

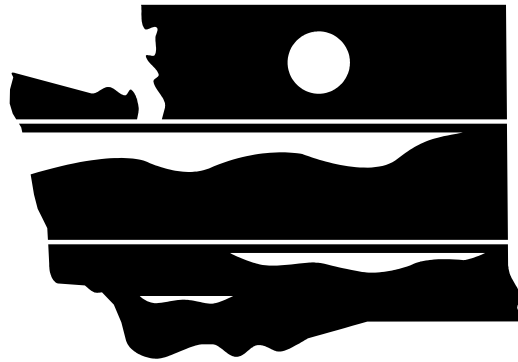
WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-430 WAC, Agricultural Burning

7/25/06

Publication: 06-02-011



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CHAPTER 173-430 WAC, Agricultural Burning

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Air Quality Program

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- ◆ Identify the reasons for adopting this rule (RCW 34.05.325(6)(a)(i)):

The statutory authority is found in RCW70.94.650, RCW 70.94.745, and RCW 70.94.743. As a practical matter, several changes occurred to the program as a result of both the SOS Settlement Agreement (9th Circuit Court of Appeals) and legislation from 1995 to the present. Some of these changes include: metering and use of a smoke management index to determine when meteorological conditions are acceptable for burning; advanced use of the web for burn calls and permitting forms; additional agricultural burning permit holder responsibilities; fully developed permit authority procedures and responsibilities; exemptions for incidental agricultural burning and horticultural pest elimination; and provisions allowing agricultural burning in an urban growth area.

The amendment updates the current Agricultural Burning Rule to:

- 1) incorporate legislative changes and corrections,
- 2) clarify technical issues and definitions,
- 3) integrate agreed upon concepts identified in the 9th Circuit Court of Appeals Settlement Agreement,
- 4) describe the procedures Ecology or a local air authority with jurisdiction will use to grant specific permission to burn,
- 5) specify additional permit and permit application requirements,
- 6) describe changes to and clarify permitting authority responsibilities and
- 7) further spell out the criteria Ecology or a local air authority with jurisdiction will use to delegate all or part of the agricultural burning permit program.

The reasons supporting this proposal include:

- 1) Ecology fulfills its responsibilities under the 9th Circuit Court of Appeals Settlement Agreement and under the Administrative Procedure Act;
- 2) The proposal incorporates legislative changes that have been enacted since 1995; and
- 3) The proposal also clarifies and provides solutions to several types of technical issues associated with administering an agricultural burning permit program.

- ◆ Identify the adoption date of rule and effective date of rule.

The scheduled adoption date is July 26, 2006. If the agency director adopts the rule and the rule is filed on this date, the effective date is 31 days later.

II. Describe Differences Between Proposed and Final Rule

- ◆ Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):

(1) 020(5) - Replace "grower" with "agricultural operation".

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial activities (RCW 70.94.745). **An agricultural operation** ~~Growers~~ burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

- **Rationale: clarification**

(2) 020(5) - add term "agricultural" to commercial activities.

5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial

agricultural activities (RCW 70.94.745). An agricultural operation Growers burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

Rationale: clarification

(3) 040(2) - replace "and" with "or" and delete "pollution control" from local air pollution control authority

(2) For allowed agricultural burning, the department of ecology and or local air ~~pollution control~~ authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts.

Rationale: clarification

(4) 040(3)(a) - add local air authorities with jurisdiction

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

Rationale: clarification

(5) 040(3)(f) - replace "agency with "authority" and add "in whole or in part"

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(f) Ecology or its delegate, or a local air **authority** ~~agency~~ with jurisdiction, or its delegate must approve or deny the permit **in part or in whole** based on information in the application.

Rationale: consistency and clarification

(6) 040(4)(a)(i) – add “calendar”

(a) Minimum fee levels:

(i) Twenty-five dollars per **calendar** year per farm based on burning up to ten acres or equivalent (~~which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be kept by the permitting authority to cover the costs of administering and enforcing this regulation; or~~);

Rationale: clarification

(7) 040(4)(a)(i)-replace “farm” with “agricultural operation”

(a) Minimum fee levels:

(i) Twenty-five dollars per **calendar** year per ~~farm~~ **agricultural operation** based on burning up to ten acres or equivalent ((which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be kept by the permitting authority to cover the costs of administering and enforcing this regulation; or));

Rationale: clarification

(8) 040(4)(a)(ii) replace “farm” with “agricultural operation” and add “calendar”

(a) Minimum fee levels:

(ii) Fifty dollars for orchard tear-out burning per calendar year per farm agricultural operation based on burning up to twenty acres or equivalent.

Rationale: clarification

(9) 40(4)(a)(ii)- add “debris from”

a) Minimum fee levels:
(ii) Fifty dollars for orchard tear-out burning per calendar year per farm agricultural operation based on burning debris from up to twenty acres or equivalent.

(10) 040(4)(c)(i)- add “calendar”

(c) Permit fee uses. The permit fee is used to offset the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. ((One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program.)) The permitting authority may set the fee as an amount per farm per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department ((is the)) has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

Rationale: consistency and clarification

(11) 040(4)(c)(i)- replace “farm” with “agricultural operation”.

(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. (~~One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program.~~) The permitting authority may set the fee as an amount per **farm agricultural operation** per **calendar** year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department (~~is the~~) has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

Rationale: consistency and clarification

(12) 040(4)(c)(iv)- add a column correlating the fee level with the actual section.

SCAPCA recommends clarifying the table. Specifically, a column could be added that describes what each row pertains to (e.g., reference the section of the regulation). For example, the \$25 fee is in regard to WAC 173-430-040(4)(a)(i). (Holmquist, Spokane County Air Pollution Control Authority -3)

~~((e))~~ (iv) The chart below shows the permit fee break-out per category: *Rationale: consistency and clarification*

Fee Level	Section	Local Administration	Research	Ecology Administration
\$25.00	040(4)(a)(i)	\$12.50	\$12.50	-0-
\$50.00	040(4)(a)(ii)	\$12.50	\$12.50	\$25.00
2006 - \$2.00 per acre	040(4)(b)(i)	Up to \$1.25 per acre	50 cents per acre	25 cents per acre
2007 - \$2.00 per acre	040(4)(b)(i)	Up to \$1.25 per acre	25 cents per acre	50 cents per acre
2008 and beyond - \$2.25 per acre	040(4)(b)(ii)	Up to \$1.25 per acre	50 cents per acre	50 cents per acre

(13)040(4)(d)- replace “prior to receiving a permit” with “when submitting the application”

(d) A farmer must pay the fee **when submitting the application** ~~prior to receiving a permit~~. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.

Rationale: clarification

(14) 080(2)(a) – Use “templates” as a modifier to refer to the type applications and permits sentence local air authorities are required to use.

(2) The permitting authority must act on a complete application (as determined by ((the agency)) ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use **application templates and permit templates supplied by and** ecology. **Ecology** delegated authorities are required to use applications and permits supplied by ecology.

(b) A map is required to accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, landmarks, etc.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section shall be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

~~((b))~~ (d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

~~((e))~~ (e) If the application is denied, the reason must be stated.

Rationale: clarification

(15) 080(3) – Replace the word “agreement” with the term “order”

~~((2))~~ (3) Permitting authorities must issue permits where appropriate on complete applications. Delegated

permitting authorities may issue permits when agreed to as part of the delegation agreement order.

Rationale: clarification

(16) 080(6)- insert a comma and remove the word “and”

(6) The permitting authority must collect the fee, and determine the local administration portion of the fee, and issue refunds.

Rationale: editing

(17) 080(6)(a) – rewrite the first sentence. Delete “when a farmer decides to burn fewer acres than identified in the” and replace it with “for permitted acres not burned”.

(6)(a) Permitting authorities must issue a permit fee refund ~~when a farmer decides to burn fewer acres than identified in the permit for permitted acres not burned~~ on confirmation by the permitting authority. The refund request deadline must be included on the permits.

Rationale: editing and clarification

(18) 090(2) - replace the last sentence with –“*The delegated permitting authority must, at a minimum, meet all of the following criteria:*”

(2) When ecology or a local air authority (~~(or the department where no local air authority exists)~~) with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. Delegation criteria include **The delegated permitting authority must, at a minimum, meet all of the following criteria:**

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled; (~~and~~)

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

III. Summarize Comments

- ◆ Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so

(RCW 34.05.325(6)(a)(iii)):

General Comments - Support from Stakeholders participating as Advisory Committee Members

Comment 1: Save Our Summers supports the proposed changes and requests Ecology review the "caution threshold" when the changes to the federal 2.5 standard is implemented. (Connor, Save Our Summers - 5)

I'm submitting these comments on behalf of myself and Save Our Summers, the citizen organization I represented on the Agricultural Burning Rule Advisory Committee over the past year. As you know, the rulemaking process that generated the proposed rules was a requirement of the November 2001 settlement agreement between SOS and Ecology. Save Our Summers participated on Ecology's Agricultural Burning Rule Advisory Committee in 2005 and 2006 and endorses the proposed changes and additions to Section 173-040 of the Washington Administrative Code (WAC).

Background and General Comments:

Save Our Summers participated on Ecology's Agricultural Burning Rule Advisory Committee in 2005 and 2006 and endorses the proposed changes and additions to Section 173-040 of the Washington Administrative Code (WAC).

The purpose of the proposed rules is clearly described in RCW 70.94, the Washington Clean Air Act, which gives primary emphasis to the protection of public health, including individuals with particular sensitivities to air pollutants.

The law provides for agricultural burning that is deemed "necessary" and for which alternatives have not been certified. Ultimately, the question becomes how much burning should be allowed and at what times should

such burning occur? The discretion on these variables (when to allow burning, and how much to allow) lies properly with the Department of Ecology and the regional air pollution control authorities who manage the agricultural burning programs in their respective jurisdictions.

The trend of the health research on PM 2.5 pollution (the small, combustion particles that constitute smoke from agricultural burning and other combustion sources) is toward the increasingly evident conclusion that it is harmful to sensitive individuals even at levels well below 35 micrograms per cubic meter—the concentration recently proposed by the Environmental Protection Agency to be the new National Ambient Air Quality Standard for PM 2.5. Thus, the science argues for an approach to regulating PM 2.5 pollution in ways that keeps exposures as low as reasonably achievable.

SOS believes the Washington Department of Ecology's program is increasingly oriented toward this approach, and that the new proposed rules will institutionalize the approach by better defining the objectives and instilling greater transparency and accountability. Some may find fault with the proposed rules because they don't absolutely define the air quality threshold (as a "burn"/ "don't burn" line on the scale of measurable PM 2.5 pollution) at which no further burning will occur. But the more relevant consideration in making a burn call is not the current level of air pollution, but existing and foreseeable atmospheric conditions that determine smoke dispersion. Just as farmers would like officials to have the discretion to allow burning when atmospheric conditions are improving, clean air advocates would like officials to have the discretion to not allow burning when atmospheric conditions are unfavorable, even if existing levels of PM 2.5 are "good," as "good" is defined in the federal Air Quality Index. Under the proposed rules, both scenarios are possible by the proper exercise of judgment by the permitting official. These rules give Ecology and regional air pollution control authorities the desired discretion, but with guidance and reporting procedures that allow external and internal review.

The Smoke Management Index

Specifically with regard to the "smoke management index" proposed at WAC 173-430-040 (2)(a), the index incorporates two provisions that SOS believes give definition and consistency to the use of "metering" as defined at WAS 173-430-010 (7).

The Caution Level

The first provision is essentially an administrative caution level tied to air quality measurements. Under the proposed rules the caution level is 16 ug/m³ PM 2.5 as measured on a 24-hour basis.

Under the framework of the federal air quality index, 16 ug/1113 is the transition between "good" and "moderate" air quality. Regional PM 2.5 data

available at the time the rule was formulated also show that 16 ug/m³ is slightly more than double the typical concentrations of PM 2.5 measured in eastern Washington communities where field burning is a concern.

Thus, 16 ug/m³ is a useful caution level for burn decisions. Under the proposed smoke management index, once the 16 ug/m³ level has been reached, decisions to allow field burns would have to be formally reported with an explanation for why no further significant deterioration of air quality is expected to occur as a result of the authorized burning.

The 'Lessons Learned' Report

The second provision is an accountability and 'lessons learned' step that would be required in the rare event that a burn authorized under the first step results (or appears to result) in a significant further deterioration of air quality. Under the proposed rule, Ecology has the discretion to investigate unusual air pollution events at any time. However, the investigation and report would be mandatory if, in the aftermath of an allowed burn, PM 2.5 pollution reaches a level that is 25 ug/m³ above the typical seasonal average for the area, as measured on a 2-hour rolling average. At that point, the "further significant deterioration" has occurred and a report analyzing the reason for the unexpected deterioration is required.

Concerns Raised

Several concerns about the proposed smoke management index were raised and discussed as the Agricultural Burning Rule Advisory Committee considered the proposal. One concern was whether the new proposed reporting requirements would be burdensome. But a review of actual PM 2.5 data and agency decisions during the periods when the "metering" system has been in effect reveal few instances where burning was actually allowed after 16 ug/m³ had been reached, and fewer instances where a follow up report would have been required. In other words, it appears Ecology is already using "metering" in an appropriately conservative way. And, thus, the 16 ug/m³ caution level reporting can be instituted without creating a new and burdensome system of paperwork, and yet still serve the purpose of providing a long-term and uniform guideline for burn decisions. Since Ecology already investigates unusual pollution events, the second provision (requiring reports at a specified level of air degradation) cannot be considered a new burden, as it is just a refinement of the current practice.

Another concern was the use of 16 ug/m³ as the caution threshold—the PM 2.5 pollution level that would require a report if a burn is authorized. As proposed by SOS, the concept was that the caution level be the point at which the PM 2.5 concentration (as measured on a 24-hour rolling average) reached a level that is double the typical seasonal average for the area in which the burn would take place. Currently, this would mean the caution threshold would be between 11 and 15 ug/m³, depending on the area. In

the Committee's deliberations the prevailing sentiment was that a uniform number be used, and the number proposed by Ecology was 16 ug/m³. As the draft rule notes, 16 ug/m³ is the "division between 'good*' and 'moderate' classifications" for PM 2.5 in the federal Air Quality Index (AQI).

While SOS would have preferred the "doubling" method, there is a benefit both for internal administration purposes and external review purposes to having a single number with a connection to the AQI. There is, however, the prospect that the AQI will change. During the course of the Committee's discussion on the new proposed rules, the U.S. Environmental Protection Agency proposed a new National Ambient Air Quality Standard for PM 2.5 that is considerably lower than the existing standard. The science behind that downward shift may also lead to a downward revision in the AQI. It is logical that any such revision be evaluated when the proposed new rules come up for future review and amendment. In other words, if the AQI is going to be the basis for the caution threshold, then the program rules should stay current with the AQI.

Finally, the proposed smoke management index described in new section WAC 173-430-040 (2) is subject to the criticism that it is too complicated. There is a reasonable question, for example, as to why it should include both 24-hour and 2-hour averages.

Here SOS would like to address two provisions in particular.

The first is the provision in section WAC 173-430-040 (2)(a)(ii) that sets an alternate trigger level for the documentation described at WAC 173-430-040 (2)(c). The alternate trigger is the detection of a 2-hour "spike" of PM 2.5 that exceeds the typical seasonal average for the area by 15 ug/1113. Accounting for local differences, this means the alternate trigger is a 2-hour spike of 21 to 23 ug/m³. At least in theory, this provision forces the official making the burn call to account for spikes in pollution levels that may indicate a higher degree of risk for additional burning than would be apparent simply by looking at the rolling 24-hour average in the area. As such it should provide an additional margin of safety.

The second is the provision at WAC 173-430-040 (2)(d) that evaluates post-burn conditions by looking for 2-hour spikes that push PM 2.5 concentrations to 25 ug/1113 above the typical seasonal average for that area. This means, depending on the area in question, the reporting threshold would come at 31 to 33 ug/m³ PM 2.5. For this purpose—evaluating whether an allowed burn causes an unanticipated and undesired further deterioration of air quality—the use of the 2-hour measure is more appropriate. Using a 24-hour average concentration would not be effective because it would be all too easy for acute exposures to be hidden in the smoothing of the numbers that comes with averaging them over 24 hours.

Implementation and Review

Certainly a review of the new rules after they've been implemented will be useful to determine how well the new system works and how it may be improved. SOS would support such a review. In the meantime, it's important that problems with the complexity of the smoke management index not be seen as problems with the underlying concepts, which are not complicated. In simplest terms, the program should be flexible but err on the side of caution, particularly when monitoring data show unusually high levels of pollution. And when decisions to burn have (or appear to have) unwelcome consequences, investigation is necessary to find out what went wrong so that future such episodes can be avoided.

Ecology Response: Ecology appreciates Save Our Summer's support of the proposed changes and of the rule-making process. Ecology is also aware that the proposed federal 2.5 standards may affect portions of this regulation, particularly the effectiveness of the Smoke Management Index. Ecology is preparing to track how this mechanism works and make adjustments when necessary .

Comment 2: The Washington Association of Wheat Growers supports the proposed changes and is encouraged by the success of the Memorandum of Understanding [(Borck, Snyder, Uhrich), Washington Association of Wheat Growers- 10; Penner, Washington Association of Wheat Growers -11]:

The Washington Association of Wheat Growers, in partnership with the state departments of Ecology and Agriculture under a Memorandum of Understanding, has had a very successful seven-year agreement to reduce emissions from wheat stubble burning. Through cooperation, education and better communications, growers have been able to cut acreage burning in half from the original base of 229,000 acres, thus cutting emissions. Washington state wheat growers have worked hard to accomplish this achievement. (Borck, Snyder, Uhrich; WAWG – 10 and Penner- WAWG-11).

Washington state allows for agricultural burning. The law also states that you can not impact the public with smoke from agricultural burning. In the past seven years, it has been a learning process for the public, the Department of Ecology and farmers. You must now have a burning permit and have the permission from your delegating authority before you can burn in your county. This is just one of many improvements. (Borck, Snyder, Uhrich; WAWG - 10).

Agriculture needs to be able to burn for various reasons, such as insect, weed or disease control and removal of excess residue. (Borck, Snyder, Uhrich; WAWG - 10).

The Ag Burning Rule Committee, for which WAWG had a representative at the table, has agreed to a balance of new science and technology to determine burn days. These include: 1) monitors for air quality which give Department of Ecology a look at air quality all over the Southeastern part of the state; 2) metering, which is basically a method of controlling where, when and how many fires can be burning at any given time and any given location; 3) the MM5, which is a state of the art weather report from the University of Washington, gives wind direction and speed at different altitudes to disperse smoke to lessen impact on public health; and 4) notification, to lessen the smoke impact, will be sent to the public through the television media designating when and where burning will take place.. Also, there is an education program in place to improve communications between all parties involved—Department of Ecology, Ag Burning Community and the people affected by smoke. (Borck, Snyder, Uhrich; WAWG - 10).

[Agriculture needs to be able to burn for various reasons, such as insect, weed or disease control and removal of excess residue. The Ag Burning Rule Committee, which WAWG had a representative at the table, has agreed to a balance of new science and technology to determine burn days These include monitors for air quality which give Department of Ecology a look at air quality all over the Southeastern part of the state Metering, which is basically a method of controlling where, when and how many fires can be burning at any given time and any given location. (Penner; WAWG -11)

The MM5 which is a state of the art weather report from the U of W gives wind direction and speed at different altitudes to disperse smoke to lessen impact on public health. (Penner; WAWG -11)

Notification, to lessen the smoke impact, will be sent to the public through the television media designating when and where burning will take place. (Penner; WAWG -11)

There is an education program in place to improve communications between all parties involved Department of Ecology, Ag Burning Community and the people effect smoke. (Penner; WAWG -11)]

There is current research both at Washington State University and by independent parties, trying to find ways to utilize Ag residue to help eliminate the need to burn We are looking at paper making, alternate crops, new equipment to handle excess residue, new varieties of cereal grains that can grow in this new high residue environment, and markets for alternate crops. (Borck, Snyder, Uhrich; WAWG – 10; Penner; WAWG -11).

Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact. (Borck, Snyder, Uhrich; WAWG – 10; Penner; WAWG -11).

Agricultural burning is very valuable and must be retained as a tool in the toolbox for farmers, This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn, so it will be a win-win situation for all parties involved. (Borck, Snyder, Uhrich; WAWG – 10; (Penner; WAWG -11)

Ecology Response: Ecology values the Washington Association of Wheat Grower's support of the proposed changes and the rulemaking process. Ecology agrees that the Memorandum of Understanding is a success and credits WAWG's commitment as a major factor toward achieving that success.

Comment 3: The American Lung Association supports the proposed rule changes and is pleased with the progress on this issue particularly since the ALA persevered and worked diligently to maintain focus on the health and safety of our public. (Thompson, American Lung Association - 8)

My name is Cindy Thompson and I serve as the Eastern Washington Regional Director for the American Lung Association of Washington. I had the great pleasure of serving on the advisory committee that worked with the Department of Ecology in pulling together these new rules. I'm proud of the great work that was accomplished and I'm here today to lend the American Lung Association of Washington's support for the proposed rules.

These rules clarify and give meaning to Washington's Clean Air Act which was established with the intent of protecting our public's health The American Lung Association of Washington has persevered and worked diligently to maintain this focus on the health and safety of our public. It has been a long standing goal to work together with stakeholders and agree how to best monitor burning and best protect the lung health of Washingtonians. We have accomplished our task.

We applaud the efforts and commitment of the Department of Ecology and its staff. The Department's dedication and resolve to listen to stakeholders and develop workable, meaningful rules was evident throughout the process.

Our mission at the Lung Association is to assure lung health for all people in Washington.

What brought us to the table was our concern for the affect that burning and its smoke can have on our lungs, especially those with compromised respiratory functions. Burning can cause or contribute to high concentrations of particulate matter, also known as PM, in our air.

The majority of smoke is composed of very fine particles than are less than 2.5 microns in diameter. To give you a comparison, a human hair is about 75 microns in diameter. These are very small particles.

Our respiratory systems are equipped to filter out larger particles, but our lungs are vulnerable to the smaller ones which can easily slip past the respiratory system's natural defenses. These small particles get trapped in the most sensitive tissues and interfere with oxygen uptake and cause airway inflammation. Toxic and cancer-causing compounds can "hitchhike" into the lung on particulate matter and be directly absorbed into the lungs.

Those at most risk from PM exposure are the elderly, people with chronic respiratory or heart disorders, and people with lung diseases such as asthma, emphysema, chronic bronchitis, and COPD Children, who breathe more deeply than adults, are most affected by PM exposure. Children with asthma, like my son and daughter, are particularly vulnerable.

During the rule making process, we spent much time working towards guidelines that would best protect the public's health. We agreed to a set of guidelines that takes into consideration existing PM levels and weather patterns when approving agricultural burning.

In addition to these guidelines, the proposed rules provide a system to evaluate how well the system works. Through this process, we will learn how to better protect our most vulnerable residents.

Together, we developed what we believe to be a set of rules that will benefit all of us. Our proposed rules serve as an example for others to follow. It is a rule with substance; it is a fair rule While there remains work to be done, this is a great step forward.

2006 marks the 100th anniversary of the American Lung Association of Washington, We continue today, as we began 100 years ago, protecting the lung health of Washington's residents.

Ecology Response: Ecology thanks you for your dedication on this issue and your contributions during the rule making process. It is certainly noteworthy that the rule changes will be implemented during the American Lung Association's 100 year anniversary.

General Comments on the Proposed Revisions

Comment 4: The revisions are a major step in helping producers use this tool and are appreciated by those affected by smoke.

- I have reviewed the draft and other supporting documents and would like to offer the following suggestions. Many of these comments are based on the experiences I had during the past 10 years in following the activities of the Agricultural Burn Task Force and assisting in the Columbia County permitting process. I want to applaud your team for the work they did in preparing this document. It is a major step in helping producers to effectively utilize this very important tool. (Schirman, - 6)

- Ms. Sosso stated that she had asthma, and was appreciative of the revisions of WAC 173-430. Ms. Sosso also requested that someone look into where the smoke was coming from in the area she lives (Nine Mile Falls). (Sosso, Citizen- 15)

- I have been working on air quality and field burning the last 5 years. I have to say that since I started working on this specific topic when I started here was a really conflicting issue. There was a lot of problems about trying to get different parties to agree what would be best for the area, the region, for the population. ...I can say that throughout all this period of time this would be asking if you had any improvement in the way that field burning is being managed through meter reading and all levels of tools including modeling to better predict what could be the conditions in this area and also to ? over decreased any chance of having an episode of poor air quality due to smoke from field burning. So, with this, I would also like to say there is always room for improvement. Doing more research in this field would also help you know to better understand this issue. I think that is it. . (Jimenez, Student Researcher -13)

Ecology Response: Thank you for your comments. Ecology is pleased with the outcome of this rule-making process. Ecology remains interested incorporating the results of the best research as the agricultural burning program continues to evolve.

Comment 5: Ecology appears to be proposing revisions to a regulation as a result of a settlement agreement. Neither the Yakima Regional Clean Air Agency nor its stakeholders has had any part of the litigation, settlement, or field trials of the proposed agricultural burning procedures that are part of the revisions.

- In preface, and by way of background, YRCAA understands that on April 13, 2006 Ecology filed with the Code Reviser a proposed rule-making seeking revisions to Chapter 173-430 of the Washington Administrative Code regarding agricultural burning. Most of these revisions, if not all, appear currently to be implemented in Eastern Washington as a result of prior discussions with stakeholders to settle an Eastern Washington field burning lawsuit. These procedures also appear to have been subsequently implemented by Ecology for orchard removal burning in Okanagon and Chelan counties in Central Washington. In short, Ecology appears to be proposing the agricultural burn regulation revisions as a result of a settlement agreement to outstanding litigation. An important note is that neither YRCAA, or any of its' local stakeholders were parties to the litigation and, then, not direct parties in settlement discussions or field trials of the proposed agricultural burning program procedures in Eastern and Central Washington which are incorporated into the Ecology proposed burn program changes. (Lawrence O'dell, Yakima Regional Clean Air Agency - 12)
- YRCAA has recognized there are merits to improving the current agricultural burn program. Toward this end, YRCAA has been working with the local orchard industry to identify potential future changes which target late fall and winter smoke emission reductions and encourage enhanced cooperation, coordination and participation by the local agricultural stakeholders during review of the local YRCAA burn program. (O'Dell, Yakima Regional Clean Air Agency - 12)

Ecology Response: ~~YRCAA correctly identified the filing date and Washington Administrative Code chapter for the proposed revisions. Ecology disagrees with the remainder of the lawsuit and rule-making assessment and an apparent attempt to discredit the rule revisions simply because YRCAA chose to ignore the rule revision effort, even with a Local Air Authority representative on the advisory committee until very late in the process.~~ However, Ecology is pleased that the Yakima Regional Clean Air Agency will be reviewing its agricultural burning permit program in the near future.

One of the issues raised is the connection between the federal lawsuit and the proposed revisions. The federal lawsuit was settled at the 9th Circuit Court of Appeals level in 2001 through a settlement agreement. The settlement agreement addressed several topics including rule-making. The portion of the settlement agreement focusing on rule making identified the time frame for rule-making to take place and several issues Ecology should consider during the rulemaking process. But the settlement agreement did not specify or suggest any rule specific language.

The revisions are the product of the rule-making effort itself. The rule-making effort took over two years beginning with the CR-101 in 2004 and followed the specifications of the Administrative Procedure Act and Ecology's policy on regulation development.

In addition to settlement agreement items, Ecology also identified other categories of issues including legislative changes and technical topics. Later, the advisory committee also identified a list of improvements areas that would make the permit program work better.

In 2005, Ecology convened an advisory committee consisting of the Agricultural Burning Practices and Research Task Force members balanced with additional members representing Save Our Summers, the American Lung Association, and irrigated growers. Both the Local Air Authority and the orchard management science perspectives were represented at the table. This group met for over a year to provide advice and assist in developing the revisions. Summaries of the meetings were routinely posted on the Air Quality Program website and are still available.

In addition to the rule revision effort, the Agricultural Burning Practices and Research Task Force adopted a Best Management Practice for Orchard Management and Tear-Out. The Ag.Task Force is the statutorily mandated board given the responsibility of determining Best Management Practices for agricultural burning in Washington State. The Ag. Task Force consulted with orchard science representatives to develop the Best Management Practice for Orchard Crops. The Orchard Burning BMP has been in effect since 2004.

Ecology looks forward to working with the Yakima Regional Clean Air Agency on this issue. One of the simplest ways to begin is by attending the Agricultural Burning Practices and Research Task Force meetings. The next one will be scheduled for late fall. Meeting places, dates, and times are available on the Air Quality Program web-site. Meeting summaries are also available on the web-site.

Comments on Specific Sections of the Proposal

173-430-010

Ecology received no comments on this section.

173-430-020

Comment 6: Ecology should define "growers" or replace "growers" with "farmers".

- WAC 173-430-020(5)
SCAPCA recommends defining “growers” or replacing “growers” with “farmers”, since “farmer” is defined in the regulation. (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees, but is replacing “grower” with “agricultural operation”, which is also defined..

Comment 7: The term "orchard" is not defined. Do Christmas tree prunings qualify under the permit exception?

- WAC 173-430-020(5)(a)
“Orchard” is not defined, but SCAPCA understands the definition to be fruit and nut bearing trees. SCAPCA requests confirmation that “orchard prunings” exclude prunings from trees grown on Christmas tree farms for the purpose of being sold as “Christmas Trees”. (Spokane County Air Pollution Control Authority -3)

Ecology Response: The term used in statute (RCW 70.94.745) is “orchard pruning.” As part of discussions, the advisory committee agreed that Christmas tree farms are not orchards and the prunings do not qualify as orchard prunings.

Comment 8: Ecology should confirm that organic debris hauled or otherwise placed along a fenceline must be removed prior to burning and not be burned.

1. WAC 173-430-020(5)(b)
SCAPCA requests confirmation that organic debris hauled or otherwise placed along a fenceline must be removed prior to burning and that it not be burned. (Holmquist, Spokane Ccounty Air Pollution Control Agency -3)
- WAC 173-430-020(5)(c)

SCAPCA requests confirmation that organic debris hauled or otherwise placed along or in an irrigation or drainage ditch must be removed prior to burning and that it not be burned. (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: The purpose of the definitions in Section 5 [(b) and (c)] is to add criteria to use in determining when the agricultural burning permit exceptions apply. The exceptions do not apply to other types of burning, such as outdoor burning. Ecology agrees that it is not legal to haul organic material which cannot be legally burned under the outdoor burning regulations to a farm to be burned along a fence line or in an irrigation drainage ditch. (WAC 173-425-050(2). Ecology is not aware of instances where organic debris from an agricultural operation is deliberately moved to an irrigation ditch or fence line for the sole purpose of permit avoidance.

173-430-030

Ecology received no comments on this section.

173-430-040

Comment 9: Use a word other than “must” on page 4 of the proposed rule.

Going over the proposal with all the changes there is one change that is under, it's on page 4. It's the last line and the word is must. The permit, the sentence is “in order to assure that health effects do not increase the permit authorities must provide metering, data gathering and annual reporting.” Since I'm the one that writes the permits for this district and that my board of supervisors have instructed that I will not do any metering. So where there is no understanding as to who does metering we would like to see the word must be revised. Where the permit authority provides metering to change that to Department of Ecology or I know some other districts do the metering. Change that because that word might target all of us to do the metering and that's not in our budget to do that. (Nancy Hoobler, Palouse Conservation District -14)

Ecology Response: First, page 4 of the proposal is the definition section and does not match up with sentence you read in your testimony. However, page 4 of the Preliminary Cost Benefit and Least Burdensome Alternative Analysis does. The term used in conjunction with “must” is

“permitting authority”. The definition of permitting authority is found in the proposal under Section 030 and means Ecology or a local air authority with jurisdiction. As such, Ecology does not see the need to change terms. Ecology envisions metering will be handled as part of the Delegation Agreement and anticipates that some delegated authorities will want a role in metering for their county and some will not.

Comment 10: Ecology should set up a credit card system to receive permit fee money.

- Basically I don't have a problem with manner in which to get a permit to burn but the method does not work. To get a permit in Asotin County takes two to three days. You can fax it to Spokane but they won't ok it until they receive the money. ..The solution for the problems would be for the DOE to have a better understanding of the problems facing the farmers have to stay in farming. Not acting like typical Bureaucrating Agency, but to be user friendly. Solution: Set up credit card systems to receive money in Spokane Office that would help to get your permit in one day. (Johnson, Grower -4)

Ecology Response: Ecology agrees this is a good idea and is already evaluating what it will take to incorporate a credit card system as a payment option.

Comment 11: Ecology should spell out how far in advance a permit may be requested and add a provision that allows on-site spot check when evaluating the permit application.

- One item I do not see spelled out is how far in advance of the scheduled burn can a permit be requested. Could I request a permit for an October burn in January? (Schirman, former permitting authority/ WSU Extension Agent -6)
- I also would suggest that somewhere in the document provision be made that the entity that is evaluating the permit application be given the ability to make an on-site spot check for accuracy in description of the site conditions. I feel that this is both helpful to the evaluator and also builds public confidence that consistency to agreed standards is being applied. (Schirman, former permitting authority/ WSU Extension Agent -6)

Ecology Response: Ecology considered both ideas during the drafting stage and determined that including language in the permit section is not warranted. Instead, Ecology is adding “per calendar year” language to the

fee section to establish a “permit” end date. As far as “spot-checks” for accuracy on permit application, language already exists in WAC that requires permitting authorities to evaluate the permit application. Ecology includes provisions in the delegation agreements on the level of effort expected for the permit evaluation stage.

Comment 12: Ecology should replace the word "and" with the word "or" in the first sentence of 040(2).

- WAC 173-430-040(2)
SCAPCA recommends the following revision: “For allowed agricultural burning, the department of ecology (~~and~~) or local...”(Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees and is making the change.

Comment 13: The proposed procedures may require significant revisions to the Yakima Regional Clean Air Agency burn program.

- During the initial proposed rule-making and previous application of the proposed procedures in Eastern and Central Washington, YRCAA believed the proposed Ecology burn regulation revisions would have only minor impacts in the existing YRCAA burn program. However, recently, YRCAA has determined the proposed Ecology agricultural burning regulation revisions may require significant changes to the existing YRCAA burn program. These include the following potential requirements:
 1. Daily pre-burn authorization using a defined Ecology methodology which may or may not be appropriate for the YRCAA area;
 2. Completion of burn decision documents during specified time periods;
 3. Preparation of incident-specific air quality determination evaluations for selected agricultural burning;
 4. Preparation of post-burn and annual burn reports;(O'Dell, Yakima Regional Clean Air Agency - 12)

Ecology Response: Yakima Regional Clean Air Agency may need to make changes to comply with the new Smoke Management Index procedures. These procedures were thoughtfully written and thoroughly debated by the advisory committee. Ecology is committed to seeing that

these procedures are implemented throughout Washington. In regards to an annual report, Ecology will continue produce an annual report. The major change is that now YRCCA needs to either produce its own report (which Ecology can pull information from) or provide Ecology the information in a timely manner. ~~It should be noted that YRCCA did not provide Ecology basic information on its agricultural burning program for 2003 or 2004.~~ Finally, post-burn reporting is an important component to an accurate agricultural burning program. A sample post-burn report (electronic submittal format) is available on the Air Quality Program web-site.

Comment 14: In section 040(2)(c), what are some examples of "making the determination forms conveniently available to the public".

- WAC 173-430-040(2)(c)
SCAPCA requests examples of what constitutes making "determination forms conveniently available to the public". (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: The advisory committee envisioned a flexible system that allows the public to access the information without digging through inches or feet of back-up material. The example used during discussions was: use two different colors of 8.5 X11inch paper for the determination forms. Once filled out, 2 hole punch the forms, put on a 2-hole punch clipboard and hang the clipboard on a wall (or store in a place that is easy to access and where the forms will not be "buried". Ecology used this method a "trial-run" over the last six months and finds it effective.

Comment 15: In section 040(3)(a), change the "and" to an "or" and add "local air pollution control authorities".

- WAC 173-430-040(3)(a)
SCAPCA recommends the following revision: "Ecology or local air pollution control authorities will provide..." (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees with the revision, but will use local air authorities "with jurisdiction" to be consistent with other parts of the rule.

Comment 16: What are examples of "the public's interest in the environment" in the permit decision-making process? [Section 040(3)(e)]

- WAC 173-430-040(3)(e)

Please provide one or more examples of what constitutes adequate consideration of "the public's interest in the environment" in the permit decision-making process. (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: First, this section does not represent a change to language in the regulation. The paragraph was moved from Section 070 to Section 040. Examples or potential examples of the public's interest in the environment affecting permit decisions are plentiful. Some examples (both actual and potential) include: following established guidelines for CRP take-out burning, adding permit conditions when requested by residents of a new housing development located close to the agricultural field, and issuing a permit when, in addition to all other information, the burning is also supported by a wildlife preservation group to enhance wildlife habitat restoration efforts. In each example, the public's interest in the environment is different, yet should have a place in permit decision making process.

Comment 17: Add the terms "in whole or in part" to 040(3)(f).

- WAC 173-430-040(3)(f)

SCAPCA recommends the following revision: "Ecology or its delegate, or a local air agency with jurisdiction, or its delegate must approve or deny the permit based in part, or in whole, on information in the application." (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees that "partial" approval or "partial denial" should be added for clarification. To accomplish this, the sentence would be worded slightly differently than SCAPCA's recommendation. The sentence will read - "Ecology or its delegate, or a local air pollution control authority with jurisdiction, or its delegate must approve or deny the permit, in part, or in whole, based on information in the application."

Comment 18: The wording in (3)(f) is limiting, could wording be added to allow a consultation with farmer or a visual inspection to clarify questions and ensure potential alternatives have been considered?:

- On page 8 paragraph 2(f) the statement limits action on the application

to information provided on the application. Could wording be added that would allow the permitting agency to consult with the farmer or make a visual on-site inspection to clarify any questions and insure that all potential alternatives have been considered before making a final decision? (Schirman, former permitting authority/ WSU Extension Agent -6)

Ecology Response: The agency action described is permit approval or denial. As such, Ecology intended a direct link between permit approval or denial and the information submitted in the application. There is always the option to contact the farmer to clarify information provided on the application prior to the approval or denial decision. However, any additional information needs to be made part of the application or attached to the application. For Ecology delegated permitting authorities, the delegation order spells out the procedure to follow. Ecology finds adding "permit application" investigation language confusing and unnecessary.

Comment 19: The proposed rule appears to establish increased agency work-loads with proportionally decreased funding available. The existing agricultural burning program in Yakima County already fails to cover its costs. Ecology should consider providing additional state funds to adequately fund the proposed revisions.

- In short, the proposed rule-making appears to establish increased local agency workloads with proportionally decreased funding available for the burn program. The potential fiscal impacts to local agency budgets do not appear to be considered in the proposed Ecology rule-making. The existing YRCAA agricultural burn program already fails to cover its costs as a result of the Washington State statutory agricultural burn permit fee cap. The proposed Ecology rule-making will likely exacerbate this program funding deficit for required local programs. Consequently, in light of the statutory agricultural burn permit fee cap in State law, additional State funds to local agencies should be considered to adequately fund the proposed Ecology agricultural burn program revisions. (O'Dell, Yakima Regional Clean Air Agency - 12)

Ecology Response: Unfortunately no additional funding beyond the permit fee is legislated for this program, nor is additional "general state" funding available. Ecology recognizes the revisions require permitting authorities to provide permitting information to Ecology, which is included in a state wide annual report and in the agricultural burning data base. The administrative costs attributed to the revisions are minimal and are addressed as part of the cost analysis. To lessen increased work-load costs, Ecology is committed to providing templates of permits,

applications, and post-burn reports. In regards to the permitting fee, there is no decrease in the “local administration” portion at any level.

Comment 20: Ecology should change the wording in 040(4)(a) by: adding “calendar” to 040(4)(a)(i), adding “calendar” and “debris” to 040(4)(a)(ii) and providing an example of “equivalent” as used in 040(4)(a)(ii).

- WAC 173-430-040(4)(a)(i)

SCAPCA recommends the following revision: “Twenty-five dollars per calendar year...” (Holmquist, Spokane County Air Pollution Control Authority -3)

- WAC 173-430-040(4)(a)(i)

SCAPCA requests one or more examples of what would constitute a 10-acre “equivalent”. (Holmquist, Spokane County Air Pollution Control Authority -3)

- WAC 173-430-040(4)(a)(ii)

SCAPCA recommends the following revision: “Fifty dollars for orchard tear-out burning per calendar year per farm based on burning debris from up to twenty acres or equivalent.” (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees with the recommended language and is incorporating those changes in the final rule text. Section (040)(e) states , in part, “the Agricultural Burning Practices and Research Task Force may set acreage equivalents, for non-field style burning based on the amount of emissions”. The Agricultural Burning Practice and Research discussed equivqlents and chose not to include an equivalent for non-field style burning as part of the revisions.

Comment 21: Section 040(c) should be re-written to: add the term “calendar” and replace “farm” with “agricultural operation” to (c)(i); and add a column to the table in (c)(iv) to describe what each row pertains to.

- WAC 173-430-040(4)(c)(i)

SCAPCA recommends the following revision: “The permitting authority may set the fee as an amount per farm per calendar year...” (Holmquist, Spokane County Air Pollution Control Authority -3)

- WAC 173-430-040(4)(c)(i)

SCAPCA recommends defining “farm” or replacing it with “agricultural operation”. (Holmquist, Spokane County Air Pollution Control Authority -3)

- WAC 173-430-040(4)(c)(iv)
SCAPCA recommends clarifying the table. Specifically, a column could be added that describes what each row pertains to (e.g., reference the section of the regulation). For example, the \$25 fee is in regard to WAC 173-430-040(4)(a)(i). (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees these suggestions provide additional clarity and is making these changes for the final text version. For consistency, Ecology is also replacing “farm” with “agricultural operation” in section 040(a).

Comment 22: Section 040(4)(d) should be reworded to connect the fee payment with the application:

- On page 9 paragraph 4(d). If the fee must accompany application (as stated on page 7 (2)(c)) could this statement be considered as contradictory? One solution might be to change the wording “receiving a permit” to “processing the application”. (Schirman, former permitting authority/ WSU Extension Agent -6)
- WAC 173-430-040(4)(d)
SCAPCA recommends the following revision: “A farmer must pay the fee when submitting the application (~~prior to receiving a permit.~~)” (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees and is making a change in the final rule text.

Comment 23: Replace 7 days with 7 “working” days in section 040(5).

- Page 10 paragraph 5 (c) and page 15 (2) both specify 7 days to return an opinion. I would suggest it be 7 business days (or is that the intent?). (Schirman, former permitting authority/ WSU Extension Agent -6)

Ecology Response: Unfortunately, RCW 70.94.650(1)(c) specifies 7 days, not working days.

173-430-060

Ecology received no comments on this section.

173-430-070

Ecology received no comments on this section.

173-430-080

Comment 24: Revise 080(2)(a) to allow Local Air Authorities to incorporate application questions or permit conditions.

- WAC 173-430-080(2)(a)
SCAPCA recommends the following revision: “Local air authorities and ecology delegated authorities are required to use applications and permits supplied by ecology, unless otherwise approved by Ecology. Permit conditions will be determined by the permitting authority.” (Holmquist, Spokane County Air Pollution Control Authority -3)

- During the initial proposed rule-making and previous application of the proposed procedures in Eastern and Central Washington, YRCAA believed the proposed Ecology burn regulation revisions would have only minor impacts in the existing YRCAA burn program. However, recently, YRCAA has determined the proposed Ecology agricultural burning regulation revisions may require significant changes to the existing YRCAA burn program. These include the following potential requirements:
 5. Potential required use of Ecology procedures and forms. If this proposed rule was not intended to prohibit the use of local agency forms or prohibit the enactment of additional local control measures, the rule should be clarified to show that these prohibitions do not exist.
(O'Dell, Yakima Regional Clean Air Agency - 12)

Ecology Response: Ecology agrees and will revise the final rule text to read: “Local air authorities are required to use application templates and permit templates supplied by ecology. and Ecology delegated authorities are required to use applications and permit supplied by ecology.

Comment 25: Section 080(3) is unclear. Is there a definition of “must issue where appropriate”?

- Page 15 paragraph (3) is not clear. Is there a definition somewhere for “must issue where appropriate”? (Schirman, former permitting authority/ WSU Extension Agent -6)

Ecology Response: Ecology disagrees and is leaving the sentence as written.

Comment 26: Ecology should re-write section 080(4) and clarify what is meant by the term "results".

- WAC 173-430-080(4)
SCAPCA recommends the following revision: “Permitting authorities, including delegated permitting authorities, must determine day-to-day burning restrictions near populated areas and ~~((arrange for)) dissemination of the results or~~ or ~~((Delegated permitting authorities must arrange for the))~~ assisting ecology in the dissemination of results.” (Holmquist, Spokane County Air Pollution Control Authority -3)
- WAC 173-430-080(4)
Please clarify what “results” need to be disseminated and if the “results” must be disseminated daily? (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: As proposed, there is no change in the first sentence of 080(4). Ecology believes the meaning of this sentence and use of the work "results" is clear. The second sentence is targeted at ensuring delegated permitting authorities "pass-along" any burning restriction information. Ecology understands that the exact dissemination "schedule" needs to be flexible to accommodate a variety of situations. Inserting a specific schedule in rule does not accomplish the objective. Ecology is leaving the sentence as written.

Comment 27: (080)(6)(a) should be re-worded to be clearer.

- WAC 173-430-080(6)(a)
SCAPCA recommends the following revision: “Permitting authorities must issue a permit fee refund ~~((when a farmer decides to burn fewer acres than identified in the))~~ for permitted acres not burned on confirmation by the permitting authority.” (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees to this suggestion and is incorporating the recommended changes in the final rule text.

Comment 28: Under 080(10) What information must be entered in the data-base? Can the arrangement be that Local Air Authorities and its delegates provide information to Ecology? How frequently must the information be entered?

▪ WAC 173-430-080(10)(a)

Please explain what information, at a minimum, must be entered into the web-based data base. (Holmquist, Spokane County Air Pollution Control Authority -3)

▪ WAC 173-430-080(10)(a)

Can the “arrangement” with Ecology consist of the local air authorities or its delegates providing the information to Ecology to enter? (Holmquist, Spokane County Air Pollution Control Authority -3)

▪ WAC 173-430-080(10)(a)

How frequently must information be entered into the web-based data base? (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: At a minimum, the information on the permit application template and the permit template will be entered. Ecology anticipates that the arrangement will be that Ecology enters the information in the data-base. The information is typically entered twice a year, which is why two transmittal deadlines are also included in section 080.

173-430-090

Comment 29: Ecology should re-write section 090(2) as recommended below.

▪ WAC 173-430-090(2)

SCAPCA recommends the following revision: “(~~Delegation criteria include~~) The delegated permitting authority must, at a minimum, meet all of the following criteria:” (Holmquist, Spokane County Air Pollution Control Authority -3)

Ecology Response: Ecology agrees and is making the change.

General Comments on Agricultural Burning:

Comment 30: Ecology should go farther to monitor orchard tree fruit burning.

- The article discusses wheat fields in particular, but I am concerned about burning fruit trees also. I oppose the burning of fruit trees and burning of agricultural material in any way. The Chelan Recycling Center accepts brush that they chip and then give away the chips. This is very environmentally friendly and we don't have to suffer through the smoke from the burning!

We live across the Columbia River from the Beebe Orchards where all the trees along the Columbia River are being removed and burned. There were days that the smoke would hinder sight distance toward the north to the Chelan Airport. It, of course, was great weather otherwise so the smoke spoiled a beautiful day. Fortunately for us the wind was from down river and blew the smoke away from us, but unfortunate for those up river near the airport and Howard Flats who had to live with the smoke. My husband developed asthma recently and is affected by burning. He has to stay indoors when the air is smokey.

With chipping available (there are commercial chipper firms for orchard use) and air pollution a concern, it seems there is no reason to allow burning of ag materials. (Brooks, Citizen - 7)

- Although I am glad to see some efforts made to monitor ag burning, it really doesn't go far enough. For instance, in the Chelan-Manson-Orondo area, burning has been at all all-time high. Much of it is because orchards are being pulled or mass pruning clippings are being burned. However, my husband and I witnessed several instances where plastic pipe and other rubbish was being burned as well. Huge, house-sized piles are burned enmasse every day. I know I'm not alone in expressing my distress. I am a borderline asthmatic and my respiratory system is being pushed to the max. This is just too much. Some days it is so bad I can neither open my windows nor can I be outdoors. I believe I speak for many middle-aged to elderly persons when I express my anger at this practice. It's bad enough when we have summer fires, but to have to put up with the kind of burning that we have experienced the last few years is over the top. Some days, the smoke is so thick you can hardly see across Lake Chelan. (Weaver, Citizen -2)

Ecology Response: Thank you for your comments. Ecology supports alternatives to burning, including chipping.

Comment 31: The tree-fruit industry needs to be able to burn for a variety of reasons including pest and disease control. Also, efforts to chip the debris have had limited success.

The Washington Growers Clearing House Association is a non-profit tree fruit grower association with approximately 2,200 Washington tree fruit grower members. The positions of the Clearing House are established by a tree fruit grower board of directors which are elected by their peers in different geographic production areas of the State.

Orchard burning is a valuable tool in controlling orchard related pests and diseases in a timely manner. For example: a highly transferable bacterium such as Fire Blight can spread through a tree and/or an entire orchard rapidly if left unchecked. The infected portion of the tree or orchard must be removed and burned immediately to stop the spread of Fire Blight. Allowing the ability to burn orchard prunings etc immediately enables the grower to reduce the likelihood of spreading this highly contagious disease.

A major pest concern for apple growers is Coddling Moth. Coddling Moth is capable of flying long distances to locate host trees and lay eggs that can result in very high levels of fruit damage and financial loss. Access to markets can be lost as a result of coddling moth detection. It is critical that infested trees destined to be pushed out, be burnt or chipped immediately to reduce the opportunity for Codling Moth etc. infestations to spread and escalate. The ability to burn and/or chip orchard trees in a timely manner reduces the number and density of pest infestations thereby reducing the amount and number of pesticide applications needed to control pests such as: Codling Moth, leaf rollers, and apple maggot, etc. The industry and County Pest and Disease boards are very concerned about the current number of orchard tree piles that have not been disposed of in a timely manner.

Efforts to chip have had limited success. First chipping is very expensive, some growers have been quoted as high as \$1,000 per acre to chip trees, plus a set up fee and chip removal fee. There is very little use for the chips. Mulching the chips has proved unsuccessful. The one sawmill in Okanogan County that accepted chips no longer does. Secondly, it is next to impossible to get an orchard chipped in a timely manner. Very few firms are available to chip. I personally called several of the chipping firms listed on the DOE website the day after the public agricultural burning hearing in Wenatchee, asking for quotes to burn five acres of orchard trees. None have returned my calls.

From a pest and disease stand point it is critical that tree fruit growers have the ability to burn their orchard prunings and remove trees in a timely manner.

The DOE policy to allow selective isolated orchard burning on moderate burning days has been helpful in reducing the number of burns on regular burn days.

(Mayer, Washington Growers Clearing House Association -9)

Ecology Response: Thank you for your comments. RCW 70.94.650(1)(c) specifically allows agricultural burning for pest and disease control.

Comment 32: Agricultural Burning is important and needs to remain an option for growers in Washington State.

- With out stubble or burning in the Columbia Basin & etc, areas managed by the private Landowner & Government Agency that own & manage the lands the following would be increased or happen(D. Michel-1 [Letter 1])
 1. Cost of managing Private & Public Lands would increase substantial It would hurt all in a economic competitive dollar amount with other areas or countries!
 2. More weed chemicals would be needed especially in 'Wet or close to water areas to control weeds & Cattails & unwanted etc. vegetation & illegal vegetation. More chemicals would have to be used on some crop fields. More fuel would have to be used to work ground or control weed. Cattails & water plugging plants would almost be uncontrollable. More weed Chemical & Pesticides on Farm crops would have to be applied in the upper proportion of the label. Government agency & etc (& County & State Road Dept) would cheat or lie on chemical near water or un-Started - un Controlled weed burning as they have done in the past. Or write up faults report as has been done in the past for their need ??? too burn or spray. There would be more vegetation fire in our area not started by other then people Smoking & throwing out ?? out the Car windows. We have more or about 1 + power line fire a year in small area now due to power line maintenance & bird trash If some of the vegetation in these areas were not controlled through vegetation weed burning the damage would be very large to the Power Grid systems We have Weed Districts in our area and weed burning is a tool that is used and needed & recommended Some Weed or vegetation is illegal to have spreading on lands under the County & State Weed district laws. Some are just illegal and those grower "M" seem not to grow them where they may get burned out on public or private grounds. Some Plants just have to be burned. As there is the water Spray issue next to water & water weeds & Stubble fields.
 3. Mosquito's in the Columbia Basin would be massive, bigger & more costly for the Mosquito's control District for the County & State. Then come the Health problem both of Humans & Animals from the bug habituate not being controlled. Some area they just could Not get Mosquito's controlled with out Vegetation control burning & spraying both.

4. With out Stubble burning Agriculture & etc. business would NOT be Economical competitive with other Areas or Countries.
5. With out Stubble burning & or grass or crop stubble burning or weed burning Farmers & US Fish & Wildlife & Washington State Game Department & USBR & DNR & Hwy, Department, their Cost would go up, & or available income down to use for good development & wages & things. Some area it would be impossible to control weeds & Mosquito's with out this weed or vegetation-burning tool.
6. On federal lands there would be more illegal weed grown ("M").
7. With out stubble-burning Farmers, DNR, US Fish & Wildlife & Washington State Game Department & Hwy Maintenance cost would go up or accidental uncontrolled fires would just happen. Some area the weed spreading would be uncontrollable(Near water area, unwanted plant vegetation) and more uncontrolled or unwantedlarge fires.
8. With out Vegetation burning it would decrease waterfowl in my area substantial. & hunting & fishing leases access income. It would decrease water fowl production bychoking out open water area & habitat.
9. I do not know how the Irrigation District could manage their canals & or lands.
10. With out control stubble burning there would be bigger uncontrolled burn by smoker or power lines or mother nature.
11. Every year now we have a power line fire and if the vegetation was not controlled in these area the fire would have done more damage.

(D. Michel- Grower and Business Owner -1 [Letter 1])

- Some Cattails & etc field burning is an important tool, due to the water & chemical issues. Both bird deputation control or enhancement of waterfowl or need or wanted plant species and income replacement for damage from waterfowl & or increase waterfowl area & deer, = agricultural field burning is a needed tool. Wildlife - Waterfowl do not like field weed or some stubble's either. Due to these animal & (geese & ducks) spreading of weeds, agricultural.--field burning is needed!

Agricultural Burning is a. important tool to Our lands in the Othello , Quincy, Mattawa, Moses Lake, Bruce, Washington, Royal Creek, Crab Creek, Owl Creek, Windchester, Wastway area, Corfy = Rd. BSE areas. Both Government & Private lands.

With OUT Cattail's & unwanted weeds & vegetation & crop Burning (including somefield Agricultural & wildlife management

residual burning) We would not be economical compatible with other area or Countries Most farmers in my area do not burn unless they see it as a necessary tool. The humus most of the time is important to put back into the ground. I believe there is some seed crops that it stimulates it production by burning, With out selected Cattail & Agriculture burning the Adams County Mosquito Control District 2031 W. Hwy 26 Othello, Wa. 99344 - Ph: 488-2661 would have a bigger mess controlling the Mosquito in our community.

(D. Michel, Grower and Business Owner-1 [Letter 2])

- Agricultural & Wildlife & etc. burning is a economical tool that is needed and DOE does not need to put any more rules on Agricultural Burning or Wildlife burning

We have 10,000 + Acres of farm & Range land & Orchards, Recreation Lands Hunting & fishing, Commercial City Buildings & housing & Rentals Our family been here over a 106 years,, We are all College educated & extended management & safety classes.

With Out Field burning for us, it would decrease the Waterfowl area ponds Habituate areas (some area it would chock out the ponds with out burning) or size. That would get choked out with undesirable growth that we bum in the spring. This would increase Undesirable vegetation Without field burning we would have a-lot more Mosquitoes habitat that our County Mosquitoes District doesn't like, The Counties Hopes we burnoff these fields, ponds areas & etc. fields areas. Some areas are only 1 1/2 +.. miles from Othello. Mosquitoes & other insects all spring or summer in the area or smoke part of one day. With our field or Agriculture Burning it would decrease my pasture & waterfowl lands in some wet or water area and become a Mosquitoes problem & weed problem, which the County Weed District & Mosquitoes Agency like me to timely burn.

Some area in Adams & Grant & Franklin County Government Ground will catch a fire this year due to the following increase vegetation along the roads! Lack of integrated Management with grazing & or smaller limited control burning on some Federal & or state managed lands Most is USFW & USBR & or Federal lands not integrated managed 3 +- ways together. The USBR & DNR lands this year with the big re-growth on the range we use and we don not use that is next door to our lands along roads or power lines will have a increase in uncontrolled burns. The land we graze has less sensitive area for uncontrolled unwanted fires by over 90 % during the summer or big & small fire. Especially if we do not have controlled burns on agriculture lands that join them with grazing first or with out grazing. We are worried about the Avista (Washington Water Power INC.) Power lines lack of maintenance & their

fires history they have in recent year started on the rangelands due to lack of upgrading these old power pole systems. We got to remember not all area can we manage livestock for maximum fire control but it will help by over 70 + % for fire & weed or decrease Chemical usage control!T he agricultural burning we do is very low as we in most crops Agriculture like to put the residue in the soil.

(D. Michel, Grower and Business Owner-1 [Letter 3])

Ecology Response: Thank you for your comments.

General Comments on Ecology's Burn Calls

Comment 33: Ecology's burn call are excessively driven by wind speeds and additional monitoring stations would be helpful.

- Lastly, in order to ensure that appropriate burning days are quickly and accurately identified it would be helpful if more weather monitoring stations could be established in the area from Wenatchee north to the Canadian Border.. The topography in that region has significant impact on the local weather patterns which may not be detected in a timely manner, by more distant weather stations. (Mayer, Washington Growers Clearing House Association -9)
- Another common issue that makes it difficult to bum in a timely manner is the fact that DOE notification of bum days is made fairly late in the morning. Any effort to make notification earlier in the day or preceding day would be very helpful (Washington Growers Clearing House Association -9)
- Ecology's burn day determination is excessively driven by wind speed, and suggested that Ecology use ventilation models other than the MM5 model to predict ventilation. (Carlton, Grower- 17)
- Ecology's burn day determinations are driven by wind speed to an excessive degree. (Thorn, Grower - 16)

Ecology Response: Ecology appreciates the feed-back and will continue to make strides to improve the quality and accuracy of the burn calls.

Comment 34: Ecology should allow grass burning to be treated the same way that cereal burning is.

- Eric Thorn, who grows cereal grain and blue grass and lives in Dayton, expressed his wish that grass burning be treated under the same laws and rules as wheat stubble burning.
- Eric would also like to see results from the research on alternatives to burning conducted with permit fees.

(Thorn, Grower - 16)

Ecology Response: The reason the two are treated differently is that grass seed field burning is subject to both the general provisions of RCW 70.94.650 and the specific provisions of RCW 70.94.656. In terms of research projects, a list, along with additional information, is available on the Air Quality Program's Agricultural Burning web-site.

SEPA

Ecology received no comments on the SEPA documents.

Small Business Economic Statement

Ecology received no comments on the Small Business Economic Statement.

Cost Benefit and Least Burdensome Alternative Analysis

Ecology received no comments on the Preliminary Cost Benefit and Least Burdensome Alternative Analysis.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

◆ Hearing dates and Locations

May 23 -**Moses Lake at 7:00 pm**: Big Bend Community College, 7662 Chanute St NE, Rooms 1870 A&B
7 people attended

May 24 -**Spokane at 7:00 pm**: Spokane County WSU/Cooperative Extension, 222 N. Havana
15 people attended

May 24 - **Wenatchee at 7:00 pm**: Wenatchee Valley Museum, 127 South Mission
3 people attended

May 25 - **Walla Walla at 7:00 pm**: Walla Walla Regional Airport, 310 A. Street, Blue Mountain/Mill Creek Rooms
29 people attended

May 30 - **Pullman at 7:00 pm**: WSU Campus, Carpenter Building, Room 102
7 people attended

◆ Mass Mailing Pieces (i.e., FOCUS sheet, news releases)

- A **News Release** posted on Ecology web-site (main page under [News](#));
- A **Hearing Notice** was sent to approximately 100 permit holders, interested individuals, organizations, and agencies. The hearing announcement was also available on the Ecology's internet web site and direct links were provided to those signed up on Ecology's AGBURN LISTSERV.

◆ Advertisements and/or Newspaper Announcements

- **Legal Notices** of this hearing were published in the Washington State Register as WSR 06-09-081 on May 4, 2006 and in the Daily Journal of Commerce on May 2, 2006.

- **Paid Notice** was published in the May 2006 edition in the Wheat Life Magazine

- **Paid Notices** were also published between May 15 and May 22, 2006 in the Wenatchee World, Walla Walla, Union Bulletin, Moscow - Pullman Daily News, Spokesman Review, and the Columbia Basin Herald.

- **Additional Publicity** materialized when several newspapers or radio stations featured the rule hearing schedule or featuring a story on the rule. The following newspaper or radio stations ran stories mentioning or featuring the Agricultural burning rule hearings:
 - Spokesman Review- story and editorial
 - KQQQ- Radio (Pullman)
 - Capital Press
 - Aberdeen Daily World
 - Lake Chelan Mirror (2)
 - Ritzville County Journal
 - Ellensburg Daily Record
 - Davenport Times
 - Dayton Chronicle
 - Wilbur Register
 - Grant County Journal
 - Republic News Miner
 - Northwest Public radio
 - Seattle Post Intelligencer (AP)
 - Spokesman Review (AP)
 - KXLY - radio (Spokane)

V. Appendices

The following is a list of suggested appendices that you should include in your CES:

- ◆ Copies of all written comments received during the comment period (Number the comments. Refer to numbers when indexing responses.)
- ◆ List of individuals (name, organizational affiliation, address) providing oral comments at hearings and corresponding comment numbers for indexing
- ◆ Copies of all public notices regarding rule (i.e., FOCUS sheets, news releases, legal notices and advertisements, handouts and flyers, WSR notices)
- ◆ Copy of the final rule text

V. Appendices

Appendix A - Oral and Written Comments

Written Comments:

DM Ranches
Dwayne Michel
2516 W Hw 26
Othello, Wa. 99344

4/26/06

Ph: 509-488-9819

Melissa Mc Eachron
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, Wa. 98504-7600

Dear Mr. Melissa Mc Eachron

In Capital Press Friday April 21 2006 there is a article about stubble -Burning compromise. Out family have been here 107 years. Our primary income is Farming, Livestock, then some money from Hunting access (Recreation Waterfowl & Upland game birds & we hope Bass fishing access), & Commercial Buildings & property rental & (Travel Lodge Motel sold now) & some house Rentals & we hope (wind energy development being tested). We are All College educated plus other State & NRCS or Ag. Education seminars each year. I need some leads on Small hydroelectric investor on our lands & (water shoots) too we have on our lands for Hydroelectric development.

With out stubble or burning in the Columbia Basin & etc. areas managed by the private Landowner & Government Agency that own & manage the lands the following would be increased or happen

1. Cost of managing Private & Public Lands would increase substantial. It would hurt all in a economic competitive dollar amount with other area or countries!
2. More weed chemicals would be needed especially in Wet or close to water areas to control weeds & Cattails & unwanted etc. vegetation & illegal vegetation. More chemicals would have to be used on some crop fields. More fuel would have to be used to work ground or control weed. Cattails & water plugging plants would almost be uncontrollable. More weed Chemical & Pesticides on Farm crops would have to be applied in the upper proportion of the label. Government agency & etc (& County & State Road Dept) would cheat or lie on chemical near water or un-Started - un Controlled weed burning as they have done in the past. Or write up faults report as has been done in the past for their need ??? too burn or spray. There would be more vegetation fire in our area not started by other then people Smoking & throwing out ?? out the Car windows. We have more or about 1 + power line fire a year in small area now due to power line maintenance & bird trash. If some of the vegetation in these areas were not controlled through vegetation weed burning the damage would be very large to the Power Grid systems. We have Weed Districts in our area and weed burning is a tool that is used and needed & recommended. Some Weed or vegetation is illegal to have spreading on lands under the County & State Weed district laws. Some are just illegal and those grower "M" seem not to grow them where they may get burned out on public or private grounds. Some Plants just

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have to be burned. As there is the water spray issue next to water & water weeds & stubble fields

3. Mosquito's in the Columbia Basin would be ^{more} bigger & more costly for the Mosquito's control District for the County & State. Then come the Health problem both of Humans & Animals from the bug habituate not being controlled. Some area they just could Not get Mosquito's controlled with out Vegetation control burning & spraying both.
4. With out Stubble burning Agriculture & etc. business would NOT be Economical competitive with other Areas or Countries.
5. With out Stubble burning & or grass or crop stubble burning or weed burning Farmers & US Fish & Wildlife & Washington State Game Department & USBR & DNR & Hwy. Department, their Cost would go up, & or available income down to use for good development & wages & things. Some area it would be impossible to control weeds & Mosquito's with out this weed or vegetation-burning tool.
6. On federal lands there would be more illegal weed grown ("M").
7. With out stubble-burning Farmers, DNR, US Fish & Wildlife & Washington State Game Department & Hwy. Maintenance cost would go up or accidental uncontrolled fires would just happen. Some area the weed spreading would be uncontrollable. (Near water area, unwanted plant vegetation) and more uncontrolled or unwanted large fires.
8. With out Vegetation burning it would decrease waterfowl in my area substantial & hunting & fishing leases access income. It would decrease water fowl production by choking out open water area & habitat.
9. I do not know how the Irrigation District could manage their canals & or lands.
10. With out control stubble burning there would be bigger uncontrolled burn by smoker or power lines or mother nature.
11. Ever year now we have a power line fire and if the vegetation was not controlled in these area the fire would have done more damage.

1 Area that I have seen recently that should Not have been burned has been the US Fish & Wildlife burning of the Columbia National Reserve at the Royal Lake area Othello Washington Adams & Grant County Sec 19 & 30 Twn. 16 N R. 28 E. area Ph: 509-488-2668. Livestock Grazing should have done this vegetation management as the original biologist outlined when it was bought. The USFW does have areas that only burning & or weed spraying is still need, I as a tool from year to year for their kind of management.

If we can be any help please communicate Mark S ^{Shoemaker} is our legislator representative and is good.

Sincerely,
Dwayne Michel
Dwayne Michel

MICHEL RECREATION LANDS

2385 W. HWY. 26, OTHELLO, WA. 99344

Department of Ecology
P.O. Box 47600
Olympia, Wa. 98504-7600
Fax 360-407-7534

RECEIVED

MAY 24 2006

BY:

Dear Melissa McRachon

In my Columbia Basin Farmer New Paper = Moses Lake, Wa. Paper it says "DOE looking for comments about agricultural burning" to submit comments, contact you.

We been here for 107 years in the Agricultural business. Plus Commercial buildings & Home rental, Commercial lots, Gravel Pits, & Access for Hunters & Fishermen on our private lands & on our private ponds-lakes-creeks. We do lease 1000's of acres of government lands for agriculture & seldom have to burn due to grazing. My qualifications are all college educated plus many other up graded management classes in agriculture business & wildlife management. Wildlife enhancement (especially waterfowl) is very important to us for hunters & fisherman land access - land management & rentals. Some Cattails & etc. field burning is an important tool, due to the water & chemical issues. Both bird depopulation control of enhancement of waterfowl or birds or wanted plant species and income replacement for damage from waterfowl & or increase waterfowl area & deer, = agricultural field burning is a needed tool. Wildlife - Waterfowl do not like field weed or some scrubble's either. Due to these animal & (geese & ducks) sprawling of weeds, agricultural --- field burning is needed!

Agricultural Burning is a important tool to Our lands in the Othello, Quincy, Mattawa, Moses Lake, Bruce, Washington, Royal Creek, Crab Creek, Owl Creek, Winchester, Waiway area, Corby = Rd. BSE. areas. Both Government & Private lands.

With OUT Cattails & unwanted weeds & vegetation & crop burning (including some field Agricultural & wildlife management residual burning). We would not be economical compatible with other area of Columbia. Most farmers in my area do not burn unless they see it as a necessary tool. The humus most of the time is important to put back into the ground. I believe there is some seed crops that it stimulates it production by burning. With our selected Cattail & Agriculture burning the Adams County Mosquito Control District 2011 W. Hwy 26 Othello, Wa. 99344. Ph: 488-2661 would have a bigger mess, controlling the Mosquito in our community.

509-488-9839 * 509-346-9637 * 509-488-0297 * FAX 509-488-0252

HUNTING AND FISHING



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There is one **bigger** burners in my area (Adams & Grant County) other than farmers. That could be stop 75 +- % of their burning with inter graded management = US Fish & Wildlife Columbia National Wildlife Refuge (USFW) - Ph: 509-488-2668. 735 E. Main St. Othello, Wa 99344. Please Don't get them mad at me please. As in recent year they have been better neighbors. There is a lot of Government lands around or next to our lands now that is not livestock grazed & is burned, on purposes or ??? Accidental fires. The previous burning on (Rented lands) from the Government was very small as the previous Soil Conservation Service & WSU, Range & Wildlife Biologist taught and stress to us, integrated livestock management & small weed field & crop burning. In the 1950's - 1960's & Beyond. So-called Accidents ? & or Controlled ? (Burns) on Washington State Game & US Fish & Wildlife Ground does occasionally +- unnecessary. Most (90%+-) Hanford Reach & US Fish & Wildlife Othello area & some Washington State Game managed lands & USBR lands would Stop the Burning (on purpose or so called accidental) by having neighbor Cattleman moving livestock in & out for short or extended periods. Under the Taylor Grazing act. The commingled or neighbor is the person the Government must lease to. This grazing would get the County Weed district off of the land managers and stop 75 +- % of the quest able costly spraying & ??? Burning. Grazing & Burning the area also stop the illegal "M" plant from being grown. These Government lands are extremely weedy due to lack of inter graded management with livestock grazing & spot burning. Deer in our area do not like woods either but getting enough weed control with our livestock grazing & burning will not happen with our damage to adjoining private or public lands. Deer damage the state is suppose to pay for. In our area we have more Mule Deer where we have the livestock & farming & Cattails agricultural burning. The Government may not graze to the extent we graze our deed & or other leased lands. With inter-graded management Livestock grazing & small spot burning area it will increase substantially the Waterfowl & upland game birds usage & other wildlife numbers & service & decrease the damage to the neighbor lands & decrease the burning by accident or on purpose on Government lands. On this Government Weed & vegetation lands that a Cattleman could & should graze. The Cattleman next door would have to clean up his cattle on small lands area next door & or burn the abandoned or clean up fields & or spray more just small areas. Or use a small holding pasture when coming out of the abandoned Government lands to clean up the hair & etc out of the Cattle. Then chemicals spray that smaller pasture area & leaf had weed areas on the government lands would work. It would decrease the fire on purpose or accidental. Cattle & Deer do not like weed that much so some area will need burning & for a while, differently & manage with grazing +- - to lower field accidental or on purpose burning on government lands. All area when caught a fire. With out grazing are much bigger fires. This year there is a higher chance of range fires on public lands with out grazing & or spot controlled burning due to the vegetation. I hope all the field burning get done or we will have unwanted big bad agricultural & Government burn lands.

Mark Shessler is our legislature representative.

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Inclosed is a USFSW map of the lands they burned last year instead of grazing. I am highlighting. The last time this was burned this many acres here was when it was a booming range in World War 2.

Enclosed is the newspaper article

Sincerely

Dwayne Michel
Dwayne Michel



MICHEL RECREATION LANDS

2316 W. HWY. 26, OTHELLO, WA. 99344

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RECEIVED
JUN 09 2006
BY

6/5/06
DM Ranches
Michel Lands

Melissa McEachron
Department of Ecology
P.O. Box 47600
Olympia, Wa. 98504-7600
e-mail, mpc461@ecy.wa.gov
Fax 360-407-7534

Dear Melissa McEachron

In one of my new paper I ask (DOE looking for comments about agricultural burning)
Enclosed Article Please send us a copy of the proposed rule too. Enclosed my
comments & maps

Agricultural & Wildlife & etc. burning is a economical tool that is needed and DOE does
not need to put any more rules on Agricultural Burning or Wildlife burning.

We have 10,000 Acres of farm & Range land & Orchards, Recreation Lands Hunting &
fishing, Commercial City Buildings & housing & Rentals. Our family been here over a
106 years. We are all College educated & extended management & safety classes

With out Agriculture burning the following would become a problem and increase +
problems. Cost, Weeds, Mosquitoes increase numbers big & other unwanted insects
control. Unwanted Weed, Unwanted weeds in water aren't spray-able due to water
issue. Plus we would NOT be economical compatible with other Country & Areas, or
States. With our Agriculture Burning it would increase Chemical use & Organic Farmers
would have a bigger problem in agriculture fields. Some crops or plant, = burning
increases the production. We in our Agriculture & Wildlife management only burn
where it is necessary & increase the productive of both.

With Out Field burning for us, it would decrease the Waterfowl area ponds & habitate
areas (some area it would chock out the ponds with out burning) or size. That would get
choked out with undesirable growth that we burn in the spring. This would increase
Undesirable vegetation. With out field burning we would have a lot more Mosquitoes
habitat that our County Mosquitoes District doesn't like. The Counties hopes we burn

509-458-9819 * 509-346-9617 * 509-489-0297 * FAX 509-489-0292

HUNTING AND FISHING



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all these fields, ponds areas & etc. fields areas. Some areas are only 1 1/2 - miles from Othello. Mosquitoes & other insects all spring or summer in the area of smoke part of one day. With our field or Agriculture Burning it would decrease my pasture & waterfowl lands in some wet or water area and become a Mosquitoes problem & weed problem, which the County Weed District & Mosquitoes Agency like me to timely burn

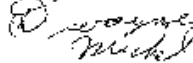
Agriculture Field burning stimulates some Agriculture Crops too with our chemical. Some Originate farmers have to burn to stimulate the crop the way they need it & etc.. With our some present field burning we would have to use more chemical for sure & more fuel (cost) to put down the residue

I do not want the US Fish & Wildlife Columbia National Wildlife Refuge (509-488-2668) mad at us. Their management are better neighbors now! But there burning of the Royal Lake Royal Slough area, 100's of Acres last year was not total necessary last year. Enclosed map. This area has never caught a fire except when it was a Roaming Range during WW II other than USFWS intentional fires. There intentional burn last year was the biggest burn for over 20 + years. What should have been done was to have D. Michel graze the cheat grass they want to ??? do to it for a time period then spray the smaller undesirable vegetation & or burn very "small" areas. Then D. Michel put there cattle in a small area on their neighboring lands to get rid of some more seed & spray & or burn a very smaller holding area. Enclosed is a map of this burned area. I highlighted one of the burn areas not need to be burned with what could have been integrated wildlife & livestock grazing management with the neighbor us. The Federal Government have informed us, Under the Taylor Grazing Act they should have or were required to lease to the adjoining or commingled neighbor. OK!

Some area in Adams & Grant & Franklin County Government Ground will catch a fire this year due to the following increase vegetation along the roads! Lack of integrated Management with grazing & or smaller limited control burning on some Federal & or state managed lands. Most is USFWS & USBR & or federal lands not integrated, managed 3 +- ways together. The USBR & DNR lands this year with the big re-growth on the range we use and we don't use that is next door to our lands along roads or power lines will have a increase in uncontrolled burns. The land we graze has less sensitive area for uncontrolled unwanted fires by over 90 % during the summer or big & small fire. Especially if we do not have controlled burns on agriculture lands that join them with grazing first or with our grazing. We are worried about the Avista (Washington Water Power INC.) Power lines lack of maintenance & their fires history they have in recent year started on the rangelands due to lack of upgrading these old power pole systems. We got to remember not all area can we manage livestock for maximum fire control but it will help by over 70 + % for fire & weed or decrease Chemical usage control! The agricultural burning we do is very low as we in most crops Agriculture like to put the residue in the soil

My State Legatator Rep. is Mark Schoester
Sincerely

Lwayne Michel



Please send copy of proposed Rules etc

DOE looking for comments about agricultural burning

The state Department of Ecology (DOE) is inviting comments on a rule regulating agricultural burning.

The DOE is updating the existing rule (Chapter 173-430 of the Washington Administrative Code) on agricultural burning. The rulemaking also is the culmination of efforts that completes the DOE's responsibilities in a settlement agreement with Save Our Summers (SOS).

The rule was developed collaboratively with an advisory group consisting of representatives from the Washington Association of Wheat Growers and other agricultural industry groups. Save Our Summers and the American Lung Association of Washington, and researchers with expertise in farming and air pollution.

"This is the first opportunity to review the agricultural burning program as a whole since 1994," said Melissa McEachron, a specialist in the Ecology's air quality program. "Several changes have occurred to the program since

that time as a result of new science and technology, litigation and legislation."

One of the key changes to the rule is a description of the DOE's procedures for determining daily whether burning should be allowed in Eastern Washington. Specifically, Ecology will use weather forecasting tools and a smoke metering system to carefully manage the spring and fall burning of wheat fields.

The rule provides new guidelines on how decisions will be made to avoid severe air pollution events downwind of burned fields.

The Washington Clean Air Act intends that public health be protected and also allows for agricultural burning that is reasonably necessary.

The DOE will be holding five hearings on the proposed rule. The hearings will begin at 7 p.m. * May 23 - Moses Lake: Big Bend Community College, 7662 Chanute St NE, Room 1870. * May 24 - Spokane: Spokane County WSU/Cooperative Extension, 222 N. Havana.

* May 24 - Wenatchee: Wenatchee Valley Museum, 127 South Mission.

* May 25 - Walla Walla: Walla Walla Regional Airport, 310 A. Street, Blue Mountain/Mill Creek Rooms.

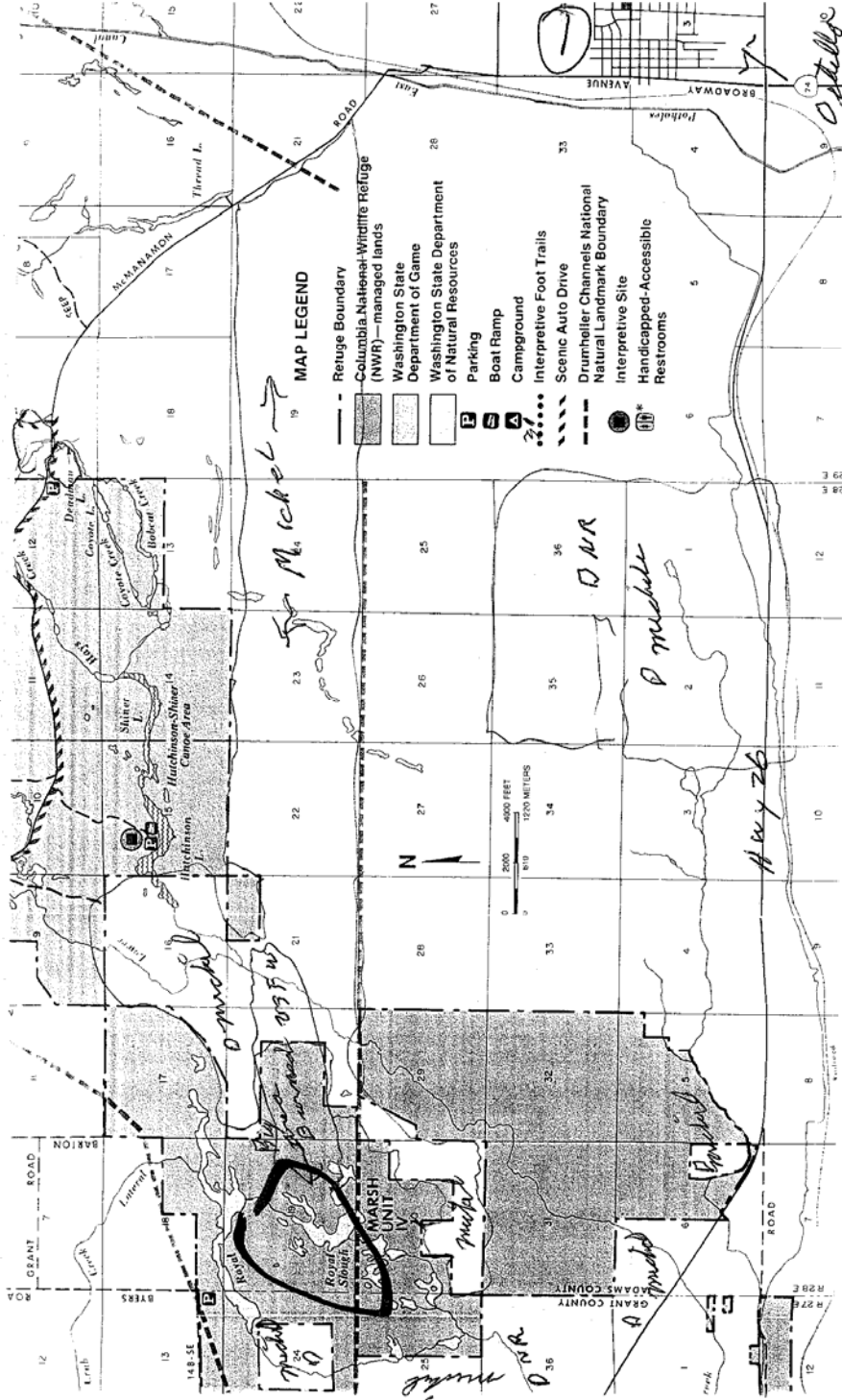
* May 30 - Pullman: WSU Campus, Carpenter Building, Room 102

For a copy of the proposed rule or to submit comments, contact Melissa McEachron, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600; e-mail, mmce461@ecy.wa.gov; fax (360) 407-7534. The proposed rule is also available online at <http://www.ecy.wa.gov/laws-rules/activity/wac173430.html>.

The comment period on the rule will run until June 9. Written, e-mailed and faxed comments must be received no later than 5 p.m.

After considering all public comments, the DOE expects to issue the final rule within a few months. A response will be sent to all people who provide comments.

Send over copy please



2

McEachron, Melissa M.

From: Arlene Weaver [apweaver@tumwater.net]
Sent: Sunday, May 07, 2006 3:56 PM
To: McEachron, Melissa M.
Subject: Ag Burning Rule

Although I am glad to see some efforts made to monitor ag burning, it really doesn't go far enough. For instance, in the Chelan-Manson-Orondo area, burning has been at all all-time high. Much of it is because orchards are being pulled or mass pruning clippings are being burned. However, my husband and I witnessed several instances where plastic pipe and other rubbish was being burned as well. Huge, house-sized piles are burned enmasse every day. I know I'm not alone in expressing my distress. I am a borderline asthmatic and my respiratory system is being pushed to the max. This is just too much. Some days it is so bad I can neither open my windows nor can I be outdoors. I believe I speak for many middle-aged to elderly persons when I express my anger at this practice. It's bad enough when we have summer fires, but to have to put up with the kind of burning that we have experienced the last few years is over the top. Some days, the smoke is so thick you can hardly see across Lake Chelan.

I support any action that will cut down or stop this mass burning. Thank you, Arlene Weaver

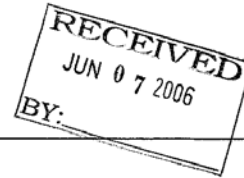
5/8/2006



SPOKANE COUNTY
AIR POLLUTION
CONTROL AUTHORITY

WEST 1101 COLLEGE AVE, SUITE 403 ♦ SPOKANE, WASHINGTON 99201 ♦ (509) 477-4727 ♦ FAX (509) 477-6828

3



June 7, 2006

Melissa McEachron
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: COMMENTS ON PROPOSED REVISIONS TO CHAPTER 173-430 WAC

Dear Ms. McEachron:

SCAPCA respectfully submits the following written comments regarding proposed revisions to Chapter 173-430 WAC:

1. WAC 173-430-020(5)
SCAPCA recommends defining "growers" or replacing "growers" with "farmers", since "farmer" is defined in the regulation.
2. WAC 173-430-020(5)(a)
"Orchard" is not defined, but SCAPCA understands the definition to be fruit and nut bearing trees. SCAPCA requests confirmation that "orchard prunings" exclude prunings from trees grown on Christmas tree farms for the purpose of being sold as "Christmas Trees".
3. WAC 173-430-020(5)(b)
SCAPCA requests confirmation that organic debris hauled or otherwise placed along a fenceline must be removed prior to burning and that it not be burned.
4. WAC 173-430-020(5)(c)
SCAPCA requests confirmation that organic debris hauled or otherwise placed along or in an irrigation or drainage ditch must be removed prior to burning and that it not be burned.

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5. WAC 173-430-040(2)
SCAPCA recommends the following revision: "For allowed agricultural burning, the department of ecology (~~and~~) or local..."
6. WAC 173-430-040(2)(c)
SCAPCA requests examples of what constitutes making "determination forms conveniently available to the public".
7. WAC 173-430-040(3)(a)
SCAPCA recommends the following revision: "Ecology or local air pollution control authorities will provide..."
8. WAC 173-430-040(3)(c)
Please provide one or more examples of what constitutes adequate consideration of "the public's interest in the environment" in the permit decision-making process
9. WAC 173-430-040(3)(f)
SCAPCA recommends the following revision: "Ecology or its delegate, or a local air agency with jurisdiction, or its delegate must approve or deny the permit based in part, or in whole, on information in the application."
10. WAC 173-430-040(4)(a)(i)
SCAPCA recommends the following revision: "Twenty-five dollars per calendar year..."
11. WAC 173-430-040(4)(a)(i)
SCAPCA requests one or more examples of what would constitute a 10-acre "equivalent".
12. WAC 173-430-040(4)(a)(ii)
SCAPCA recommends the following revision: "Fifty dollars for orchard tear-out burning per calendar year per farm based on burning debris from up to twenty acres or equivalent"
13. WAC 173-430-040(4)(c)(i)
SCAPCA recommends the following revision: "The permitting authority may set the fee as an amount per farm per calendar year..."
14. WAC 173-430-040(4)(c)(i)
SCAPCA recommends defining "farm" or replacing it with "agricultural operation".

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15. WAC 173-430-040(4)(c)(iv)
SCAPCA recommends clarifying the table. Specifically, a column could be added that describes what each row pertains to (e.g., reference the section of the regulation). For example, the \$25 fee is in regard to WAC 173-430-040(4)(a)(i).
16. WAC 173-430-040(4)(d)
SCAPCA recommends the following revision: "A farmer must pay the fee when submitting the application (~~prior to receiving a permit~~)"
17. WAC 173-430-080(2)(a)
SCAPCA recommends the following revision: "Local air authorities and ecology delegated authorities are required to use applications and permits supplied by ecology, unless otherwise approved by Ecology. Permit conditions will be determined by the permitting authority."
18. WAC 173-430-080(4)
SCAPCA recommends the following revision: "Permitting authorities, including delegated permitting authorities, must determine day-to-day burning restrictions near populated areas and ~~((arrange for)) dissemination of the results or ((-Delegated permitting authorities must arrange for the))~~ assisting ecology in the dissemination of results."
19. WAC 173-430-080(4)
Please clarify what "results" need to be disseminated and if the "results" must be disseminated daily?
20. WAC 173-430-080(6)(a)
SCAPCA recommends the following revision: "Permitting authorities must issue a permit fee refund (~~when a farmer decides to burn fewer acres than identified in the~~) for permitted acres not burned on confirmation by the permitting authority."
21. WAC 173-430-080(10)(a)
Please explain what information, at a minimum, must be entered into the web-based data base.
22. WAC 173-430-080(10)(a)
Can the "arrangement" with Ecology consist of the local air authorities or its delegates providing the information to Ecology to enter?
23. WAC 173-430-080(10)(a)
How frequently must information be entered into the web-based data base?

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Page 4 of 4

24. WAC 173-430-090(2)

SCAPCA recommends the following revision: "~~((Delegation criteria include))~~ The delegated permitting authority must, at a minimum, meet all of the following criteria:"

Thank you for your time and consideration.

Sincerely,
Spokane County Air
Pollution Control Authority



Matt Holmquist
Compliance Administrator

Cc: Ronald J. Edgar, Interim Director
Correspondence file

4

RECEIVED
JUN 07 2006
BY:

Frank Johnson for Johnson Farms

I farm 20 miles south of Asotin Clarkston Valley at 3000 feet, 15 miles to Oregon line Average farm houses 5 miles apart. We have mountain weather not like the lower elevations. Basically I don't have a problem with manner in which to get a permit to burn but the method does not work. To get a permit in Asotin County takes two to three days. You can fax it to Spokane but they won't ok it until they receive the money. Then you have to wait for the burn day. In the past October 2005 there was only 6 burn days. You cannot run a farming operation in this manner. We do not burn the stubble unless we cannot get through the residue with the drills.

The solution for the problems would be for the DOE to have a better understanding of the problems facing the farmers have to stay in farming . Not acting like typical Bureaucrating Agency, but to be user friendly.

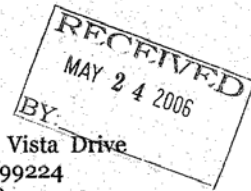
Solution:

Set up credit card systems to receive money in Spokane Office that would help to get your permit in one day.

Frank H Johnson
2701 PERRY LANE
CLARKSTON WA 99403
509 758 1870

May 24, 2006

5



Tim Connor
1016 S. Buena Vista Drive
Spokane, WA 99224
(509) 838-4580

Melissa McEachron
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Proposed Agricultural Burning Rules under WAC 173-040

Dear Ms. McEachron:

I'm submitting these comments on behalf of myself and Save Our Summers, the citizen organization I represented on the Agricultural Burning Rule Advisory Committee over the past year. As you know, the rulemaking process that generated the proposed rules was a requirement of the November 2001 settlement agreement between SOS and Ecology.

Background and General Comments:

Save Our Summers participated on Ecology's Agricultural Burning Rule Advisory Committee in 2005 and 2006 and endorses the proposed changes and additions to Section 173-040 of the Washington Administrative Code (WAC).

The purpose of the proposed rules is clearly described in RCW 70.94, the Washington Clean Air Act, which gives primary emphasis to the protection of public health, including individuals with particular sensitivities to air pollutants.

The law provides for agricultural burning that is deemed "necessary" and for which alternatives have not been certified. Ultimately, the question becomes how much burning should be allowed and at what times should such burning occur? The discretion on these variables (when to allow burning, and how much to allow) lies properly with the Department of Ecology and the regional air pollution control authorities who manage the agricultural burning programs in their respective jurisdictions.

The trend of the health research on PM 2.5 pollution (the small, combustion particles that constitute smoke from agricultural burning and other combustion sources) is toward the increasingly evident conclusion that it is harmful to sensitive individuals even at levels well below 35 micrograms per cubic meter--the concentration recently proposed by the Environmental Protection Agency to be the new National Ambient Air Quality Standard for PM 2.5. Thus, the science argues for an approach to regulating PM 2.5 pollution in

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ways that keeps exposures as low as reasonably achievable.

SOS believes the Washington Department of Ecology's program is increasingly oriented toward this approach, and that the new proposed rules will institutionalize the approach by better defining the objectives and instilling greater transparency and accountability. Some may find fault with the proposed rules because they don't absolutely define the air quality threshold (as a "burn"/ "don't burn" line on the scale of measureable PM 2.5 pollution) at which no further burning will occur. But the more relevant consideration in making a burn call is not the current level of air pollution, but existing and foreseeable atmospheric conditions that determine smoke dispersion. Just as farmers would like officials to have the discretion to allow burning when atmospheric conditions are improving, clean air advocates would like officials to have the discretion to not allow burning when atmospheric conditions are unfavorable, even if existing levels of PM 2.5 are "good," as "good" is defined in the federal Air Quality Index. Under the proposed rules, both scenarios are possible by the proper exercise of judgment by the permitting official. These rules give Ecology and regional air pollution control authorities the desired discretion, but with guidance and reporting procedures that allow external and internal review.

The Smoke Management Index

Specifically with regard to the "smoke management index" proposed at WAC 173-430-040 (2)(a), the index incorporates two provisions that SOS believes give definition and consistency to the use of "metering" as defined at WAS 173-430-010 (7).

The Caution Level

The first provision is essentially an administrative caution level tied to air quality measurements. Under the proposed rules the caution level is 16 $\mu\text{g}/\text{m}^3$ PM 2.5 as measured on a 24-hour basis.

Under the framework of the federal air quality index, 16 $\mu\text{g}/\text{m}^3$ is the transition between "good" and "moderate" air quality. Regional PM 2.5 data available at the time the rule was formulated also show that 16 $\mu\text{g}/\text{m}^3$ is slightly more than double the typical concentrations of PM 2.5 measured in eastern Washington communities where field burning is a concern.

Thus, 16 $\mu\text{g}/\text{m}^3$ is a useful caution level for burn decisions. Under the proposed smoke management index, once the 16 $\mu\text{g}/\text{m}^3$ level has been reached, decisions to allow field burns would have to be formally reported with an explanation for why no further significant deterioration of air quality is expected to occur as a result of the authorized burning.

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The 'Lessons Learned' Report

The second provision is an accountability and 'lessons learned' step that would be required in the rare event that a burn authorized under the first step results (or appears to result) in a significant further deterioration of air quality. Under the proposed rule, Ecology has the discretion to investigate unusual air pollution events at any time. However, the investigation and report would be mandatory if, in the aftermath of an allowed burn, PM 2.5 pollution reaches a level that is 25 $\mu\text{g}/\text{m}^3$ above the typical seasonal average for the area, as measured on a 2-hour rolling average. At that point, the "further significant deterioration" has occurred and a report analyzing the reason for the unexpected deterioration is required.

Concerns Raised

Several concerns about the proposed smoke management index were raised and discussed as the Agricultural Burning Rule Advisory Committee considered the proposal. One concern was whether the new proposed reporting requirements would be burdensome. But a review of actual PM 2.5 data and agency decisions during the periods when the "metering" system has been in effect reveal few instances where burning was actually allowed after 16 $\mu\text{g}/\text{m}^3$ had been reached, and fewer instances where a followup report would have been required. In other words, it appears Ecology is already using "metering" in an appropriately conservative way. And, thus, the 16 $\mu\text{g}/\text{m}^3$ caution level reporting can be instituted without creating a new and burdensome system of paperwork, and yet still serve the purpose of providing a long-term and uniform guideline for burn decisions. Since Ecology already investigates unusual pollution events, the second provision (requiring reports at a specified level of air degradation) cannot be considered a new burden, as it is just a refinement of the current practice.

Another concern was the use of 16 $\mu\text{g}/\text{m}^3$ as the caution threshold--the PM 2.5 pollution level that would require a report if a burn is authorized. As proposed by SOS, the concept was that the caution level be the point at which the PM 2.5 concentration (as measured on a 24-hour rolling average) reached a level that is double the typical seasonal average for the area in which the burn would take place. Currently, this would mean the caution threshold would be between 11 and 15 $\mu\text{g}/\text{m}^3$, depending on the area. In the Committee's deliberations the prevailing sentiment was that a uniform number be used, and the number proposed by Ecology was 16 $\mu\text{g}/\text{m}^3$. As the draft rule notes, 16 $\mu\text{g}/\text{m}^3$ is the "division between 'good' and 'moderate' classifications" for PM 2.5 in the federal Air Quality Index (AQI).

While SOS would have preferred the "doubling" method, there is a benefit both for internal administration purposes and external review purposes to having a single number with a connection to the AQI. There is, however, the

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prospect that the AQI will change. During the course of the Committee's discussion on the new proposed rules, the U.S. Environmental Protection Agency proposed a new National Ambient Air Quality Standard for PM 2.5 that is considerably lower than the existing standard. The science behind that downward shift may also lead to a downward revision in the AQI. It is logical that any such revision be evaluated when the proposed new rules come up for future review and amendment. In other words, if the AQI is going to be the basis for the caution threshold, then the program rules should stay current with the AQI.

Finally, the proposed smoke management index described in new section WAC 173-430-040 (2) is subject to the criticism that it is too complicated. There is a reasonable question, for example, as to why it should include both 24-hour and 2-hour averages.

Here SOS would like to address two provisions in particular.

The first is the provision in section WAC 173-430-040 (2)(a)(ii) that sets an alternate trigger level for the documentation described at WAC 173-430-040 (2)(c). The alternate trigger is the detection of a 2-hour "spike" of PM 2.5 that exceeds the typical seasonal average for the area by 15 $\mu\text{g}/\text{m}^3$. Accounting for local differences, this means the alternate trigger is a 2-hour spike of 21 to 23 $\mu\text{g}/\text{m}^3$. At least in theory, this provision forces the official making the burn call to account for spikes in pollution levels that may indicate a higher degree of risk for additional burning than would be apparent simply by looking at the rolling 24-hour average in the area. As such it should provide an additional margin of safety.

The second is the provision at WAC 173-430-040 (2)(d) that evaluates post-burn conditions by looking for 2-hour spikes that push PM 2.5 concentrations to 25 $\mu\text{g}/\text{m}^3$ above the typical seasonal average for that area. This means, depending on the area in question, the reporting threshold would come at 31 to 33 $\mu\text{g}/\text{m}^3$ PM 2.5. For this purpose--evaluating whether an allowed burn causes an unanticipated and undesired further deterioration of air quality--the use of the 2-hour measure is more appropriate. Using a 24-hour average concentration would not be effective because it would be all too easy for acute exposures to be hidden in the smoothing of the numbers that comes with averaging them over 24 hours.

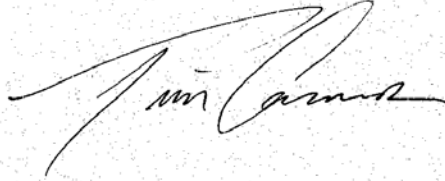
Implementation and Review

Certainly a review of the new rules after they've been implemented will be useful to determine how well the new system works and how it may be improved. SOS would support such a review. In the meantime, it's important that problems with the complexity of the smoke management index not be seen

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as problems with the underlying concepts, which are not complicated. In simplest terms, the program should be flexible but err on the side of caution, particularly when monitoring data show unusually high levels of pollution. And when decisions to burn have (or appear to have) unwelcome consequences, investigation is necessary to find out what went wrong so that future such episodes can be avoided.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Carnahan". The signature is written in dark ink and is positioned below the word "Sincerely,".

6

McEachron, Melissa M.

From: Roland & Carol Schirman [schirman@innw.net]
Sent: Monday, May 29, 2006 7:58 AM
To: McEachron, Melissa M
Cc: Jay Penner
Subject: Rule-making activity for Chapter 173-430 WAC - Agricultural Burning

May 29, 2006

Melissa McEachron
WA State Dept of Ecology

Dear Melissa

I am sorry that a prior commitment prevented me from attending your public comment session at Walla Walla last week. I have reviewed the draft and other supporting documents and would like to offer the following suggestions. Many of these comments are based on the experiences I had during the past 10 years in following the activities of the Agricultural Burn Task Force and assisting in the Columbia County permitting process.

- 1) On page 8 paragraph 2(f) the statement limits action on the application to information provided on the application. Could wording be added that would allow the permitting agency to consult with the farmer or make a visual on-site inspection to clarify any questions and insure that all potential alternatives have been considered before making a final decision?
- 2) On page 9 paragraph 4(d) If fee must accompany application (as stated on page 7 2 (c)) could this statement be considered as contradictory? One solution might be to change the wording "receiving a permit" to "processing the application".
- 3) Page 10 paragraph 5 (c) and page 15 (2) both specify 7 days to return an opinion. I would suggest it be 7 business days (or is that the intent?).
- 4) Page 15 paragraph (3) is not clear. Is there a definition somewhere for "must issue where appropriate"?

One item I do not see spelled out is how far in advance of the scheduled burn can a permit be requested. Could I request a permit for an October burn in January?

I also would suggest that somewhere in the document provision be made that the entity that is evaluating the permit application be given the ability to make an on-site spot check for accuracy in description of the site conditions. I feel that this is both helpful to the evaluator and also builds public confidence that consistency to agreed standards is being applied.

I want to applaud your team for the work they did in preparing this document. It is a major step in helping producers to effectively utilize this very important tool.

Yours truly,

Roland Schirman

6/2/2006

120 Weinhard Rd
Dayton WA 99328

6/2/2006

McEachron, Melissa M.

7

From: Anne Brooks [Anne@BrooksSolar.com]
Sent: Monday, May 22, 2006 12:04 PM
To: McEachron, Melissa M.
Subject: ag burning

Melissa,

I am responding to the "comment on ag burning rule" article in our local paper, The Chelan Valley Mirror. The article discusses wheat fields in particular, but I am concerned about burning fruit trees also.

I oppose the burning of fruit trees and burning of agricultural material in any way. The Chelan Recycling Center accepts brush that they chip and then give away the chips. This is very environmentally friendly and we don't have to suffer through the smoke from the burning!

We live across the Columbia River from the Beebe Orchards where all the trees along the Columbia River are being removed and burned. There were days that the smoke would hinder sight distance toward the north to the Chelan Airport. It, of course, was great weather otherwise so the smoke spoiled a beautiful day. Fortunately for us the wind was from down river and blew the smoke away from us, but unfortunate for those up river near the airport and Howard Flats who had to live with the smoke. My husband developed asthma recently and is affected by burning. He has to stay indoor when the air is smokey.

With chipping available (there are commercial chipper firms for orchard use) and air pollution a concern, it seems there is no reason to allow burning of ag materials.

Thank you for receiving my comments.

Anne Brooks
140 Columbia View
Chelan, WA 98816
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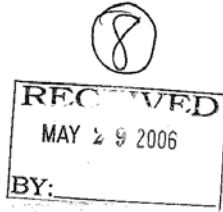
Leonard Hudson, M.D.
Past-President

Marina Cofer-Wildsmith, MA
Chief Executive Officer

**Improving Life,
One Breath
at a Time**

We bring people
and resources
together to fight
tobacco use, bad air
and the asthma
epidemic

PRINTED ON RECYCLED PAPER



May 25, 2006

My name is Cindy Thompson and I serve as the Eastern Washington Regional Director for the American Lung Association of Washington. I had the great pleasure of serving on the advisory committee that worked with the Department of Ecology in pulling together these new rules.

I'm proud of the great work that was accomplished and I'm here today to lend the American Lung Association of Washington's support for the proposed rules.

These rules clarify and give meaning to Washington's Clean Air Act which was established with the intent of protecting our public's health. The American Lung Association of Washington has persevered and worked diligently to maintain this focus on the health and safety of our public. It has been a long standing goal to work together with stakeholders and agree how to best monitor burning and best protect the lung health of Washingtonians. We have accomplished our task.

We applaud the efforts and commitment of the Department of Ecology and its staff. The Department's dedication and resolve to listen to stakeholders and develop workable, meaningful rules was evident throughout the process.

Our mission at the Lung Association is to assure lung health for all people in Washington.

What brought us to the table was our concern for the affect that burning and its smoke can have on our lungs, especially those with compromised respiratory functions. Burning can cause or contribute to high concentrations of particulate matter, also known as PM, in our air.

The majority of smoke is composed of very fine particles than are less than 2.5 microns in diameter. To give you a comparison, a human hair is about 75 microns in diameter. These are very small particles.



Our respiratory systems are equipped to filter out larger particles, but our lungs are vulnerable to the smaller ones which can easily slip past the respiratory system's natural defenses. These small particles get trapped in the most sensitive tissues and interfere with oxygen uptake and cause airway inflammation. Toxic and cancer-causing compounds can "hitchhike" into the lung on particulate matter and be directly absorbed into the lungs.

Those at most risk from PM exposure are the elderly, people with chronic respiratory or heart disorders, and people with lung diseases such as asthma, emphysema, chronic bronchitis, and COPD. Children, who breathe more deeply than adults, are most affected by PM exposure. Children with asthma, like my son and daughter, are particularly vulnerable.

During the rule making process, we spent much time working towards guidelines that would best protect the public's health. We agreed to a set of guidelines that takes into consideration existing PM levels and weather patterns when approving agricultural burning.

In addition to these guidelines, the proposed rules provide a system to evaluate how well the system works. Through this process, we will learn how to better protect our most vulnerable residents.

Together, we developed what we believe to be a set of rules that will benefit all of us. Our proposed rules serve as an example for others to follow. It is a rule with substance; it is a fair rule. While there remains work to be done, this is a great step forward.

2006 marks the 100th anniversary of the American Lung Association of Washington. We continue today, as we began 100 years ago, protecting the lung health of Washington's residents.



9

PO BOX 2207
WENATCHEE, WASHINGTON 98807-2207
(509) 662-6181

June 8, 2006

Grower Board
Phyllis Gleasman
Manson District
Dave Bitterman
East Wenatchee
Mark Clayton
Orondo
Scott Dorsing
S Columbia Basin
Sam Godwin
Tonasket
Kurt Guelich
*Omak/Okanogan
Jerry Gutzwiler
Squilchuck
Tom Hattrup
Upper Yakima Valley
Kent Karstetter
N Columbia Basin
Kim Kennedy
Cashmere
James Koempel
Dryden
Frank Lyall
Lower Yakima Valley
Allen Byrd
Methow/Pateros
Aaron Mathison
Malaga
Dennis Nicholson
Peshastin/Leavenworth
Allen Robison
Chelan
Maurice Sawyer
Oroville
Allan Schmidt
Mid Yakima Valley
Mike Miller
Entiat
Lynn Smith
Wenatchee/Sunnyslope
Richard Thomason
Brewster
Kent Waliser
Tri-Cities Area
Larry Ward
Monitor
Brian Westerdahl
Bridgeport
Manager
Kirk B Mayer
* Board President
** Vice President

Melissa McEachron
Department of Ecology
P.P. Box 47600
Olympia, WA. 98504

Subject: Agricultural Burning

The Washington Growers Clearing House Association is a non-profit tree fruit grower association with approximately 2,200 Washington tree fruit grower members. The positions of the Clearing House are established by a tree fruit grower board of directors which are elected by their peers in different geographic production areas of the State.

Orchard burning is a valuable tool in controlling orchard related pests and diseases in a timely manner. For example: a highly transferable bacterium such as Fire Blight can spread through a tree and/or an entire orchard rapidly if left unchecked. The infected portion of the tree or orchard must be removed and burned immediately to stop the spread of Fire Blight. Allowing the ability to burn orchard prunings etc immediately enables the grower to reduce the likelihood of spreading this highly contagious disease.

A major pest concern for apple growers is Coddling Moth. Coddling Moth is capable of flying long distances to locate host trees and lay eggs that can result in very high levels of fruit damage and financial loss. Access to markets can be lost as a result of coddling moth detection. It is critical that infested trees destined to be pushed out, be burnt or chipped immediately to reduce the opportunity for Codling Moth etc. infestations to spread and escalate. The ability to burn and/or chip orchard trees in a timely manner reduces the number and density of pest infestations thereby reducing the amount and number of pesticide applications needed to control pests such as: Codling Moth, leaf rollers, and apple maggot, etc. The industry and County Pest and Disease boards are very concerned about the current number of orchard tree piles that have not been disposed of in a timely manner.

For current WSU pest and disease management advisory information go to:
www.ncw.wsu.edu/treefruit/models.htm

Efforts to chip have had limited success. First chipping is very expensive, some growers have been quoted as high as \$1,000 per acre to chip trees, plus a set up fee and chip removal fee. There is very little use for the chips. Mulching the chips has proved unsuccessful. The one sawmill in Okanogan County that accepted chips no longer does. Secondly, it is next to impossible to get an orchard chipped in a timely manner. Very few firms are available to chip. I personally called several of the chipping firms listed on the DOE website the day after the public agricultural burning hearing in Wenatchee, asking for quotes to burn five acres of orchard trees. None have returned my calls.

From a pest and disease stand point it is critical that tree fruit growers have the ability to burn their orchard pruning's and remove trees in a timely manner.

The DOE policy to allow selective isolated orchard burning on moderate burning days has been helpful in reducing the number of burns on regular burn days.

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Washington Growers Clearing House Association.
Comments on Agricultural Burning continued....
Page 2 of 2

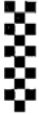
Lastly, in order to ensure that appropriate burning days are quickly and accurately identified it would be helpful if more weather monitoring stations could be established in the area from Wenatchee north to the Canadian Border. The topography in that region has significant impact on the local weather patterns which may not be detected in a timely manner, by more distant weather stations.

Another common issue that makes it difficult to burn in a timely manner is the fact that DOE notification of burn days is made fairly late in the morning. Any effort to make notification earlier in the day or preceding day would be very helpful.

Thank you.

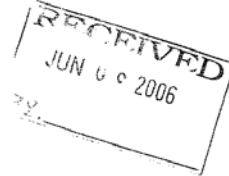


Kirk B. Mayer, Manager



PO BOX 2207
WENATCHEE, WASHINGTON 98807-2207
(509) 662-6181

9



Grower Board

- Phyllis Gleasman
Manson District
- Dave Bitterman
East Wenatchee
- Mark Clayton
Orondo
- Scott Dorsing
S Columbia Basin
- Sam Godwin
Tonasket
- Kurt Guelich
*Omak/Okanogan
- Jerry Gutzwiler
Squitchuck
- Tom Hattrup
Upper Yakima Valley
- Kent Karstetter
N Columbia Basin
- Kim Kennedy
Cashmere
- James Koempel
Dryden
- Frank Lyall
Lower Yakima Valley
- Allen Byrd
Methow/Pateros
- Aaron Mathison
Malaga
- Dennis Nicholson
Peshastin/Leavenworth
- Allen Robison
Chelan
- Maurice Sawyer
Oroville
- Allan Schmidt
Mid Yakima Valley
- Mike Miller
Entiat
- Lynn Smith
Wenatchee/Sunnyslope
- Richard Thomason
Brewster
- Kent Waliser
Tri-Cities Area
- Larry Ward
Monitor
- Brian Westerdahl
Bridgeport

Manager

Kirk B. Mayer

* Board President

** Vice President

June 8, 2006

Melissa McEachron
Department of Ecology
P.P. Box 47600
Olympia, WA. 98504

Subject: Agricultural Burning

The Washington Growers Clearing House Association is a non-profit tree fruit grower association with approximately 2,200 Washington tree fruit grower members. The positions of the Clearing House are established by a tree fruit grower board of directors which are elected by their peers in different geographic production areas of the State.

Orchard burning is a valuable tool in controlling orchard related pests and diseases in a timely manner. For example: a highly transferable bacterium such as Fire Blight can spread through a tree and/or an entire orchard rapidly if left unchecked. The infected portion of the tree or orchard must be removed and burned immediately to stop the spread of Fire Blight. Allowing the ability to burn orchard prunings etc. immediately enables the grower to reduce the likelihood of spreading this highly contagious disease.

A major pest concern for apple growers is Codling Moth. Codling Moth is capable of flying long distances to locate host trees and lay eggs that can result in very high levels of fruit damage and financial loss. Access to markets can be lost as a result of codling moth detection. It is critical that infested trees destined to be pushed out, be burnt or chipped immediately to reduce the opportunity for Codling Moth etc. infestations to spread and escalate. The ability to burn and/or chip orchard trees in a timely manner reduces the number and density of pest infestations thereby reducing the amount and number of pesticide applications needed to control pests such as: Codling Moth, leaf rollers, and apple maggot, etc. The industry and County Pest and Disease boards are very concerned about the current number of orchard tree piles that have not been disposed of in a timely manner.

For current WSU pest and disease management advisory information go to:
www.new.wsu.edu/treefruit/models.htm

Efforts to chip have had limited success. First chipping is very expensive, some growers have been quoted as high as \$1,000 per acre to chip trees, plus a set up fee and chip removal fee. There is very little use for the chips. Mulching the chips has proved unsuccessful. The one sawmill in Okanogan County that accepted chips no longer does. Secondly, it is next to impossible to get an orchard chipped in a timely manner. Very few firms are available to chip. I personally called several of the chipping firms listed on the DOE website the day after the public agricultural burning hearing in Wenatchee, asking for quotes to burn five acres of orchard trees. None have returned my calls.

From a pest and disease stand point it is critical that tree fruit growers have the ability to burn their orchard pruning's and remove trees in a timely manner.

The DOE policy to allow selective isolated orchard burning on moderate burning days has been helpful in reducing the number of burns on regular burn days.



10

WASHINGTON ASSOCIATION OF WHEAT GROWERS

109 EAST FIRST AVENUE, RITZVILLE, WASHINGTON 99169-2394
TELEPHONE 509-659-0610 FAX 509-659-4302

May 23, 2006

Director Jay Manning
Department of Ecology
Olympia, WA 98504-7600

Dear Director Manning:

The Washington Association of Wheat Growers, in partnership with the state departments of Ecology and Agriculture under a Memorandum of Understanding, has had a very successful seven-year agreement to reduce emissions from wheat stubble burning. Through cooperation, education and better communications, growers have been able to cut acreage burning in half from the original base of 229,000 acres, thus cutting emissions. Washington state wheat growers have worked hard to accomplish this achievement.

Washington state allows for agricultural burning. The law also states that you can not impact the public with smoke from agricultural burning. In the past seven years, it has been a learning process for the public, the Department of Ecology and farmers. You must now have a burning permit and have the permission from your delegating authority before you can burn in your county. This is just one of many improvements.

Agriculture needs to be able to burn for various reasons, such as insect, weed or disease control and removal of excess residue.

The Ag Burning Rule Committee, for which WAWG had a representative at the table, has agreed to a balance of new science and technology to determine burn days. These include: 1) monitors for air quality which give Department of Ecology a look at air quality all over the Southeastern part of the state; 2) metering, which is basically a method of controlling where, when and how many fires can be burning at any given time and any given location; 3) the MM5, which is a state of the art weather report from the University of Washington, gives wind direction and speed at different altitudes to disperse smoke to lessen impact on public health; and 4) notification, to lessen the smoke impact, will be sent to the public through the television media designating when and where burning will take place. Also, there is an education program in place to improve communications between all parties involved—Department of Ecology, Ag Burning Community and the people affected by smoke.

There is current research both at Washington State University and by independent parties, trying to find ways to utilize Ag residue to help eliminate the need to burn. We are looking at paper making, alternate crops, new equipment to handle excess residue, new varieties of cereal grains that can grow in this new high residue environment, and markets for alternate crops.

Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact.

Agricultural burning is very valuable and must be retained as a tool in the toolbox for farmers. This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn, so it will be a win-win situation for all parties involved.

On behalf of the Washington Association of Wheat Growers,

Jerry Snyder
State President
Washington Association of Wheat Growers



WASHINGTON ASSOCIATION OF WHEAT GROWERS

109 EAST FIRST AVENUE, RITZVILLE, WASHINGTON 99169-2394
TELEPHONE 509-659-0610 FAX 509-659-4302

10



May 23, 2006

Director Jay Manning
Department of Ecology
Olympia, WA 98504-7600

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There is current research both at Washington State University and by independent parties, trying to find ways to utilize Ag residue to help eliminate the need to burn. We are looking at paper making, alternate crops, new equipment to handle excess residue, new varieties of cereal grains that can grow in this new high residue environment, and markets for alternate crops.

Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact.

Agricultural burning is very valuable and must be retained as a tool in the toolbox for farmers. This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn, so it will be a win-win situation for all parties involved.

On behalf of the Washington Association of Wheat Growers,

Gretchen Borck
Director of Issues
Washington Association of Wheat Growers

May 25, 2006

Director Jay Manning
Department of Ecology
Olympia, WA 98504



Dear Director Manning,

The Washington Association of Wheat Growers in partnership with the Department of Ecology and Department of Agriculture under a Memorandum of Understanding has had a very success seven year agreement to reduce emissions from wheat stubble burning. Through cooperation, education and better communications the growers have been able to cut acreage burning in half from the original base of 229,000 acres, thus cutting emissions. The wheat growers have worked hard to accomplish this achievement.

Washington State allows for agricultural burning. The law also states that you can not impact the public with smoke from agricultural burning. In the past seven years, it has been a learning process for the public, Department of Ecology and farmers. You must now have a burning permit and have the permission from your delegating authority before you can burn in your county. This is just one of many improvements.

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There is an education program in place to improve communications between all parties involved Department of Ecology, Ag Burning Community and the people effect smoke.

There is research both at WSU and independent parties, on going to try to find ways to utilize Ag residue to help eliminate the need to burn. We are looking at paper making, alternate crops, new equipment to handle excess residue, new varieties of cereal grains that can grow in this new high residue environment, and markets for alternate crops.

Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact.

Agricultural burning is a very valuable tool and must be retained as a tool in the tool box. This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn. So it will be a win, win for all parties involved.

On behalf of the Washington Association of Wheat Growers,

Natural Resources Committee Co-Chairman on fields burning
Ag Burn Task Force member representing cereal grain

Jay Penner

Comments at the Hearings:

Wenatchee Hearing

Moderator

7:27 p.m. on May 24, 2006 In this hearing on the proposed agricultural burn rule, chapter 173.4.30 WAC. In Wenatchee at the Wenatchee Valley Museum. Legal notices of this hearing were published in the Washington State Register at WSR0609081 on May 4, 2006 and in the *Daily Journal of Commerce* on May 2, 2006. Paid notice was published in the May 2006 edition of *Wheat Life Magazine*. Paid notices were also published between May 15 and May 22 in the *Wenatchee World*, *Walla Walla Union Bulletin*, *Moscow Pullman Daily News*, *Spokesman Review* and the *Columbia Basin Herald*. In addition to hearing notice we sent to approximately 100 permit holders and interested individuals, organizations and other agencies.

The hearing announcement was also available on Ecology's internet website and direct links were provided to those signed on Ecology's ag burn list serve. Any testimony received at this hearing, along with written comments received will be part of the official record for this proposed rule.

Let us begin. Please state your name for the record and address.

Randy Uhrich

Randy Uhrich. I'm from Wenatchee and I am the secretary/treasurer for Washington Association of Wheat Growers. I have my comments here. I wanted to just state the position of the association and read this for the record.

The Washington Association of Wheat Growers, in partnership with the state departments of Ecology and Agriculture under a Memorandum of Understanding, has had a very successful seven-year agreement to reduce emissions from wheat stubble burning. Through cooperation, education and better communications, growers have been able to cut acreage burning in half from the original base of 229,000 acres, thus cutting emissions. Washington state wheat growers have worked hard to accomplish this achievement

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Agriculture needs to be able to burn for various reasons, such as insect, weed or disease control and removal of excess residue.

The Ag Burning Rule Committee, for which WAWG had a representative at the table, has agreed to a balance of new science and technology to determine burn days. These include: 1) monitors for air quality which give Department of Ecology a look at air

quality all over the Southeastern part of the state; 2) metering, which is basically a method of controlling where, when and how many fires can be burning at any given time and any given location; 3) the MM5, which is a state of the art weather report from the University of Washington, gives wind direction and speed at different altitudes to disperse smoke to lessen impact on public health; and 4) notification, to lessen the smoke impact, will be sent to the public through the television media designating when and where burning will take place Also, there is an education program in place to improve communications between all parties involved-Department of Ecology, Ag Burning Community and the people affected by smoke.

There is current research both at Washington State University and by independent parties, trying to find ways to utilize Ag residue to help eliminate the need to burn We are looking at paper making, alternate crops, new equipment to handle excess residue, new varieties of cereal grains that can grow in this new high residue environment, and markets for alternate crops

Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact.

Agricultural burning is very valuable and must be retained as a tool in the toolbox for farmers. This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn, so it will be a win-win situation for all parties involved. On behalf of the Washington Association of Wheat Growers.

Moderator

Thank you sir.

Before me close formal testimony I would like to extent the opportunity for anyone else who would like to give formal comment to please go ahead and say so now. OK. All testimony received at this hearing; along with all written comments received will be part of the official hearing record for this proposed rule. Written comments must be received by close of business June 9, 2006. The next step is adoption. The agency director or his or her designee will look at public comment. The responsiveness summary and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled July 26, 2006. If the proposed rule should be adopted that day and filed with the code reviser it will go into effect 31 days later. On behalf of the Department of Ecology, thank you for coming tonight. I appreciate your cooperation and courtesy. Let the records show that this hearing is adjourned at 7:59 p.m.

Pullman Hearing

This is the formal part. During this section here I have to read certain things for the public record.

As tonight's hearings officer my job is to conduct the hearing. I have two main responsibilities. First I make sure everyone who wants to has the opportunity to come up and comment and second I need to make sure that Ecology obtains a clear record of the

hearing. That's what this recording is for.

Normally during this part I go through the ground rules about common courtesy and those types of things, but with the group tonight I think we'll be able to get away without going through the rules.

Before we start we had everyone sign and say if they wanted to testify. If you haven't decided I will ask you toward the end if you want to come up. I'll be starting with the people in the order they signed in and then I'll open it up to others. Remember one at a time, questions are for the record. We, no one will be able to answer your questions right now.

Since we only had a couple of folks that wanted to testify – normally we go about 3 minutes. I keep a timer, but I won't keep a timer but let's try to go 3 to 4 minutes. When I call your name please step up please state your name and address for the record. That's important because I'll stop you if you don't. With that I'm going to put this right here if you forget. Just says name and address. Thank you. Find my watch now. There we go.

Let the record show it's 7:48 p.m. on May 30, 2006 and this is the hearing on the proposed agricultural burn rule, chapter 173.4.30 WAC in Pullman, WA on the campus of Washington State University. Legal notices of this hearing were published in the Washington State Register as WSR06-09-081 on May 4, 2006 and in the *Daily Journal of Commerce* on May 2, 2006. Paid notice was published in the May 2006 edition of *Wheat Life Magazine*. Paid notices were also published between May 15 and May 22 in the *Wenatchee World*, *Walla Walla Union Bulletin*, *Moscow Pullman Daily News*, *Spokesman Review* and the *Columbian Basin Herald*. In addition a hearing notice was sent to approximately 100 permit holders, interested individuals, organizations and agencies, the hearing announcement was also available on Ecology's internet website and direct links were also provided to those signed up on Ecology's ag burn list serve.

Any testimony received at this hearing along with the written comments received will be part of the official hearing record for this proposed rule. We will begin with Gretchen Bork.

Gretchen Borck

Good evening my name is Gretchen Borck I'm the director of Issues for the Washington Association of Wheat Growers. Our address is 109 E First Ave, Ritzville, WA 99169.

The Washington Association of Wheat Growers, in partnership with the state departments of Ecology and Agriculture under a Memorandum of Understanding, has had a very successful seven-year agreement to reduce emissions from wheat stubble burning. Through cooperation, education and better communications, growers have been able to cut acreage burning in half from the original base of 229,000 acres, thus cutting emissions. Washington state wheat growers have worked hard to accomplish this achievement

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Future technology could provide smoke plume modeling with neighboring states and Indian Nations on reservation ground to help with smoke impact.

Agricultural burning is very valuable and must be retained as a tool in the toolbox for farmers. This proposed Ag Burning rule will both protect public health and allow farmers to continue to burn, so it will be a win-win situation for all parties involved. On behalf of the Washington Association of Wheat Growers, thank you.

Moderator

Leah, did you want to testify? Jorge Jimenez

Jorge Jimenez (13)

My name is Jorge Jimenez. My address is 1620 NE Norwood Drive, BB302. I live here in Pullman, WA.

I'm not really representing, but I'm a student here at WSU. I have been working on air quality and field burning the last 5 years. I have to say that since I started working on this specific topic when I started here was a really conflicting issue. There was a little

miscommunication and misunderstanding about field burning. There was a lot of problems about trying to get different parties to agree what would be best for the area, the region, for the population. I have to say that during my study the first step was to find any measurement in this area, particularly Eastern Washington. We couldn't define from archive data in the year 2000, 2001 if we have certain events of high air and particulate matter that could retrieve it from field burning and then provide a guidelines and talking with people who were doing all this relation.

I can say that throughout all this period of time this would be asking if you had any improvement in the way that field burning is being managed through meter reading and all levels of tools including modeling to better predict what could be the conditions in this area and also to ? over decreased any chance of having an episode of poor air quality due to smoke from field burning. So, with this, I would also like to say there is always room for improvement. Doing more research in this field would also help you know to better understand this issue. I think that is it.

Moderator

Before we close formal testimony I would like to extent the opportunity for anyone else who wants to give formal comment to do so now?

Nancy Hoobler (14)

My name is Nancy Hoobler I work on, I'm the natural resource coordinator for the Palouse Conservation District and our address is 325 NW State Street, Pullman, WA 99163.

Going over the proposal with all the changes there is one change that is under, it's on page 4. It's the last line and the word is must. The permit, the sentence is "in order to assure that health effects do not increase the permit authorities must provide metering, data gathering and annual reporting." Since I'm the one that writes the permits for this district and that my board of supervisors have instructed that I will not do any metering. So where there is no understanding as to who does metering we would like to see the word must be revised. Where the permit authority provides metering to change that to Department of Ecology or I know some other districts do the metering. Change that because that word might target all of us to do the metering and that's not in our budget to do that. Thank you.

Moderator

Would anyone else like to give formal comment before we start the closing part? OK. All testimony received at this hearing along with all written or video comments received will be part of the official hearing record for this proposed rule. Written comments must be received by close of business June 9, 2006. The next step is adoption. The agency director or his or her designee will look at public comment. The responsiveness summary and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled July 26, 2006. If the proposed rule should be adopted that day and filed with the code reviser it will go into effect 31 days later. On behalf of the Department of Ecology, thank you for coming tonight. I appreciate your cooperation

and courtesy. Let the records show that this hearing is adjourned at 7:59 p.m. Thank you.

Hearing Summaries:

DEPARTMENT OF ECOLOGY

HEARING SUMMARY

M E M O R A N D U M

May 24, 2006

TO: Jay Manning
Director

FROM: Kary Peterson
Hearings Officer

SUBJECT: Public Hearing Summary for WAC 173-430

The Air Quality Program conducted a public hearing for the proposed changes to the Agricultural Burning Regulation on May 23, 2006, in Moses Lake. Melissa McEachron, Karen Wood, Paul Rossow, Kary Peterson were present. A total of seven people, (not counting staff), were in attendance. One person gave testimony.

Summary of Comments:

The Washington Association of Wheat Growers, (WAWG) representative, Gretchen Borck, was the only person to give public comment. WAWG supports the revisions of WAC 173-430. WAWG also supports Ecology's agricultural burn program. The people in attendance support the agencies revisions to WAC 173-430 and Ecology's agricultural burn program. No one commented in opposition to the proposed changes to WAC 173-430.

cc: Stu Clark, Program Manager
Jerry Thielen, Regulatory Affairs Manager
Melissa McEachron, Rule Writer

DEPARTMENT OF ECOLOGY

HEARING SUMMARY

M E M O R A N D U M

May 25, 2006

TO: Jay Manning
Director

FROM: Marcie Mangold
Hearings Officer

SUBJECT: Public Hearing Summary for WAC 173-430

The Air Quality Program conducted a public hearing for the proposed changes to the Agricultural Burning Regulation on May 24, 2006, in Spokane. Karen Wood, Paul Rossow, Kary Peterson, Jeannie Brandt and Marcie Mangold were present. A total of 15 people, (not counting staff), were in attendance. Four people gave testimony.

Summary of Comments:

Cindy Thompson, representing the American Lung Association of Washington was first to give comment. Ms. Thompson was on the Advisory Committee and appeared to be in support of the revisions of WAC 173-430.

Second was Clare Sosso, a citizen of the Spokane area. Ms. Sosso stated that she had asthma, and was appreciative of the revisions of WAC 173-430. She also requested that someone look into where the smoke was coming from in the area she lives (Nine Mile Falls). **(15)**

The Washington Association of Wheat Growers, (WAWG) representative, Jerry Snyder was third to give comment. WAWG supports the revisions of WAC 173-430. WAWG also supports Ecology's agricultural burn program. Finally, Tim Connor, representing Save Our Summers, submitted written comments. Mr. Connor commended the agency for working together with the farmers, and praised the system, but asked that it be flexible and err on the side of caution regarding monitoring data that show unusually high levels of pollution.

In general, the people in attendance supported the agency's revisions to WAC 173-430 and Ecology's agricultural burn program. No one commented in opposition to the proposed changes to WAC 173-430.

cc: Stu Clark, Program Manager
Jerry Thielen, Regulatory Affairs Manager
Melissa McEachron, Rule Writer
Ag Burn Team

HEARING SUMMARY

From: Marcley, Richard

Sent: Thursday, May 25, 2006 1:14 PM

To: Manning, Jay (ECY)

Cc: McEachron, Melissa M.

Subject: Air Quality: Proposed Agricultural Burning Rule Public Hearing in Wenatchee

The Air Quality Program conducted a public hearing on May 24th 2006 at the Wenatchee Valley Museum & Cultural Center located at 127 S. Mission St in Wenatchee. The hearing was conducted to solicit public comment regarding changes in the agricultural burn rule (chapter 173-430 WAC).

Present were Melissa McEachron, Holly Meyers, and Maureen McCormick with the Department Air Quality Program and myself, Richard Marcley with the Water Quality Program out of the central regional office in Yakima.

Three individuals from the public attended the meeting. One made both written and oral comments to the proposed rule change, which was favorable. The general consensus of opinion among the attendees was that more air quality monitoring stations would enable the Department to better serve agriculture burning needs if more local real-time conditions were identifiable.

Richard Marcley

Water Quality Specialist

509-454-7250

DEPARTMENT OF ECOLOGY

HEARING SUMMARY

M E M O R A N D U M

May 26, 2006

TO: Jay Manning
Director

FROM: Paul Rossow
Hearings Officer

SUBJECT: Public Hearing Summary for WAC 173-430

The Air Quality Program conducted a public hearing on the proposed changes to the Agricultural Burning Regulation on May 25, 2006, in Walla Walla. Melissa McEachron, Karen Wood, Kary Peterson and Paul Rossow were present. A total of 29 people, (not counting staff), were in attendance. Three people presented testimony.

Summary of Comments:

Val Turner presented testimony on behalf of Jay Penner, who sat on the rules advisory committee for this rule, representing cereal grain growers, but who could not be in attendance. Mr. Penner and the Washington Association of Wheat Growers, which he represents, support the revisions of WAC 173-430 and Ecology's agricultural burn program.

Eric Thorn, who grows cereal grain and blue grass and lives in Dayton, expressed his wish that grass burning be treated under the same laws and rules as wheat stubble burning, his concern that Ecology's burn day determinations are driven by wind speed to an excessive degree, and his hope to see results from the research on alternatives to burning conducted with permit fees. **(16)**

David Carlton, also a grower from Dayton, expressed concern that Ecology's burn day determination is excessively driven by wind speed, and suggested that Ecology use ventilation models other than the MM5 model to predict ventilation.

Overall, the first comment praises the proposed rule changes, and the last two, while perhaps not directly commenting on the rule, provide valuable feedback on ways to improve Ecology's burn day determination process. **(17)**

cc: Stu Clark, Program Manager
Jerry Thielen, Regulatory Affairs Manager
Melissa McEachron, Rule Writer

DEPARTMENT OF ECOLOGY

HEARING SUMMARY

M E M O R A N D U M

May 31, 2006

TO: Jay Manning
Director

FROM: Kary Peterson
Hearings Officer

SUBJECT: Public Hearing Summary for WAC 173-430

The Air Quality Program conducted a public hearing for the proposed changes to the Agricultural Burning Regulation on May 30, 2006, in Pullman, on the WSU campus. Melissa McEachron, Grant Pfeifer, Kary Peterson were present. A total of seven people, (not counting staff), were in attendance. Three people gave testimony.

Summary of Comments:

The Washington Association of Wheat Growers, (WAWG) representative, Gretchen Borck, gave public comment. WAWG supports the revisions of WAC 173-430. WAWG also supports Ecology's agricultural burn program. Nancy Hoobler representing Palouse Conservation District submitted public comment; main concern was with wording that might cause permitting authorities to take on more responsibility with record keeping and burn decisions. Jorge Jiminez commented on how far the Ag. Burning program had progressed and would like to see continued research in the future. The people in attendance support the agencies revisions to WAC 173-430 and Ecology's agricultural burn program.

cc: Stu Clark, Program Manager
Jerry Thielen, Regulatory Affairs Manager
Melissa McEachron, Rule Writer

Appendix B - Comment Index and List of Individuals Providing Comment

List of Individuals and Index

Comment #	Name
1.	Dwayne Michel DM Ranches 2516 W. Hw. 26 Othello, WA 99344
2.	Arlene Weaver apweaver@tumwater.net
3.	Matt Holmquist Spokane County Air Pollution Control Authority 1101 West College Ave, Suite 403 Spokane, WA 99201
4.	Frank H. Johnson Johnson Farms 2701 Perry Lane Clarkston, WA 99403
5.	Timothy J. Connor Save Our Summers 1016 S. Buena Vista Dr. Spokane, WA 99224
6.	Roland Schirman 120 Weinhard Rd Dayton, WA 99328
7.	Anne Brooks 140 Columbia View Chelan, WA 98816
8.	Cindy Thompson American Lung Association 1817 E. Springfield, Suite E Spokane, WA 99202

9. **Kirk B. Mayer**
Washington Growers Clearing House
P. O. Box 2207
Wenatchee, WA 98807

10. **Gretchen Borck, Jerry Snyder, Randy Uhrich**
Washington Association of Wheat Growers
109 East First Ave.
Ritzville, WA 99169

11. **Jay Penner**
Agricultural Burning Practices and Research
Task Force Member
Washington Association of Wheat Growers
109 East First Ave.
Ritzville, WA 99169

12. **Charles Stansel**
Yakima Regional Clean Air Authority
Six South 2nd Street, Suite 1016
Yakima, WA 98901

13. **Jorge Jiminez**
1620 NE Norwood Drive, BB302
Pullman, WA 99163

14. **Nancy Hoobler**
Palouse Conservation District
325 NW State Street
Pullman, WA 99163

15. **Clare Sosso**
15115 N. Pheasant Rd
Nine Mile Falls, WA 99206

16. **Eric Thorn**
P.O. Box 207
Dayton, WA 99328

17. **David Carlton**
103 Fullerton Rd
Dayton, WA 99328

Appendix C - Public Notices



Hearing Notice

Proposed Ecology Regulation on Agricultural Burning

Hearing schedule

The Department of Ecology is proposing changes to the agricultural burning

Why are changes needed?

The proposal incorporates legislative changes from as far back as 1995. The proposal also includes changes that provide solutions to several types of technical issues and questions that have occurred while administering the agricultural burning permit program.

What types of changes are proposed?

The changes proposed are designed to update the agricultural burning program in the state of Washington. They include:

- incorporating changes made by the legislature (from 1995-2005)
- revising definitions
- organizing sections to be more user friendly
- clarifying technical issues
- describing procedures Ecology or local air quality agencies use to assess and grant specific permission to burn (in eastern Washington, this is typically referred to as the daily burn call)
- integrating the current metering system into the goals and procedures
- specifying additional permit related requirements
- adjusting permitting authority responsibilities
- spelling-out delegation criteria

Yes. The Agricultural Burning Practices and Research Task Force approved the following fee revisions:

- Variable fee remains at \$2.00/acre through 2007
- In 2008, fee becomes \$2.25/acre
- Add minimum permit level and fee level for orchard tear-out
 - 20 acres at \$50.00
- No change to the minimum permit and fee level for other types of agricultural burning.

May 2006

Original printed on recycled



**All hearings begin
at 7:00 p.m.**

**Thursday
May 25, 2006:**

**Walla Walla Regional
Airport
310 A St.
Blue Mountain/
Mill Creek Rooms
Walla Walla, WA**

**Tuesday
May 30, 2006:**

**WSU Campus
Carpenter Bldg.
Room 102
Pullman, WA**

Additional information:

**Copies of the proposed
rule and supporting
material are available
on the Department of
Ecology's web site at:**

**[http://www.ecy.wa.gov/
laws-rules/activity/
wac173430.html](http://www.ecy.wa.gov/laws-rules/activity/wac173430.html)**

Are there definition changes in the proposal?

Yes. The incidental commercial agriculture provision in RCW 70.94.745 created an exception for agricultural burning that is incidental to commercial activities. The exception applies to orchard prunings, organic debris along fencelines, organic debris along or in irrigation or drainage ditches, and organic debris blown by wind. The proposal includes definitions for three of the terms and an example of organic debris blown by wind. The definitions below are included in the proposal as part of section 020:

- **Orchard prunings.** An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations.
- **Organic debris along fencelines.** A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.
- **Organic debris along or in irrigation or drainage ditches.** An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field.
- **Organic debris blown by wind.** The primary example is tumbleweeds.

Additional changes to definitions are found in section 030 of the proposal.

How can I comment on the proposed regulations?

You can comment by giving testimony at any of the public hearings (see the schedule) on page 1. You can also comment by submitting written comments (letter or email) by June 9, 2006 to:

Melissa McEachron
Department of
Ecology P.O. Box
4 7600
Olympia, WA 98504
E-mail: mmce461@ecy.wa.gov
FAX: (360) 407-7534

If you need special accommodations or need this publication in another format, please call Tami Dahlgren at (360) 407-6800. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

NEWS REVIEW PUBLISHING COMPANY

The Moscow-Pullman Daily News

P.O. Box 374
Lewiston, Idaho 83501
(208) 743-8411

Date 05/17/2008

INVOICE NO 425612

LEGAL ADVERTISING
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SOLD TO: WASHINGTON
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SPOKANE

NOTICE: This is

Please

A copy of the proposed rule is available for review at www.ecology.wa.gov/rulemaking or by contacting Melissa McBeck, Deputy Chief of Ecology, P.O. Box 47600, Olympia, WA 98547-6000, e-mail: melissa.mcbeck@ecology.wa.gov, phone: (360) 407-8860, fax: (360) 407-7574.

You are invited to the proposed rule at any of the public hearings, or to mail in your written comments to Melissa McBeck at the above contact information by 5:00 p.m. June 9, 2008.

State Administrative Policy Act (SAPA) determination

Ecology has determined that this rule change has no probable significant adverse impact on the environment, and has issued a determination of no significant impact for this rule change.

Persons wishing to print or object to approval of this application, or comment on the determination of no significant impact, must send their comments to Kenney, Leahy & 2006 at the address below. Department of Ecology, Air Quality Program, Attention: Melissa McBeck, P.O. Box 47600, Olympia, WA 98547-6000.

If you are objecting to or protesting the application, you must include a detailed statement of the basis for objection and a two dollar security fee. If you are only commenting on the determination of no significant impact, there is no fee.

Hearing schedule

All hearings begin at 7:00 p.m.

May 23, 2008:

Big Bend Community College, 7682 Channing St, NE, Room 1270 A&B, Moses Lake, WA

May 24, 2008:

Spokane County WSO Cooperative Association, 222 N. Haven, Spokane, WA

Wenatchee Valley Museum, 127 South Mission, Wenatchee, WA

May 25, 2008:

Walla Walla Regional Airport, 310 N. 5th, Elm Mountain/Mill Creek Rooms, Walla Walla, WA

May 30, 2008:

Invoice No 30311016

Invoice # 425612 Ag Burning

Page 1 of 1 Lines 1

Tab. Lines

100000 \$ 117.04

Statement will be rendered the first of the month.

Statement Will Refer to Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

Lorraine Hudson, Legal Clerk being first duly sworn, on oath deposes and says: That she is the printer of Moscow-Pullman Daily News, a newspaper of general circulation, printed and published daily except Sunday at Moscow, Latah County, Idaho, in compliance with Sections 80-108, 80-107, and 80-106 of the Idaho Code and the amendments thereto; that the notice of which the annexed is a full, true and correct printed copy was published in the regular and entire issues of said newspaper and not in a supplement thereto, upon the following dates:

May 17, 2008

the same being the date designated for the publication of said notice

Lorraine Hudson

State of Idaho

SS

County of Latah

On this 17 day of May

In the year of 2008, before me, a Notary Public, personally appeared Lorraine Hudson, known or identified to me to be the person whose name subscribed to the within and being by me first duly sworn

the statements therein are true and correct to me that he executed the same. My Commission Expires 05/10/2010

Robin Watkins
Notary Public for Idaho

Residing at Moscow, Idaho



425612
Washington State Department
of Ecology
Notice of Public Hearing
Chapter 173-430 WAC, Agricultural
Burning

The Washington State Department of Ecology (Ecology) is updating Chapter 173-430 WAC, Agricultural Burning, which regulates agricultural burning in Washington. This rule change fulfills requirements of a settlement agreement between Ecology and an citizen group Save Our Scenic (SOS). Ecology will hold public hearings to receive comments on the changes to this regulation.

What is the purpose of the rule change?

The rule changes will: Provide new guidelines on how Ecology will make daily decisions about whether to allow burning to begin in Washington. Ecology will use weather forecasting tools and a smoke marking system to monitor spring and fall burning of wheat fields to avoid severe air pollution downwind of burned fields.

incorporate legislative changes and amendments.

Clarify best-of-both-worlds and definitions.

Add new air permit requirements identified in the Ecology/SOS settlement agreement.

Describe changes to and clarify permitting authority responsibilities.

Specify criteria for delegating all or part of the burn permit program.

How were the rule changes developed?

Washington State Department of Ecology
Bodies of Public Hearing
Chapter 173-430 WAC, Agricultural Runoff

The Washington State Department of Ecology (Ecology) is conducting Chapter 173-430 WAC, Agricultural Runoff, which regulates agricultural runoff in Washington. This rule chapter has requirements of a settlement agreement between Ecology and the Urban Growth Study Committee (UGS). Ecology will hold public hearings to receive comments on the changes to this regulation.

What is the purpose of the rule change?

The rule changes will:

- Provide new guidelines on how Ecology will make daily decisions about whether to allow a rain in eastern Washington. Ecology will use weather forecasting tools and a modeling system to manage runoff and all barriers of wheat fields to avoid severe air pollution downwind of tilled fields.
- Incorporate legislative changes and corrections.
- Clarify best practices and definitions.
- Add proposed changes identified in the Ecology 2008 settlement agreement. Changes to the regulatory authority, permitting, and responsibilities.
- Specify the rules for collecting all or partial fishery permit program.

How were the rule changes developed?

Ecology worked with an advisory group consisting of representatives of the Washington Association of Wheat Growers and of the agricultural industry group, Save Our Runoff, the American Lung Association of Washington, and researchers at Washington State University in Pullman and at Pollution.

How to review and comment on the proposed rule

A copy of the proposed rule is available for review at <http://www.ecy.wa.gov/programs/air/quality/173-430.html> or by contacting:

Melissa McEstrin
Department of Ecology
P.O. Box 47300
Olympia, WA 98504-7600
e-mail: mme401@ecy.wa.gov
phone: (360) 407-6860
fax: (360) 407-7534

You can comment on the proposed rule at any of the public hearings in person, or by mail. Write comments to Melissa McEstrin at the above contact information by 5:00 p.m. June 9, 2008.

State Environmental Policy Act (SEPA) determination

Ecology has determined that the rule changes have a potential significant adverse impact on the environment and has issued a "determination of no significant impact" to the rule change.

Persons wishing to protest or object to approval of this regulation, or comment on the determination of no significant impact, must send their comments to Ecology by June 9, 2008. The address is below.

Department of Ecology
Air Quality Program
Attention: Melissa McEstrin
P.O. Box 47300
Olympia, WA 98504-7600

If you are protesting or objecting to the application, you must include a detailed statement of the basis for objections and a two-dollar recording fee. If you are objecting to the determination of no significant impact, there is no fee.

Hearing schedule

All hearings begin at 7:00 p.m.

May 23, 2008
Big Bend Community College
7667 Chesapeake NE
P.O. Box 1875A & B
Moses Lake, WA
May 24, 2008
Spokane County, WSU Engineering
Extension
232 N. Howard
Spokane, WA
May 25, 2008
Walla Walla Regional Airport
310 4th
Blue Mountain Mill Creek Road
Walla Walla, WA

May 30, 2008
PSL Campus
Cameron Bldg.
Rm 102
Pullman, WA
Naches Valley Museum
227 South Nason
Wenatchee, WA

For more information

Melissa McEstrin
Department of Ecology
P.O. Box 47300
Olympia, WA 98504-7600
e-mail: mme401@ecy.wa.gov
phone: (360) 407-6860
fax: (360) 407-7534

If you need special accommodations or need a justification for another format, please call Tom Cahill at (360) 407-6860 by May 15, 2008. Persons with hearing loss call (800) 717 for Washington Relay Service. Persons with a speech disability call (877) 833-5741.

061175

*Federal Tax ID No. 91-0420030

AFFIDAVIT OF PUBLICATION

WASHINGTON
Spokane, ss.

St Dept of Ecology

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\$ 1,351.35

Log No: SR11675

berg

I swear that I am the Principal Clerk of the SPOKESMAN newspaper established and regularly published, once the English language, in and of general circulation in the City of Spokane, Spokane County, Washington; and in the City of the Kootenai County, Idaho; that said newspaper has published and regularly published and has had said general circulation for more than six (6) months prior to the 23rd day, 1941; that said newspaper is printed in an office at its place of publication in the City of Spokane, Idaho; that said newspaper was approved and designated as a newspaper by order of the Superior Court of the State of Idaho for Spokane County on the 23rd day of July, 1941, and said order has not been revoked and is in full force and effect; and attached hereto and which is a part of the proof of publication was published in said newspaper, one time(s), the having been made once each time on the following dates:
May 17, 2008

and sworn to before me at the City of Spokane, this 17th day of May, 2008.

Jill M. Leong
Notary Public in and for the State of Washington,
residing in Spokane County, Washington



NEWS REVIEW PUBLISHING COMPANY

The Moscow-Pullman Daily News

P.O. Box 374
Lewiston, Idaho 83501
(208) 743-8411

Date 05/17/2008

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A copy of the proposed rule is available for review at www.ecology.wa.gov/rulemaking or by contacting Melissa McBeck, Deputy Chief of Ecology, P.O. Box 47600, Olympia, WA 98547-6000, email: melissa.mcbeck@ecology.wa.gov, phone: (360) 407-8860, fax: (360) 407-7574.

You are invited to the proposed rule at any of the public hearings, or to mail in your written comments to Melissa McBeck at the above contact information by 5:00 p.m. June 9, 2008.

State Administrative Policy Act (SAPA) determination

Ecology has determined that this rule change has no probable significant adverse impact on the environment, and has issued a determination of no significant impact for this rule change.

Persons wishing to print or object to approval of this application, or comment on the determination of no significant impact, must send their comments to Kenney, Leahy & 2006 at the address below. Department of Ecology, Air Quality Program, Attention: Melissa McBeck, P.O. Box 47600, Olympia, WA 98547-6000.

If you are objecting to or protesting the application, you must include a detailed statement of the basis for objection and a two dollar security fee. If you are only commenting on the determination of no significant impact, there is no fee.

Hearing schedule

All hearings begin at 7:00 p.m.

May 23, 2008:

Big Bend Community College, 7682 Chace, 9th, NE, Room 1270 A&B, Moses Lake, WA

May 24, 2008:

SpoKane County WSO Cooperative Association, 222 N. Haven, Spokane, WA

Wenatchee Valley Museum, 127 South Mission, Wenatchee, WA

May 25, 2008:

Walla Walla Regional Airport, 310 N. 5th, Elm Mountain/Mill Creek Rooms, Walla Walla, WA

May 30, 2008:

Invoice No 30311016

Invoice # 425612 Ag Burning

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Statement will be rendered the first of the month. Statement Will Refer to Invoice by No. Only.

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Lorraine Hudson, Legal Clerk being first duly sworn, on oath deposes and says: That she is the printer of Moscow-Pullman Daily News, a newspaper of general circulation, printed and published daily except Sunday at Moscow, Latah County, Idaho, in compliance with Sections 80-108, 80-107, and 80-106 of the Idaho Code and the amendments thereto; that the notice of which the annexed is a full, true and correct printed copy was published in the regular and entire issues of said newspaper and not in a supplement thereto, upon the following dates:

May 17, 2008

the same being the date designated for the publication of said notice

Lorraine Hudson

State of Idaho

SS

County of Latah

On this 17 day of May

In the year of 2008, before me, a Notary Public, personally appeared Lorraine Hudson, known or identified to me to be the person whose name subscribed to the within and being by me first duly sworn

the statements therein are true and I am satisfied to me that he executed the same. My Commission Expires 05/10/2011

Notary Public for Idaho

Residing at Moscow, Idaho



425612
Washington State Department
of Ecology
Notice of Public Hearing
Chapter 173-430 WAC, Agricultural
Burning

The Washington State Department of Ecology (Ecology) is updating Chapter 173-430 WAC, Agricultural Burning, which regulates agricultural burning in Washington. This rule change fulfills requirements of a settlement agreement between Ecology and an citizen group Save Our Scenic (SOS). Ecology will hold public hearings to receive comments on the changes to this regulation.

What is the purpose of the rule change?

The rule changes will: Provide new guidelines on how Ecology will make daily decisions about whether to allow burning to begin in Washington. Ecology will use weather forecasting tools and a smoke marking system to reduce spring and fall burning of wheat fields to avoid severe air pollution downwind of burned fields.

Incorporates legislative changes and amendments.

Clarify best practices and definitions.

Add new air emissions identified in the Ecology/SOS settlement agreement.

Describe changes to and clarify permitting authority responsibilities.

Specify criteria for delegating all or part of the burn permit program.

How were the rule changes developed?

THE WENATCHEE WORLD, WENATCHEE, WASHINGTON
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STATE OF WASHINGTON
COUNTY OF CHELAN

Wenatchee World

WASH. STATE DEPT. OF ECOLOGY
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221603 Washington State Dep

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and approved as such by the Superior
Court of said County and State.

WASHINGTON STATE DEPARTMENT OF ECOLOGY
NOTICE OF PUBLIC HEARING
CHAPTER 179-490 WAC, AGRICULTURAL SURFACING

The Washington State Department of Ecology (Ecology) is updating the 1978-490 WAC, Agricultural Surfacing, which regulates agricultural surfacing in Washington. This rule change is a result of a settlement agreement between Ecology and the American Lung Association (ALA). Ecology will hold public hearings to receive comments on the changes to this regulation.

What is the purpose of the rule change?
The rule change will:
* Provide new guidelines on how Ecology will make daily decisions about whether to allow farming in certain areas.
* Ecology will use weather to control dust and a dust-measuring system to manage spring and fall timing of small takedowns.
* Provide a dust-pollution downward adjustment.
* Provide a dust-pollution adjustment and a dust-pollution adjustment.
* Provide a dust-pollution adjustment and a dust-pollution adjustment.
* Provide a dust-pollution adjustment and a dust-pollution adjustment.

How were the rule changes developed?
Ecology worked with an advisory group consisting of representatives of the Washington Association of Wheat Growers and other agricultural industry groups, State University, the American Lung Association of Washington, and local farmers with expertise in farming and dust reduction.

How to review and comment on the proposed rule
A copy of the proposed rule is available for review at the following addresses:
Ecology, 43612 179-490 WAC, Olympia, WA 98504-7612

Velma McEathron, Ecology, phone: (360) 407-8200
Fax: (360) 407-8200
Olympia, WA 98504-7612

You can comment on the proposed rule in any of the public meetings or email. See the public hearing schedule for details. Comments must be received by Ecology by June 1, 2006.

State Environmental Policy Act (SEPA) determination
Ecology has determined that this rule change has no probable significant adverse impact on the environment and therefore no SEPA determination is required for this rule change.
Persons wishing to comment on the determination of this application, and send their comments to Ecology by June 1, 2006, the address below:

Department of Ecology
Air Quality Program
Attn: Velma McEathron
P.O. Box 43612
Olympia, WA 98504-7612

If you are choosing to protest the application, you must provide a detailed statement of the basis for objection and a fee of \$100.00. If you are protesting on the determination of a significant impact, the fee is \$200.00.

Meeting schedule
All meetings begin at 7:00 p.m.
May 23, 2006
Big Bend Community College
7689 Charles St NE
Poulsbo, WA 98278
May 24, 2006
Buckley County WSC/Cooperative Extension
222 N. Howard
Spokane, WA
Wenatchee Valley Museum
27 South Main
Wenatchee, WA

May 25, 2006
Statewide Regional Super
310 A St
Blaine Mountain
Vancouver, WA
May 26, 2006
WEL Center
Olympia, WA
Box 1129
P.O. Box 1129
Olympia, WA

For more information
Velma McEathron
Department of Ecology
P.O. Box 43612
Olympia, WA 98504-7612
Phone: (360) 407-8200
Fax: (360) 407-8200

PUBLISHED ON: 05/21



TOTAL COST: 330.00
FILED ON: 05/21/06

Subscribed and sworn to before me this 21st day of May, 2006

Nancy J. McMillin
Notary Public in and for the State of Washington,
residing in Wenatchee.

STATE OF WASHINGTON – KING COUNTY

--88

197775
DEPT OF ECOLOGY

No AGRICULTURAL BURNING

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice is

PUBLIC HEARING

was published on

05/02/06

The amount of the fee charged for the foregoing publication is the sum of \$ 298.35, which amount has been paid in full.



[Signature]

Subscribed and sworn to before me on
05/02/06 *[Signature]* *[Signature]*

Notary Public for the State of Washington,
residing in Seattle

State of Washington, King

State of Washington

Washington State Department of
Ecology

Notice of Public Hearing
Chapter 173-430 WAC,
Agricultural Burning

The Washington State Department of Ecology (Ecology) is updating Chapter 173-430 WAC, Agricultural Burning, which regulates agricultural burning in Washington. This rule change fulfills requirements of a settlement agreement between Ecology and the citizen group Save Our Summers (SOS). Ecology will hold public hearings to receive comments on the changes to this regulation.

What is the purpose of the rule changes?

The rule changes will:

- Provide new guidelines on how Ecology will make daily decisions about whether to allow burning in eastern Washington. Ecology will use weather forecasting tools and a smoke metering system to manage spring and fall burning of wheat fields to avoid severe air pollution downwind of burned fields.
- Incorporate legislative changes and corrections.
- Clarify technical issues and definitions.
- Add agreed-upon concepts identified in the Ecology/SOS settlement agreement. Describe changes to and clarify permitting authority responsibilities.
- Specify criteria for delegating all or part of the burn permit program.

How were the rule changes developed?

Ecology worked with an advisory group consisting of representatives of the Washington

Spokane County WSU/
Cooperative Extension
222 N. Havana
Spokane, WA
Wenatchee Valley Museum
127 South Mission
Wenatchee, WA
May 25, 2006:
Walla Walla Regional Airport
310 A St.
Blue Mountain/ Mill Creek
Rooms

Walla Walla, WA
May 30, 2006:
WSU Campus
Carpenter Bldg.
Room 102
Pullman, WA

For more information
Melissa McEachron
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
e-mail: mmce461@ecy.wa.gov
phone: (360) 407-6860
fax: (360) 407-7534

If you need special accommodations or need this publication in another format, please call Tami Dahlgren at (360) 407-6800 by May 15, 2006. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Date of publication in the Seattle Daily Journal of Commerce, May 2, 2006.

5/2(197775)

WSR 06-09-081
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 04-10 -- Filed April 18, 2006, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-125.

Title of Rule and Other Identifying Information: Update the current rule on agricultural burning, [chapter 173-430 WAC](#). This chapter establishes the requirements for burning related to agricultural activities in Washington.

Hearing Location(s): On May 23, at 7:00 p.m., in Moses Lake, Big Bend Community College, 7662 Chanute Street N.E., Rooms 1870 A&B; on May 24, at 7:00 p.m., in Spokane, Spokane County WSU/Cooperative Extension, 222 North Havana; on May 24, at 7:00 p.m., in Wenatchee, Wenatchee Valley Museum, 127 South Mission; on May 25, at 7:00 p.m., in Walla Walla, Walla Walla Regional Airport, 310 A. Street, Blue Mountain/Mill Creek Rooms; and on May 30, at 7:00 p.m., in Pullman, WSU Campus, Carpenter Building, Room 102.

Date of Intended Adoption: July 26, 2006.

Submit Written Comments to: Melissa McEachron, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail MMCE461@ecy.wa.gov, fax (360) 407-7534, received by June 9, 2006.

Assistance for Persons with Disabilities: Contact Tami Dahlgren by May 12, 2006, TTY (877) 833-6341 or 711 (360) 407-6800.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update the current agricultural burning rule to: (1) Incorporate legislative changes and corrections; (2) clarify technical issues and definitions; (3) integrate agreed upon concepts identified in the 9th Circuit Court of Appeals Settlement Agreement; (4) describe the procedures ecology or a local air authority with jurisdiction will use to grant specific permission to burn; (5) specify additional permit and permit application requirements; (6) describe changes to and clarify permitting authority responsibilities; and (7) further spell out the criteria ecology or a local air authority with jurisdiction will use to delegate all or part of the agricultural burning permit program.

The anticipated effect is to have an efficient and effective agricultural burning program that meets the needs of both growers and clean air advocates.

Reasons Supporting Proposal: The reasons supporting this proposal include: (1) Ecology fulfills its responsibilities under the 9th Circuit Court of Appeals Settlement Agreement and under the Administrative Procedure Act; (2) the proposal incorporates legislative changes that have been enacted since 1995; and (3) the proposal also clarifies and provides solutions to several types of technical issues associated with administering an agricultural burning permit program.

Statutory Authority for Adoption: [RCW 70.94.650](#), 70.94.743, and 70.94.745.

Statute Being Implemented: [RCW 70.94.650](#), 70.94.743, and 70.94.745.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McEachron, Lacey, (360) 407-6860; Implementation and Enforcement: Stuart Clark, Lacey, (360) 407-6800.

A small business economic impact statement has been prepared under [chapter 19.85 RCW](#).

Small Business Economic Impact Statement

If you need this publication in another format, please call Tami Dahlgren at (360) 407-6800. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341.

I. Executive Summary: The purpose of this rule amendment is to incorporate legislative changes, integrate technical topics and include settlement agreement items related to agricultural burning that have occurred since the development of [chapter 173-430 WAC](#) in 1994. The proposed amendments will provide clarifications and slight modifications to agricultural burning program requirements in Washington state. As required under [chapter 34.05 RCW](#), ecology is providing this small business economic impact statement (SBEIS) as part of the rule adopting process.

Historically, every SBEIS completed on [chapter 173-430 WAC](#) has found that there are disproportionate benefits to small businesses.¹ Burning has many benefits and is a low cost method of handling a variety of agricultural issues including disease, pests, weeds and excess stubble. In some areas, burning may aid in direct seeding practices which is a less soil invasive farming practice than traditional tillage. Additionally, the rule language has been updated to allow burning for "all agricultural products" which, along with recent legislation, may provide additional incentives for biodiesel production in Washington state. One amendment incorporates the "metered burning" system (described in the settlement agreement), which ecology has developed during the past several years. This allows permitting authorities to make burn calls during periods of time when particulate exposure is less likely to occur in populated areas. This amendment reduces the cost impact of the existing rule by allowing agricultural burning to take place while causing minimal effects to public health.

The costs of the rule to small businesses include the burn fee increase proposed for 2008 by the agricultural burning and research task force and additional application documents.

As the following report details, small businesses dominate the industry affected by agricultural burning in Washington state. This analysis estimates potential industry benefits from rule amendments at \$7.3 million (detailed in Appendix E). The costs of the rule include fee increases and other burdens and have been determined to disproportionately affect small businesses. Ecology expects that the rule amendments in this analysis will provide net benefits to overall business and will disproportionately benefit small businesses.

II. Legal History: The Washington state legislature established an agricultural burning program in 1991. In following, ecology established rules for a full-scale agricultural burning

program that became effective in 1995. Since that time, additional legislation, rule making and litigation related to grass-seed field burning has taken effect. In 1999, a voluntary memorandum of understanding (MOU) agreement with the Washington Association of Wheat Growers to reduce emissions was finalized. Additionally, litigation by Save Our Summers resulted in a 9th Circuit Court of Appeals settlement in November 2001. Ecology initiated rule making to comply with the settlement agreement and fulfill the mandatory regulatory review described in the Washington State Administrative Procedure Act, [chapter 34.05 RCW](#).

III. Description of Changes Created by the Amendments: The majority of the changes in this amendment are required by statute or by the court approved settlement agreement. A crosswalk between the old rule and the amended rule is located in Appendix A. The amendments which rely directly on the statute or court approved settlement agreement are not required to be analyzed under [chapter 19.85 RCW](#) and therefore, are not evaluated in this review. The following sections contain amendment components of the rule that provide additional direction beyond the law and court order decisions and therefore, are evaluated in this analysis:

[WAC 173-430-030\(1\)](#), this subsection explains that propane use to remove vegetative material is considered agricultural burning. The law has never been interpreted to allow propane burning to be a basis for avoiding a permit; this addition will clarify the interpretation of the rule language.

[WAC 173-430-030\(8\)](#), the definition of farmer is updated to include any person engaged in the growing or production for sale of any "agricultural product." This will allow agricultural burning by farms that produce products that are inputs for alternative production purposes such as poplar trees used for pulp and paper or seed crop used for biodiesel. This increases access to agricultural burning.

[WAC 173-430-040\(2\)](#), the burn calls and metering amendment incorporates management practices for burning that have developed over the last ten years and in doing so, have moved beyond the straight acreage analysis used in the voluntary memorandum of understanding (MOU). Metering is a technique that uses meteorological conditions and predictions to manage burning within the capacity of an air shed and may allow increased burning on specific days with minimal affect on people. As the air authorities and ecology have determined how to predict when particulates will be disbursed by the wind, the number of allowable acres burned has increased. This information is used to make daily burn calls that define the quantity of allowable acres to burn in a given area. The metering generates information on the success of the burn and determines how the burn call avoided creating exposure impacts. In order to assure that health effects do not increase, the permit authorities must provide metering, data gathering, and annual reporting.²

[WAC 173-430-040\(3\)](#), in this subsection, the burn permit application process has been amended to include a map requirement. This allows the issuers of burn permits to check the burn area more efficiently. As a result, the cost and time required to apply for a burn permit will increase.

[WAC 173-430-040\(4\)](#), this subsection incorporates the maximum fee levels and the authority for fee level changes. The legislature established the authority of fee level changes to the agricultural burning practices and research task force. This section establishes fees set by the agricultural burning practices and research task force that remain below the maximum level by law of \$2.50 per acre. The fee will be maintained at the current level of \$2 per acre through 2007

and raised to \$2.25 from 2008 on. The increase includes the ecology administration fee increase from \$0.25 to \$0.50 per acre in 2007 and 2008. Additionally, the task force has determined that the research component of the fee will remain at \$0.50 per acre in 2006, drop down to \$0.25 per acre in 2007 and then rise back up to \$0.50 per acre in 2008.

In addition, new fee maximums for orchard tear-out burning are incorporated. According to [RCW 70.94.743](#), outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity, given it has been determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases. The fixed fee for orchard tear-out burning permits of up to twenty acres will increase from \$25 to \$50.

IV. Affected Industry: The dominant economic impact will occur in North American Industry Classification System 111, Crop Production; however, the following NAICS codes may be affected:

- 111 Crop Production
- 112 Animal Production
- 115 Support Activities for Agriculture and Forestry

Table IVa: Permitted Acres Burned by Crop Type³

Sum of ACRES	YEAR				Grand Total
	2002	2003	2004	2005	
CROP					
barley	820	4,477	2,567	2,388	10,252
beans	-	496	-	-	496
CRP	4,828	10,835	12,596	4,667	32,926
corn	-	116	430	1,893	2,439
grass cover	20	172	695	3,607	4,494
hay					
irrigated	151	2,255	1,864	1,868	6,137
dryland	-	-	45	56	101
oats	27	-	-	-	27
orchard	75	461	247	54	837
pasture	-	289	25	150	464
peas	-	-	617	-	617
spot burning	174	232	223	92	721
turnip - seed	-	30	-	-	30
weed control	54	28	154	128	364
wheat					
irrigated	7,223	16,580	24,593	76	48,471
dryland	72,705	228,726	242,985	100,377	644,794
Totals	86,077	264,696	287,041	115,356	753,170

The increase in burning will most likely not create an increase in particulate exposure or

related health effects when burning is timed carefully. However, burning has the potential to affect 1.3 million people on days when the particulates will be brought to highly populated areas. Given accurate timing of the burn calls, data collection and analysis create the primary cost of the rule.

Table IVb. Permitted Acres Burned by County

Sum of ACRES	YEAR				Population
COUNTY	2002	2003	2004	2005	
ADAMS	59		2,320	320	16,428
ASOTIN		73			20,551
CHELAN			20		66,616
COLUMBIA	31,424	109,793	114,045	46,705	4,064
DOUGLAS		695	160		32,603
FERRY				35	7,260
FRANKLIN	3,458	6,766	12,692	1,667	49,347
GARFIELD	60	17,236	16,598	11,565	2,397
GRANT	2,305	3,596	4,250	1,688	74,698
KITTITAS	70	264	277	50	33,362
LINCOLN	492	1,192	1,035	321	10,184
OKANOGAN		39			39,564
STEVENS			30		40,066
WALLA WALLA	27,372	72,946	68,038	18,964	55,180
WHITMAN	20,838	52,097	67,577	34,042	40,740
Grand Total	86,077	264,696	287,041	115,356	493,060

The agricultural sectors affected by this rule are dominated by small businesses. Only 6% of the companies have over fifty employees and 53% have only one to four employees. The average firm employing less than fifty individuals has 9.4 employees.⁴ Thus, most of the companies benefiting from the additional flexibility in the burn calls will be smaller companies.

The permit data provides information on each burn; however, it does not segregate out the costs or gains to individual businesses. The following data provides a summary of four years of activity on the part of individuals applying for permits.

Table IVc Individual Permit Data for 2002 through 2005

Applicant Permit Statistics: Fee estimates				
	Number of Acres	Number of Permits	Acres/ permit	2008 fee increase (Based on 2005 numbers)
Total	753,170	6,005		\$28,839
Individual				
Maximum	70,045	91	770	\$2,715.75
Minimum	11	1	11	\$0.25
Average	1,407	5	286	\$70.91

Median 254 2 127 \$4.25

The majority of the costs of this amendment are imposed on government in the form of researching and documenting the burn calls and providing oversight. The cost imposed on agricultural businesses in exchange for this cost reduction is small relative to the gain from burning. The costs include adding a map to the application and submitting a post burn report. The conservative cost of adding the map is \$19.44. When evaluated on a cost per employee basis there is a disproportionate impact to small businesses as seen in Table IVd.

Table IVd. Disproportionate Impacts Estimate for Maps

Disproportionate Impact			
Employment Basis	Cost	SB \$/Emp	LB \$/Emp
Industry Average	\$19.44	\$2.06	\$0.39
Public Data	\$19.44	\$2.56	\$0.06

In 2008, the fee for agricultural burning will increase from \$2.00 to \$2.25 per acre. The fees are increasing in order to cover the cost of reviewing atmospheric conditions and creating burn calls. The total annual cost of the fee increase is estimated to be \$28,000 in 2008. When evaluated on a cost per employee basis, the fees have a disproportionate impact as seen in Table IVe.

Public data on individual companies is limited to seventeen out of three hundred permittees. The fees have been evaluated with both the industry average and public data and it is suspected that calculations based on the industry average are more likely to be valid. If a company is an average small company and pays the average fee increase of \$71 and the 6% of large employers pay the same average fee, then the impact is disproportionate to small businesses. Small companies would pay on average \$7.51 per employee and an employer with fifty employees would pay \$1.42 per employee.

Table IVe. Disproportionate Impacts Estimate for Fees (Small vs. Large Business)

Disproportionate Impact			
	Cost	SB \$/Emp	LB \$/Emp
Industry Average	\$70.91	\$7.51	\$1.42
Public Data	\$70.91	\$9.33	\$0.23

The \$0.25 fee increase scheduled for 2008 is proportionate to acreage for all companies burning over twenty acres. Acreage burned is a function of crop type rather than number of employees. Acreage burned is highest for wheat and in following, wheat will pay approximately 93% of the fee. 83% of the companies that will pay over \$50 more for the fee increase produce wheat. One company producing wheat is predicted to pay 5% of the fee. Peak employment within wheat and grains in 2004 was eight hundred forty-seven in August while the annual average was two hundred twenty-four. There are one thousand two hundred seventy-eight firms

in NAICS 111 and oilseed, grain farming and wheat constitutes 20% of the one thousand nine hundred seventy-one employees.⁵

As a result of the fee increase from \$25 to \$50 for orchard burning permits up to twenty acres, the impact is disproportionate with respect to acreage as well as employment. Those with burn permits for large acreage will have an average fee increase of \$6 where those with small burn permits will have an average fee increase of \$25 (see Appendix B).

V. Reducing the Cost Impact: Due to the voluntary MOU, burning had been reduced in half by 2000 in comparison with pre 1998 burning. However, burning increased over the last few years under metered burning (see Appendix C). As such, this amendment would have constituted a "method to reduce costs" under [RCW 19.85.030](#) (2)(f). The amendments, taken together, should reduce costs for most companies.

[RCW 19.85.030](#) provides several options for ecology to reduce costs if it is legal and feasible to do so.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

This amendment modifies the timing of burning and allows more burning.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements in [RCW 70.94.650](#) require a permitting program be established. [RCW 70.94.743](#) and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement is detailed. More recordkeeping including maps and post burn reports are required in order to allow increased burning without creating significant health effects.

(c) Reducing the frequency of inspections;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements found in [RCW 70.94.650](#) require a permitting program be established. [RCW 70.94.743](#) and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement details additional requirements. Excellent compliance facilitates increased burning, which in turn lowers costs.

(d) Delaying compliance timetables;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements of [RCW 70.94.650](#) require a permitting program be established. [RCW 70.94.743](#) and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement details additional requirements. In order to allow more burning, an excellent understanding of the timing of burning is essential. Farmers may not be able to burn on the day that is most convenient, but they will be allowed to burn when it is safe to do so.

(e) Reducing or modifying fine schedules for noncompliance;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements in [chapter 70.94 RCW](#) are detailed. Excellent compliance facilitates increased burning.

(f) Any other mitigation techniques.

This rule amendment constitutes mitigation in that it reduces the costs of the existing rule.

VI. Small Business Involvement in Rule Development: Ecology formed an advisory committee in order to include small businesses in the rule drafting phase. The advisory committee included four growers who represented specific crop types and/or grower organizations. In addition, at least one other advisory committee member is a grower although the interested represented was that of the conservation district. Ecology uses several methods to inform growers including: A web-based information system (through LISTSERV), specific e-mail coordination with delegated permitting authorities, ecology air quality program web postings for permit information and forms, and as time allows, presentations at various local meetings. Local air authorities also use a variety of methods including telephone assistance and web-page information.

¹ Small business economic impact statement for revisions of [chapter 173-403 WAC](#) to limit grass seed field burning emissions, July 24, 1996. Small business economic impact statement for revisions of [chapter 173-403 WAC](#) to certify alternatives to grass seed field burning, March 31, 1998.

² The annual report costs would be attributed to ecology staff time. An estimate would likely be 1/10th of an FTE or 1/10th time for one person working full time: ~ \$10,000.

³ The raw data on applications contains duplicate applications. Applications also exceed final burn values. Ecology staff attempted to clean this data to avoid duplication on March 21, 2006.

⁴ County Business Patterns 2003, Census Bureau NAICS 111.

⁵ Agricultural Workforce in Washington, 2004, downloaded March 15, 2006, https://www.workforceexplorer.com/admin/uploadedPublications/5435_Ag_Report_2004bdWE.pdf.

A copy of the statement may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail CACA461@ecy.wa.gov.

A cost-benefit analysis is required under [RCW 34.05.328](#). A preliminary cost-benefit analysis may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail CACA461@ecy.wa.gov.

April 13, 2006

Polly Zehm

Deputy Director

OTS-8773.1

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-010 Purpose of the regulation. ~~((This chapter, promulgated under [chapter 70.94 RCW](#), the Washington Clean Air Act,))~~ [Chapter 70.94 RCW](#), the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state

that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout [chapter 70.94 RCW](#), including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. [Chapter 70.94 RCW](#) authorizes the department of ecology and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes controls for agricultural burning in the state in order to minimize adverse health and the environment effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. The control strategies include:

- (1) Establishing a permit program with minimum statewide requirements and specific burn authorizations.
- (2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.
- (3) Encouraging and developing economically feasible alternative methods to agricultural burning.
- (4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.
- (5) Providing for local administration of the permitting program through delegation.
- (6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.
- (7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.
- (8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.
- (9) Providing for education and communication.

[Statutory Authority: [RCW 70.94.650](#). 95-03-083 (Order 94-17), § 173-430-010, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-010, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#). 90-19-062 (Order 90-10), § 173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-010, filed 11/9/77. Formerly [WAC 18-16-010](#).]

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities (~~((and includes the burning of fields, prunings, weeds, and irrigation ditches, drainage ditches, fence rows or other essential pathways))~~). It does not apply to silvicultural burning or (~~(open))~~ other outdoor burning (chapter 173-425 WAC).

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (RCW 70.94.650).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and regulations, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial activities (RCW 70.94.745). Growers burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

[Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-020, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-020, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#), 90-19-062 (Order 90-10), § 173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-020, filed 11/9/77. Formerly [WAC 18-16-020](#).]

AMENDATORY SECTION(Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-030 Definition of terms. The definitions of terms contained in [chapter 173-400 WAC](#) are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in [RCW 70.94.650](#) or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or (~~proof that the land is designated in a classification for agricultural use~~) its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Ag task force:** Means the agricultural burning practices and research task force.

(4) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in [RCW 70.94.715](#).

~~(5)~~ **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (Ag task force).

~~(5))~~ **(6) Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

~~(6))~~ **(7) Department:** Means the department of ecology.

~~(7))~~ **(8) Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons (~~using such products as ingredients in a manufacturing process, or persons~~) growing or producing such products primarily for their own consumption.

~~(8) Open)~~ **(9) Impaired air quality:** Means a first or second stage impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with [RCW 70.94.715](#), [70.94.775](#), and [70.94.473](#).

(a) A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(b) A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in [WAC 173-425-020](#).

~~((9))~~ (11) **Permitting authority:** Means ecology or its delegate or a local air authority ~~((and the department where no local air authority exists))~~ with jurisdiction or ~~((their))~~ its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

~~((10))~~ (12) **Silvicultural burning:** Means burning on any land the department of natural resources protects per [RCW 70.94.030](#)(13), 70.94.660, 70.94.690, and pursuant to [chapter 76.04 RCW](#).

[Statutory Authority: [RCW 70.94.656](#), [98-12-016](#) (Order 97-45), § 173-430-030, filed 5/26/98, effective 6/26/98. Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-030, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#), 90-19-062 (Order 90-10), § 173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-030, filed 11/9/77. Formerly [WAC 18-16-030](#).]

AMENDATORY SECTION(Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in [WAC 173-430-045](#).

(2) For allowed agricultural burning, the department of ecology and local air pollution control authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in [RCW 70.94.030](#)(4) and further identified in [RCW 70.94.331](#). The smoke management index is not an emission standard as defined in [RCW 70.94.030](#)(9) and further identified in [RCW](#)

[70.94.331](#). The smoke management index is not an air pollution episode as described in [RCW 70.94.710](#).

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection at the time of making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM2.5 concentration was equal to or greater than 16 micrograms per cubic meter. This is division between "good" and "moderate" classifications of the U.S. Environmental Protection Agency's Air Quality Index (AQI) for particulate matter based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter.

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of such determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations pursuant to the smoke management index.

(f) Pursuant to [RCW 70.94.473](#) and [70.94.775](#), no burning shall be authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by [RCW 70.94.656](#) and/or by [RCW 70.94.650](#).

(3) Except as described in [WAC 173-430-020\(5\)](#), all agricultural burning requires a permit.

(a) Ecology will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

~~((b))~~ (c) A farmer must fill out the information requested on a permit application ~~((or the permit) and return)~~, pay the permitting fee, and submit it to the permitting authority for review and approval prior to burning.

~~((The permitting authority may require the farmer to fill out an application prior to issuing a permit.~~

~~((i))~~ (ii) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: ~~((Range;))~~ Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

~~((iii))~~ (ii) All applications must comply with other state or local regulations.

~~((e))~~ (d) The permitting authority must evaluate the application, ~~((if there is one,))~~ and approve the permit prior to burning.

~~((4))~~ (e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air agency with jurisdiction, or its delegate must approve or deny the permit based on information in the application.

(g) Ecology and its delegate or a local air ~~((agencies (and the department where no local air agency exists))~~ agency with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in [RCW 70.94.743](#).

~~((3))~~ (4) All agricultural burning permits require a fee. ~~((After January 1, 1995, the fee is the greater of:~~

~~((a) A minimum fee of)~~ Maximum fee level is set by statute at two dollars and fifty cents per acre ([RCW 70.94.650\(2\)](#)) and is established by the agricultural burning practices and research task force ([RCW 70.94.650\(4\)](#)). The fee is the greater of a minimum fee level or a variable fee level.

(a) Minimum fee levels:

(i) Twenty-five dollars per year per farm based on burning up to ten acres or equivalent ~~((which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be kept by the permitting authority to cover the costs of administering and enforcing this regulation; or))~~;

(ii) Fifty dollars for orchard tear-out burning per year per farm based on burning up to twenty acres or equivalent.

(b) ~~((A))~~ The variable fee level (based on the acreage or equivalent ~~((of agricultural burning which will be used as follows: Up to one dollar per acre for applied research, twenty five cents per acre for ecology administration and up to one dollar and twenty five cents per acre for local permit program)))~~;

(i) Through the calendar year 2007, the fee is two dollars per acre.

(ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.

(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. ~~((One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program.))~~ The permitting authority may set the fee as an amount per farm per year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department ~~((is the))~~ has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

(ii) Ecology administration. ~~((Another))~~ This portion of the fee shall be ~~((twenty five cents per acre burned and cover))~~ used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program. ~~((The amount (if any) by which the annual total, of this portion of the fee, exceeds the annual statewide administrative, education, and oversight costs shall be deposited in the agricultural burning research fund of the air pollution control account.))~~

(iii) Research fund. ~~((A final portion.))~~ The agricultural burning applied research portion~~((;))~~ of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the ~~((Ag))~~ agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. ~~((The research portion of the fee assessed shall be fifty cents per acre burned starting in calendar year 1995.))~~ The ~~((Ag))~~ agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.

~~((e))~~ (iv) The chart below shows the permit fee break-out per category:

Fee Level Local Administration Research Ecology

			<u>Administration</u>
<u>\$25.00</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>-0-</u>
<u>\$50.00</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>\$25.00</u>
<u>2006 - \$2.00 per acre</u>	<u>Up to \$1.25 per acre</u>	<u>50 cents per acre</u>	<u>25 cents per acre</u>
<u>2007 - \$2.00 per acre</u>	<u>Up to \$1.25 per acre</u>	<u>25 cents per acre</u>	<u>50 cents per acre</u>
<u>2008 and beyond - \$2.25 per acre</u>	<u>Up to \$1.25 per acre</u>	<u>50 cents per acre</u>	<u>50 cents per acre</u>

(d) A farmer must pay the fee prior to receiving a permit. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.

~~((4))~~ (e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.

~~((4))~~ (5) All agricultural burning permits must ~~((be conditioned))~~ include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) ~~((For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis, or as provided by [RCW 70.94.656](#).~~

~~((e))~~ Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include the use of a daily burn decision, permit specific decisions and/or metering.

(c) The permitting authority must act on a complete application (as determined by the agency) within seven days of receipt.

(i) The permitting authority must evaluate the application and approve or deny all or part of it.

(ii) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iii) If the application is denied, the reason must be stated.

(6) Additional requirements for burning of field and turf grasses grown for seed.

The department of ecology will proceed with the process to certify alternatives to burning as identified in [RCW 70.94.656](#)(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in [RCW 70.94.656](#)(4).

(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

~~(((d)) Additional requirements for burning of field and turf grasses grown for seed. Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~—(e)) (b) Exemptions to ((additional)) the requirements for burning of field and turf grasses grown for seed (((d)) (a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to [WAC 173-430-045](#) Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of (((d)) (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:~~

~~(i) The exemption request must be certified by an agronomic professional;~~

~~(ii) The farmer must be able to show full compliance with the emissions reductions in (((d)) (a) of this subsection for the acreage not exempted; and~~

~~(iii) The farmer must be in full compliance with permit requirements for other crops under [WAC 173-430-040](#).~~

~~(((f)) (c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by [RCW 70.94.656](#), until another method(s) is shown to be better and meets with the intent of [RCW 70.94.656\(4\)](#). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~(d) The department of ecology or local air authority may provide for trading of permits using the method described in (((f)(i), (ii), (iii), (iv), (v), and (vi) of)) this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to [WAC 173-430-045](#) Alternatives to burning field and/or turf grasses grown for seed.~~

(i) Ecology or the local air authority may develop a system that allows the trading of permits by:

(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(D) Assuring that the permits are used only once in a calendar year.

(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.

(v) Acreage that is exempted under (e) of this subsection is not eligible for the trading system.

(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

~~((g) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by [RCW 70.94.656](#), until another method(s) is shown to be better and meets with the intent of [RCW 70.94.656\(4\)](#). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~(h))~~ (e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of ~~((d))~~ (a) of this subsection provided:

(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by ~~((4))~~ (a) of this subsection; and

(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in ~~((4))~~ (a) of this subsection.

~~((5))~~ (7) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

[Statutory Authority: [RCW 70.94.656](#), [98-12-016](#) (Order 97-45), § 173-430-040, filed 5/26/98, effective 6/26/98. Statutory Authority: [RCW 70.94.656](#)(4), [97-03-021](#) (Order 96-05), § 173-430-040, filed 1/7/97, effective 2/7/97. Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-040, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#), 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly [WAC 18-16-040](#).]

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) The department shall administer the research portion of the permit fee to carry out the recommendations of the Ag task force. In carrying out the recommendations, the department may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct any such study, the department may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible.

(2) No less than every two years, the Ag task force will ~~((annually))~~ review research needs and submitted proposals and make its recommendations to the department.

[Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-060, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#), 90-19-062 (Order 90-10), § 173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-060, filed 11/9/77. Formerly [WAC 18-16-060](#).]

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) ~~((No burning))~~ Do not burn at night ~~((except))~~ unless it is specified as a best management practice;

(b) ~~((Complying))~~ Comply with all fire safety regulations of the local fire protection agency including any no-burn directives ~~((they))~~ it may issue;

(c) ~~((Calling))~~ Call the local air authority burning information line (if there is one) before lighting the fire;

(d) ~~((Burning))~~ Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

~~((e) No burning))~~ (f) Do not burn when adverse meteorological conditions exist;

~~((f) Burning))~~ (g) Burn only natural vegetation;

~~((g) No burning or adding))~~ (h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

~~((h) Attending))~~ (i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under [chapter 173-400 WAC](#) or [RCW 70.94.640](#), agricultural burning will not be allowed.

[Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-070, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#), 90-19-062 (Order 90-10), § 173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-070, filed 11/9/77. Formerly [WAC 18-16-070](#).]

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

~~((1))~~ (2) The permitting authority must act on a complete application (as determined by ((the agency)) ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities and ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map is required to accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, landmarks, etc.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section shall be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

~~((b))~~ (d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

~~((e))~~ (e) If the application is denied, the reason must be stated.

~~((2))~~ (3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation agreement.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

~~((3))~~ (5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

~~((4))~~ (6) The permitting authority must collect the fee and determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund when a farmer decides to burn fewer acres than identified in the permit on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

~~((5) The permitting authority must))~~ (7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ecology administration portion of the fee to the department.

(a) ~~((Funds should be transferred twice a year or as designated in the delegation agreement.~~

~~((b))~~ Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) The department must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to the department. ~~((The portion of the fee designated for research shall be deposited in a special account in the air pollution control account.~~

~~((6))~~ (8) The permitting authority must coordinate compliance. Violations are subject to the remedies of [chapter 70.94 RCW](#), Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must utilize the web-based data base.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

[Statutory Authority: [RCW 70.94.650](#). 95-03-083 (Order 94-17), § 173-430-080, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: [RCW 70.94.331](#). 90-19-062 (Order 90-10), § 173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-080, filed 11/9/77. Formerly [WAC 18-16-080](#).]

AMENDATORY SECTION(Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-090 Receiving delegation -- Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ~~((the local air authority (or the department where no local air authority exists),))~~ ecology or ~~((their))~~ its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority ~~((or the department where no local air authority exists))~~ with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. Delegation criteria include:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled; ~~((and))~~

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if the department or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered and/or enforced. Before withdrawing delegation, the delegated agency shall be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then the department or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement prior to implementation.

[Statutory Authority: [RCW 70.94.650](#), 95-03-083 (Order 94-17), § 173-430-090, filed 1/17/95, effective 2/17/95.]

Appendix D - Final Rule Text

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95,
effective 2/17/95)

WAC 173-430-010 Purpose of the regulation. Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the department of ecology and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes controls for agricultural burning in the state in order to minimize adverse health and the environment effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. The control strategies include:

(1) Establishing a permit program with minimum statewide requirements and specific burn authorizations.

(2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.

(3) Encouraging and developing economically feasible alternative methods to agricultural burning.

(4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates,

forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or other outdoor burning (chapter 173-425 WAC).

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (RCW 70.94.650).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and regulations, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.745). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field

that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Ag task force:** Means the agricultural burning practices and research task force.

(4) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(5) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (Ag task force).

(6) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

(7) **Department:** Means the department of ecology.

(8) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons growing or producing such products primarily for their own consumption.

(9) **Impaired air quality:** Means a first or second stage impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW 70.94.715, 70.94.775, and 70.94.473.

(a) A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(b) A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(11) **Permitting authority:** Means ecology or its delegate or a local air authority with jurisdiction or its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(12) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, the department of ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM_{2.5} concentrations are regularly monitored will follow the procedures in (c) of this subsection at the time of making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM_{2.5} concentration was equal to or greater than 16 micrograms per cubic meter. This is division between "good" and "moderate"

classifications of the U.S. Environmental Protection Agency's Air Quality Index (AQI) for particulate matter based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter.

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of such determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations pursuant to the smoke management index.

(f) Pursuant to RCW 70.94.473 and 70.94.775, no burning shall be authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the

permitting authority may limit the number of acres, on a pro rata basis as provided by RCW 70.94.656 and/or by RCW 70.94.650.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) A farmer must fill out the information requested on a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval prior to burning.

(i) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

(ii) All applications must comply with other state or local regulations.

(d) The permitting authority must evaluate the application, and approve the permit prior to burning.

(e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air agency with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW 70.94.743.

(4) All agricultural burning permits require a fee. Maximum fee level is set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and is established by the

agricultural burning practices and research task force (RCW 70.94.650(4)). The fee is the greater of a minimum fee level or a variable fee level.

(a) Minimum fee levels:

(i) Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;

(ii) Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.

(b) The variable fee level (based on the acreage or equivalent):

(i) Through the calendar year 2007, the fee is two dollars per acre.

(ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.

(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. The permitting authority may set the fee as an amount per agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

(ii) Ecology administration. This portion of the fee shall be used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program.

(iii) Research fund. The agricultural burning applied research portion of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. The agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.

(iv) The chart below shows the permit fee break-out per category:

Fee Level	Section	Local Administration	Research	Ecology Administration
\$25.00	WAC 173-430-040 (4)(a)(i)	\$12.50	\$12.50	-0-
\$50.00	WAC 173-430-040 (4)(a)(ii)	\$12.50	\$12.50	\$25.00
2006 - \$2.00 per acre	WAC 173-430-040 (4)(b)(i)	Up to \$1.25 per acre	50 cents per acre	25 cents per acre
2007 - \$2.00 per acre	WAC 173-430-040 (4)(b)(i)	Up to \$1.25 per acre	25 cents per acre	50 cents per acre
2008 and beyond - \$2.25 per acre	WAC 173-430-040 (4)(b)(ii)	Up to \$1.25 per acre	50 cents per acre	50 cents per acre

(d) A farmer must pay the fee when submitting the application. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.

(e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.

(5) All agricultural burning permits must include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include the use of a daily burn decision, permit specific decisions and/or metering.

(c) The permitting authority must act on a complete application (as determined by the agency) within seven days of receipt.

(i) The permitting authority must evaluate the application and approve or deny all or part of it.

(ii) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iii) If the application is denied, the reason must be stated.

(6) Additional requirements for burning of field and turf grasses grown for seed.

The department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4).

(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(b) Exemptions to the requirements for burning of field and turf grasses grown for seed (a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(i) The exemption request must be certified by an agronomic professional;

(ii) The farmer must be able to show full compliance with the emissions reductions in (a) of this subsection for the acreage not exempted; and

(iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

(c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an

alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.

(d) The department of ecology or local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed.

(i) Ecology or the local air authority may develop a system that allows the trading of permits by:

(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(D) Assuring that the permits are used only once in a calendar year.

(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.

(v) Acreage that is exempted under (e) of this subsection is not eligible for the trading system.

(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of (a) of this subsection provided:

(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by (a) of this subsection; and

(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in (a) of this subsection.

(7) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) The department shall administer the research portion of the permit fee to carry out the recommendations of the Ag task force. In carrying out the recommendations, the department may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct any such study, the department may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible.

(2) No less than every two years, the Ag task force will review research needs and submitted proposals and make its recommendations to the department.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) Do not burn at night unless it is specified as a best management practice;

(b) Comply with all fire safety regulations of the local fire protection agency including any no-burn directives it may issue;

(c) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(f) Do not burn when adverse meteorological conditions exist;

(g) Burn only natural vegetation;

(h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map is required to accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, landmarks, etc.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section shall be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ecology administration portion of the fee to the department.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) The department must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to the department.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must utilize the web-based data base.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-090 Receiving delegation--Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled;

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if the department or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered and/or enforced. Before withdrawing delegation, the delegated agency shall be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then the department or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement prior to implementation.