
SUBSTITUTE HOUSE BILL 1423

State of Washington

67th Legislature

2021 Regular Session

By House Environment & Energy (originally sponsored by Representatives Fitzgibbon, Springer, and Dent; by request of Department of Natural Resources)

1 AN ACT Relating to smoke management civil enforcement; amending
2 RCW 70A.15.3160 and 76.04.205; and prescribing penalties.

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

4 **Sec. 1.** RCW 70A.15.3160 and 2020 c 20 s 1112 are each amended to
5 read as follows:

6 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
7 43.05.150, and in addition to or as an alternate to any other penalty
8 provided by law, any person who violates any of the provisions of
9 this chapter, chapter 70A.25 or 70A.450 RCW, RCW 70A.45.080 or
10 76.04.205, or any of the rules in force under such chapters or
11 section may incur a civil penalty in an amount not to exceed ten
12 thousand dollars per day for each violation. Each such violation
13 shall be a separate and distinct offense, and in case of a continuing
14 violation, each day's continuance shall be a separate and distinct
15 violation. Enforcement actions related to violations of RCW 76.04.205
16 must be consistent with the provisions of RCW 76.04.205.

17 (b) Any person who fails to take action as specified by an order
18 issued pursuant to this chapter shall be liable for a civil penalty
19 of not more than ten thousand dollars for each day of continued
20 noncompliance.

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

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

10 (3) Each act of commission or omission which procures, aids or
11 abets in the violation shall be considered a violation under the
12 provisions of this section and subject to the same penalty. The
13 penalties provided in this section shall be imposed pursuant to RCW
14 43.21B.300.

15 (4) All penalties recovered under this section by the department
16 or the department of natural resources shall be paid into the state
17 treasury and credited to the air pollution control account
18 established in RCW 70A.15.1010 or, if recovered by the authority,
19 shall be paid into the treasury of the authority and credited to its
20 funds. If a prior penalty for the same violation has been paid to a
21 local authority, the penalty imposed by the department under
22 subsection (1) of this section shall be reduced by the amount of the
23 payment.

24 (5) To secure the penalty incurred under this section, the state
25 or the authority shall have a lien on any vessel used or operated in
26 violation of this chapter which shall be enforced as provided in RCW
27 60.36.050.

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

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

37 (8) The department shall develop rules for excusing excess
38 emissions from enforcement action if such excess emissions are
39 unavoidable. The rules shall specify the criteria and procedures for
40 the department and local air authorities to determine whether a

1 period of excess emissions is excusable in accordance with the state
2 implementation plan.

3 **Sec. 2.** RCW 76.04.205 and 1986 c 100 s 17 are each amended to
4 read as follows:

5 (1) Except in certain areas designated by the department or as
6 permitted under rules adopted by the department, a person shall have
7 a valid written burning permit obtained from the department to burn:

8 (a) Any flammable material on any lands under the protection of
9 the department; or

10 (b) Refuse or waste forest material on forestlands protected by
11 the department.

12 (2) To be valid a permit must be signed by both the department
13 and the permittee. Conditions may be imposed in the permit for the
14 protection of life, property, or air quality and (~~{the department}~~)
15 the department may suspend or revoke the permits when conditions
16 warrant. A permit shall be effective only under the conditions and
17 for the period stated therein. Signing of the permit shall indicate
18 the permittee's agreement to and acceptance of the conditions of the
19 permit.

20 (3) The department may inspect or cause to be inspected the area
21 involved and may issue a burning permit if:

22 (a) All requirements relating to firefighting equipment, the work
23 to be done, and precautions to be taken before commencing the burning
24 have been met;

25 (b) No unreasonable danger will result; and

26 (c) Burning will be done in compliance with air quality standards
27 established by chapter (~~(70.94)~~) 70A.15 RCW.

28 (4) The department, authorized employees thereof, or any warden
29 or ranger may refuse, revoke, or postpone the use of permits to burn
30 when necessary for the safety of adjacent property or when necessary
31 in their judgment to prevent air pollution as provided in chapter
32 (~~(70.94)~~) 70A.15 RCW.

33 (5) Any person who violates this section, any permit issued under
34 this section, any rules that implement this section, or the
35 silvicultural burning provisions set forth in chapter 70A.15 RCW, may
36 incur a civil penalty pursuant to RCW 70A.15.3160. The department
37 shall adopt a rule that establishes: (a) A framework for resolving
38 conflicts that may arise related to this section, including the
39 issuance of civil penalties pursuant to RCW 70A.15.3160 for

1 violations of this section; and (b) the method by which penalties
2 issued pursuant to RCW 70A.15.3160 for violations of this section
3 will be calculated. The department shall conduct a public process to
4 solicit input on the development of the rule.

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