of this section as vessels
36 that have little or no value and either have no identified owner or
37 have an identified owner lacking financial resources to clean up and

1 dispose of the vessel, that pose a threat to human health or the
2 environment.

3 (b) Funds for plans and programs shall be allocated consistent with
4 the priorities and matching requirements established in chapters
5 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that
6 is a Puget Sound partner, as defined in RCW 90.71.010, along with any
7 project that is referenced in the action agenda developed by the Puget
8 Sound partnership under RCW 90.71.310, shall, except as conditioned by
9 RCW 70.105D.120, receive priority for any available funding for any
10 grant or funding programs or sources that use a competitive bidding
11 process. During the 2007-2009 fiscal biennium, moneys in the account
12 may also be used for grants to local governments to retrofit public
13 sector diesel equipment and for storm water planning and implementation
14 activities.

15 (c) To expedite cleanups throughout the state, the department shall
16 partner with local communities and liable parties for cleanups. The
17 department is authorized to use the following additional strategies in
18 order to ensure a healthful environment for future generations:

19 (i) The director may alter grant-matching requirements to create
20 incentives for local governments to expedite cleanups when one of the
21 following conditions exists:

22 (A) Funding would prevent or mitigate unfair economic hardship
23 imposed by the clean-up liability;

24 (B) Funding would create new substantial economic development,
25 public recreational, or habitat restoration opportunities that would
26 not otherwise occur; or

27 (C) Funding would create an opportunity for acquisition and
28 redevelopment of vacant, orphaned, or abandoned property under RCW
29 70.105D.040(5) that would not otherwise occur;

30 (ii) The use of outside contracts to conduct necessary studies;

31 (iii) The purchase of remedial action cost-cap insurance, when
32 necessary to expedite multiparty clean-up efforts.

33 (d) To facilitate and expedite cleanups using funds from the local
34 toxics control account, during the 2009-2011 fiscal biennium the
35 director may establish grant-funded accounts to hold and disperse local
36 toxics control account funds and funds from local governments to be
37 used for remedial actions.

1 (4) Except for unanticipated receipts under RCW 43.79.260 through
2 43.79.282, moneys in the state and local toxics control accounts may be
3 spent only after appropriation by statute.

4 (5) (~~Except during the 2011-2013 fiscal biennium,~~) (a) One
5 percent of the moneys deposited into the state and local toxics control
6 accounts shall be allocated only for public participation grants to
7 persons who may be adversely affected by a release or threatened
8 release of a hazardous substance and to not-for-profit public interest
9 organizations. The primary purpose of these grants is to facilitate
10 the participation by persons and organizations in the investigation and
11 remedying of releases or threatened releases of hazardous substances
12 and to implement the state's solid and hazardous waste management
13 priorities.

14 (b) In addition to the one percent of moneys allocated for public
15 participation grants in (a) of this subsection, one-half of one percent
16 of the moneys deposited into the state and local toxics control
17 accounts must be allocated to facilitate the participation of community
18 organizations in the processes described in sections 5 and 6 of this
19 act relating to the issuance of environmental permits and the adoption
20 of clean-up plans in highly impacted communities.

21 (c) No grant authorized under this section may exceed sixty
22 thousand dollars. Grants may be renewed annually. Moneys appropriated
23 for public participation from either account which are not expended at
24 the close of any biennium shall revert to the state toxics control
25 account.

26 (6) No moneys deposited into either the state or local toxics
27 control account may be used for solid waste incinerator feasibility
28 studies, construction, maintenance, or operation, or, after January 1,
29 2010, for projects designed to address the restoration of Puget Sound,
30 funded in a competitive grant process, that are in conflict with the
31 action agenda developed by the Puget Sound partnership under RCW
32 90.71.310.

33 (7) The department shall adopt rules for grant or loan issuance and
34 performance.

35 (8) During the 2011-2013 fiscal biennium, the legislature may
36 transfer from the local toxics control account to the state toxics
37 control account such amounts as reflect excess fund balance in the
38 account.

(9) During the 2011-2013 fiscal biennium, the local toxics control account may also be used for local government shoreline update grants and actions for reducing public exposure to toxic air pollution; funding to local governments for flood levee improvements; and grants to local governments for brownfield redevelopment.

NEW SECTION. **Sec. 14.** A new section is added to chapter 70.94 RCW to read as follows:

In determining the amount of a penalty assessed under this chapter, the department or authority must consider the cost of a supplemental environmental project performed by the person under section 8(2) of this act.

NEW SECTION. **Sec. 15.** A new section is added to chapter 70.105 RCW to read as follows:

In determining the amount of a penalty assessed under this chapter, the department must consider the cost of a supplemental environmental project performed by the person under section 8(2) of this act.

NEW SECTION. **Sec. 16.** A new section is added to chapter 90.48 RCW to read as follows:

In determining the amount of a penalty assessed under this chapter, the department must consider the cost of a supplemental environmental project performed by the person under section 8(2) of this act.

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

Upon request, the department may, whenever practicable and appropriate, provide interpreters for hearings or meetings, and interpret or translate crucial public documents, summaries of crucial public documents, and notices relevant to environmental permitting processes.

NEW SECTION. **Sec. 18.** A new section is added to chapter 43.21A RCW to read as follows:

Pursuant to the policy declared in section 1 of this act, and consistent with federal executive order 12898, the department shall, to the extent practical, make achieving environmental justice part of its

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in Washington state.

NEW SECTION. **Sec. 19.** A new section is added to chapter 43.23 RCW to read as follows:

Pursuant to the policy declared in section 1 of this act, and consistent with federal executive order 12898, the department shall, to the extent practical, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in Washington state.

NEW SECTION. **Sec. 20.** A new section is added to chapter 43.30 RCW to read as follows:

Pursuant to the policy declared in section 1 of this act, and consistent with federal executive order 12898, the department shall, to the extent practical, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in Washington state.

NEW SECTION. **Sec. 21.** A new section is added to chapter 43.31 RCW to read as follows:

Pursuant to the policy declared in section 1 of this act, and consistent with federal executive order 12898, the department of commerce shall, to the extent practical, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in Washington state.

NEW SECTION. **Sec. 22.** A new section is added to chapter 43.300 RCW to read as follows:

Pursuant to the policy declared in section 1 of this act, and

1 consistent with federal executive order 12898, the department shall, to
2 the extent practical, make achieving environmental justice part of its
3 mission by identifying and addressing, as appropriate,
4 disproportionately high and adverse human health or environmental
5 effects of its programs, policies, and activities on minority
6 populations and low-income populations in Washington state.

7 NEW SECTION. **Sec. 23.** A new section is added to chapter 47.01 RCW
8 to read as follows:

9 Pursuant to the policy declared in section 1 of this act, and
10 consistent with federal executive order 12898, the department shall, to
11 the extent practical, make achieving environmental justice part of its
12 mission by identifying and addressing, as appropriate,
13 disproportionately high and adverse human health or environmental
14 effects of its programs, policies, and activities on minority
15 populations and low-income populations in Washington state.

16 NEW SECTION. **Sec. 24.** The department may adopt rules as necessary
17 to implement this act.

18 NEW SECTION. **Sec. 25.** Sections 1 through 8 and 24 of this act
19 constitute a new chapter in Title 70 RCW.

20 NEW SECTION. **Sec. 26.** This act takes effect January 1, 2014.

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