
HOUSE BILL 1057

State of Washington

67th Legislature

2021 Regular Session

By Representatives Pollet and Valdez

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1 AN ACT Relating to clarifying the meaning of the term "enjoyment
2 of life and property" within the clean air act; amending RCW
3 70A.15.1030; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** Stationary air sources that emit noxious
6 odors or other air contaminants have repeatedly been found to impair
7 the ability of the public to utilize publicly owned recreational
8 facilities, parks, and common spaces. The legislature finds that
9 unimpaired use of publicly owned open spaces is important for public
10 health. Enforcement of the clean air act's prohibition on air
11 pollution in the context of the public's enjoyment of publicly owned
12 spaces has been difficult due to uncertainty concerning the scope of
13 the term "enjoyment of life and property" as used in the clean air
14 act's definition of "pollution." Therefore, it is the intent of the
15 legislature to clarify that unreasonable interference with enjoyment
16 of life and property, as those terms are used in the clean air act,
17 includes unreasonable interference with the public's enjoyment and
18 use of public properties including, but not limited to, bicycle or
19 pedestrian trails, parks, and town commons.

1 **Sec. 2.** RCW 70A.15.1030 and 2020 c 20 s 1081 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

8 (2)(a) "Air pollution" is presence in the outdoor atmosphere of
9 one or more air contaminants in sufficient quantities and of such
10 characteristics and duration as is, or is likely to be, injurious to
11 human health, plant or animal life, or property, or which
12 unreasonably interfere with enjoyment of life and property.

13 (b) For the purpose of this chapter, air pollution shall not
14 include air contaminants emitted in compliance with chapter 17.21
15 RCW.

16 (c) For the purpose of this chapter, "enjoyment of life and
17 property" may include a person's use or enjoyment of a public park,
18 public recreational facility or trail, or publicly owned commons of
19 any municipal government or state agency.

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

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

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

27 (6) "Best available control technology" (BACT) means an emission
28 limitation based on the maximum degree of reduction for each air
29 pollutant subject to regulation under this chapter emitted from or
30 that results from any new or modified stationary source, that the
31 permitting authority, on a case-by-case basis, taking into account
32 energy, environmental, and economic impacts and other costs,
33 determines is achievable for such a source or modification through
34 application of production processes and available methods, systems,
35 and techniques, including fuel cleaning, clean fuels, or treatment or
36 innovative fuel combustion techniques for control of each such a
37 pollutant. In no event shall application of "best available control
38 technology" result in emissions of any pollutants that will exceed
39 the emissions allowed by any applicable standard under 40 C.F.R. Part
40 60 and Part 61, as they exist on July 25, 1993, or their later

1 enactments as adopted by reference by the director by rule. Emissions
2 from any source utilizing clean fuels, or any other means, to comply
3 with this subsection shall not be allowed to increase above levels
4 that would have been required under the definition of BACT as it
5 existed prior to enactment of the federal clean air act amendments of
6 1990.

7 (7) "Best available retrofit technology" (BART) means an emission
8 limitation based on the degree of reduction achievable through the
9 application of the best system of continuous emission reduction for
10 each pollutant that is emitted by an existing stationary facility.
11 The emission limitation must be established, on a case-by-case basis,
12 taking into consideration the technology available, the costs of
13 compliance, the energy and nonair quality environmental impacts of
14 compliance, any pollution control equipment in use or in existence at
15 the source, the remaining useful life of the source, and the degree
16 of improvement in visibility that might reasonably be anticipated to
17 result from the use of the technology.

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

19 (9) "Control officer" means the air pollution control officer of
20 any authority.

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

22 (11) "Emission" means a release of air contaminants into the
23 ambient air.

24 (12) "Emission standard" and "emission limitation" mean a
25 requirement established under the federal clean air act or this
26 chapter that limits the quantity, rate, or concentration of emissions
27 of air contaminants on a continuous basis, including any requirement
28 relating to the operation or maintenance of a source to assure
29 continuous emission reduction, and any design, equipment, work
30 practice, or operational standard adopted under the federal clean air
31 act or this chapter.

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

34 (14) (a) "Lowest achievable emission rate" (LAER) means for any
35 source that rate of emissions that reflects:

36 ~~((a))~~ (i) The most stringent emission limitation that is
37 contained in the implementation plan of any state for such class or
38 category of source, unless the owner or operator of the proposed
39 source demonstrates that such limitations are not achievable; or

1 (~~(b)~~) (ii) The most stringent emission limitation that is
2 achieved in practice by such class or category of source, whichever
3 is more stringent.

4 **(b)** In no event shall the application of this term permit a
5 proposed new or modified source to emit any pollutant in excess of
6 the amount allowable under applicable new source performance
7 standards.

8 (15) "Modification" means any physical change in, or change in
9 the method of operation of, a stationary source that increases the
10 amount of any air contaminant emitted by such source or that results
11 in the emission of any air contaminant not previously emitted. The
12 term modification shall be construed consistent with the definition
13 of modification in Section 7411, Title 42, United States Code, and
14 with rules implementing that section.

15 (16) "Multicounty authority" means an authority which consists of
16 two or more counties.

17 (17) "New source" means (a) the construction or modification of a
18 stationary source that increases the amount of any air contaminant
19 emitted by such source or that results in the emission of any air
20 contaminant not previously emitted, and (b) any other project that
21 constitutes a new source under the federal clean air act.

22 (18) "Permit program source" means a source required to apply for
23 or to maintain an operating permit under RCW 70A.15.2260.

24 (19) "Person" means an individual, firm, public or private
25 corporation, association, partnership, political subdivision of the
26 state, municipality, or governmental agency.

27 (20) "Reasonably available control technology" (RACT) means the
28 lowest emission limit that a particular source or source category is
29 capable of meeting by the application of control technology that is
30 reasonably available considering technological and economic
31 feasibility. RACT is determined on a case-by-case basis for an
32 individual source or source category taking into account the impact
33 of the source upon air quality, the availability of additional
34 controls, the emission reduction to be achieved by additional
35 controls, the impact of additional controls on air quality, and the
36 capital and operating costs of the additional controls. RACT
37 requirements for a source or source category shall be adopted only
38 after notice and opportunity for comment are afforded.

39 (21) "Silvicultural burning" means burning of wood fiber on
40 forestland consistent with the provisions of RCW 70A.15.5120.

1 (22) "Source" means all of the emissions units including
2 quantifiable fugitive emissions, that are located on one or more
3 contiguous or adjacent properties, and are under the control of the
4 same person, or persons under common control, whose activities are
5 ancillary to the production of a single product or functionally
6 related group of products.

7 (23) "Stationary source" means any building, structure, facility,
8 or installation that emits or may emit any air contaminant.

9 (24) "Trigger level" means the ambient level of fine
10 particulates, measured in micrograms per cubic meter, that must be
11 detected prior to initiating a first or second stage of impaired air
12 quality under RCW 70A.15.3580.

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