



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-430 WAC
Agricultural Burning

Summary of rule making and response to comments

November 2010
Publication no. 10-02-034

Publication and Contact Information

This publication is available on the Department of Ecology's website at www.ecy.wa.gov/biblio/1002034.html

For more information contact:

Publications Coordinator
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6830

Email: tami.dahlgren@ecy.wa.gov

Washington State Department of Ecology - www.ecy.wa.gov

Headquarters, Olympia	360-407-6000
Northwest Regional Office, Bellevue	425-649-7000
Southwest Regional Office, Olympia	360-407-6300
Central Regional Office, Yakima	509-575-2490
Eastern Regional Office, Spokane	509-329-3400

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Concise Explanatory Statement

Chapter 173-430 WAC Agricultural Burning

Air Quality Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Agricultural Burning
WAC Chapter(s): Chapter 173-430 WAC
Adopted date: November 10, 2010
Effective date: The effective date is 31 days after Ecology files the rule with the Code Reviser (December 12, 2010). Ecology will begin charging the new fees on January 1, 2011.

To see more information related to this rule making or other Ecology rule makings please visit our web site: www.ecy.wa.gov/lawsandrules

Reasons for Adopting the Rule

- ◆ SSB 6556 (2010) and RCW 70.94.6528 provide authority for ongoing agricultural burning fee increases until the fee reaches the \$3.75 cap per acre for field burning and \$1.00 per ton for pile burning. According to statute, the Task Force determines fees within these caps.
- ◆ As a result, this rule adopts the fees as determined by the Agricultural Burning Practices and Research Task Force (Task Force) based on the new fee structure established in RCW 70.94.6528.
 - ◆ For pile burning, the rule changes fees to a per ton basis from a per acre fee. Field burning fees remain on a per acre basis.
 - ◆ For field burning, the rule increases the fee.
 - ◆ The rule adopts a process for adjusting the fees within the caps in the future.
 - ◆ The rule includes some minor changes for consistency.
- ◆ SSB 6556 (2010) introduced a per-ton fee for pile burns to replace the per-acre fee. The volume of piled material burned exceeds the volume of crop residue from a field of the same size. Therefore, this fee structure provides a closer link to the amount of the fee and the quantity of material burned.
- ◆ *Rasmussen v. Ecology* requires Ecology to remove language it found as outside of Ecology's regulatory authority.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(b)(ii) requires Ecology to 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, stating the reasons for the differences.

There are some differences between the proposed rule filed on August 4, 2010 and the adopted rule filed on November 17, 2010. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them:

We made changes to WAC 173-430-020 (1) in the "General applicability and conditions" section to clarify references to the silvicultural and outdoor burning rules. We made the following changes:

- Deleted the word "other" before outdoor burning to clarify that the rule refers to all outdoor burning rather than the more narrow definition of "other outdoor burning" in WAC 173-425-030 (15).
- Added a reference to Chapter 332-24 WAC, Forest protection because it contains the requirements for Silvicultural Burning.
- Formatted the sentence with bullet points to make it easier to read.

Response to Comments

Description of comments:

The Concise Explanatory Statement responds to the identified comments in a question-and-answer format.

Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s). In the third column:

- The letter (A-K) groups the responses by category,
- The number (1-33) shows the order in which the responses appear.

Individuals and Organizations Providing Written Comments

Document Number	Name and Affiliation	Comment Number(s)
1	Kevin Futrell	E10
2	Jerry Darnall JJJ Farm	B4
3	Janet Jordan	F11
4	Jerald Kent	E9
5	Dena Ybarra	B2
6	Dennis Schwab	B3, D8
7	Mike Cook	C6
8	Den Ybarra	B5
9	Matt Holmquist Spokane Regional Clean Air Agency	G12, G13, G14, G15, H16, H17, H18, H19, H20, I21, J22, J23, J24, J25, K26, K27, K28, K29, K30, K31, K32, K33
10	Jay Penner	C7

Ecology accepted comments between August 4, 2010 until September 9, 2010. This section provides verbatim comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii))

A. Which agricultural burning permits will include the pile burning (per/ton) fee?

Comment # 1:

Do the changes in the pile burning include orchard removal?

Ecology Response:

Yes. Ecology will charge the pile burning (per/ton) fee for a permit to burn trees for orchard removal beginning January 1, 2011.

B. Determining tonnage of piles

Comment# 2:

How do we know how much our trees weigh when we remove them?

Ecology Response:

Ecology is developing guidance that will help you calculate the weight of your trees. The guidance will include the following two methods:

- A calculation based on the number of acres removed and the age of the trees. Ecology's current data suggests a formula of about 0.7 tons per acre per year.
- A determination based on the amount of tons from the volume of the pile size. The Washington State Department of Natural Resources currently uses this method for silvicultural burning.

Comment # 3:

Wouldn't it be better to base the fee on the volume of the pile, which is much easier to determine, i.e., length, width, and height?

Ecology Response:

SSB 6556 (2010) and RCW 70.94 require us to charge a per ton fee for pile burning. However, one of the methods Ecology will use to determine the weight of a pile will use the volume (length, width, and height) of the pile.

Comment # 4:

Just out of curiosity, exactly how is a small farmer supposed to calculate the tonnage of pruning's and such for the new Agricultural Burnings fees...Do you have a sample formula? Or are we now required to weigh all piles before burning? Will state grants be available for scales?

Ecology Response:

The rule includes an exemption for prunings. Tree prunings do not require a fee or permit.

Ecology is developing guidance that will help you calculate the weight of your piles.

The guidance will include the following two methods:

- A calculation based on the number of acres removed and the age of the trees. Ecology's current data suggests a formula of about 0.7 tons per acre per year.
- A determination based on the amount of tons from the volume of the pile size. The Washington State Department of Natural Resources currently uses this method for silvicultural burning.

Comment # 5:

I do not agree with changing the charge to pile burning fee (per/ton). If the formula that is used increases by 0.7 tons per year I think the orchards will be overcharged. The Washington State Department of Natural Resources currently uses this method for silvicultural burning. I think the biggest difference is that orchards are pruned every year to keep the orchard to a manageable size of tree. Once the orchard tree feels it's space it is maintained at that height for the rest of the orchards life.

Ecology Response

Although a tree may not get taller every year, it still adds mass and girth. Ecology used data from the Chipping Grant Program to determine the 0.7 tons per year we used in the formula. However, we are open to additional data that may suggest we use a different number in the formula.

C. Support for increasing fees

Comment # 6:

I support increases to burning fees to cover the state's regulatory costs and to discourage burning.

Ecology Response:

Thank you for your support. The Agricultural Burning Practices and Research Task Force (Task Force) determines the fees for agricultural burning. The Task Force includes representatives from the agricultural community. Additionally, the Task Force set-up a subcommittee to make recommendations regarding the appropriate fee levels under the new per ton pile burning structure. The subcommittee included additional non-Task Force members from the orchardist community.

Comment # 7:

I do support this burn fee increase and here are my reasons why:

1. You can only burn on designated burn days determined by the department of ecology. If there's nobody there to make a burn call you won't get to burn.
2. Department of ecology has a premier smoke management program to protect public health and it allows farmers to burn. This program is constantly being updated with the latest technology, when it has been proven to be better than the current technology used.
3. The environmental clean air community is satisfied with the current program, as it does protect public health.
4. Growers are pretty much satisfied with the program, as they are able to get their fields burnt in a timely manner.
5. This smoke management program costs money. Some of the money comes from permit fees. The rest comes out of the General Fund of the State of Washington. With the state being broke, this program is in jeopardy of losing personnel and possibly two days a week of making burn calls. This program operates 365 days a year. Losing weekend burn calls is not an option. Less people, means taking longer to make a burn call, which means less hours in a day to burn. Less people mean they may push the envelope to make a burn call and could mean more marginal burn calls which will impact public health.
6. The current burn team has worked together for a long time and they know the system, which works very well. It would be a shame to have to break this team up due to budget restrictions.

7. Yes, the department of ecology has had wrecks once in a while, but so does everybody else. You look at the problem, fix it, move on and make things better.

These are some of the reasons why I support this burn fee increase. Thank you.

Ecology Response:

Thank you for your support. The Agricultural Burning Practices and Research Task Force (Task Force) determines the fees for agricultural burning. The Task Force includes representatives from the agricultural community. Additionally, the Task Force set-up a subcommittee to make recommendations regarding the appropriate fee levels under the new per ton pile burning structure. The subcommittee included additional non-Task Force members from the orchardist community.

D. Health effects of burning

Comment # 8:

Will the money collected from the fees be placed in a special medical fund to help pay for the medical care of those people affected by breathing in harmful smoke?

Ecology Response:

The increased fees will cover more of the costs of the existing smoke management and permit programs. Less dependence on state general fund sources will help ensure that Ecology can continue to provide smoke management services 365 days a year. Smoke from agricultural burning can harm the health of people who breathe in the smoke's harmful particles and toxics. If this smoke is carefully managed, the smoke will go "up and away" and impacts to the public are limited.

E. Opposed to increasing fees

Comment # 9:

We are taxed to the max! No more fees of any kind!

Ecology Response:

Ecology has not increased the fee cap for the past 15 years. Law requires the Agricultural Burning Practices and Research Task Force (Task Force), to determine fee levels (RCW 70.94.6528 (5)). The Task Force includes industry representatives subject to these fees. The Task Force decided to increase fees for 2011 to cover more of the costs of existing smoke management and permit programs. Less dependence on state general fund sources will help ensure that Ecology can continue to provide smoke management services 365 days a year.

Comment # 10:

Enforcing fines for illegal burning on the weekends would be a better way to fill the revenue shortfall gap and pay for 365 days a year service. I'm opposed to the new fee setup.

Ecology Response:

Ecology does provide smoke management services on the weekend. This allows agricultural burning on the weekends when conditions are favorable. Additionally, we do enforcement on the weekends. However, penalty money does not support the agricultural burning program.

Law specifies that all air quality penalties go to the air pollution control account (RCW 70.94.431).

F. Biomass Incineration

Comment # 11:

Agricultural burning would seem to be the ideal situation for biomass incineration, or whatever you might call it -- driving off the volatile gasses from waste material, pulverizing the resulting bio-char, and distributing it over the fields. Unlike the large processes that the Federal government is encouraging, a small operation covering a few acres would not be harmful to the environment since it would not encourage growth for the sake of the burning itself, and the energy that could be harvested from it. The bio-char is helpful to the fields and, unlike composting, the process does not produce methane.

Biomass incineration can take place with such small-scale equipment as an old oil barrel that has been converted to allow separation of the woody mass and the gasses that are being burnt.

Ecology Response:

A portion of the agricultural burning fee goes to research into alternatives to agricultural burning. Please see <http://www.ecy.wa.gov/programs/air/aginfo/research.htm> for more information.

Ecology has a work group that is further exploring the possibility of using biomass incineration in Washington.

G. Comments on General Applicability and Conditions, Chapter 173-430-020 WAC

Comment # 12:

Restate WAC 173-430-020 to clarify that the reference to “other outdoor burning” isn’t being made to WAC 173-425-030 (15).

Ecology Response:

Ecology deleted the word “other” in the phrase “outdoor burning.” For more information, please see the “Differences Between the Proposed Rule and Adopted Rule” section on page 4.

Comment # 13:

In WAC 173-430-020 clarify that silvicultural burning requirements aren’t in Chapter 173-425 WAC.

Ecology Response:

Ecology added a reference to chapter 332-24 WAC, Forest protection. This chapter contains the silvicultural burning requirements. For more information, please see the “Differences Between the Proposed Rule and Adopted Rule” section on page 4.

Comment # 14:

Make the following changes to WAC 173-430-020 (5) (a):

- Delete “overly vigorous or nonfruiting tree.”

- Add “from tree and “or nut.”
- Replace “and” with “or” after tree canopy training and after disease.
- Delete “and” after plant.

Ecology Response:

In this sentence, Ecology changed “facilitate” to “assist” to simplify language. Additional changes to this section would fall outside the scope of this rule making. During an earlier rule making, the Task Force provided input to the specific language in this definition. We consider a nut tree as a fruit tree.

Comment # 15:

Make the following change to WAC 173-430-020 (5) (a):

Add “in possession of a farmer, or the area which the farmer has a present right of position,” to clarify that it excludes situations such as organic debris in ditches along fence lines where the ditches are not under the control of the farmer (e.g., city or county right-of-way).

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making.

H. Comments on Definition of Terms, Chapter 173-430-030 WAC

Comment # 16:

Be consistent throughout the regulation with “Task Force” or “Task force”

Ecology Response:

The proposed rule language published in the Washington State Register uses “task force” throughout the rule.

Comment # 17:

The issue seems to pertain to differentiating a “field” from a “pile” as it applies to agricultural burning. Since pile burning is being defined, might the definition of field burning be omitted? It seems the definition being proposed is partially redundant of the “agricultural operation” definition. If it is necessary to define field burning, consider, “field burning: Agricultural burning which excludes pile burning”

Ecology Response:

Ecology and the rule advisory committee considered the following options:

- omitting a definition for field burning,
- defining field burning as “all burning except pile burning.”

However, we decided to clearly differentiate between pile and field burning so Ecology can clearly identify which fee (per/acre or per/ton) applies to which permits.

Comment # 18:

For clarification, does [pile burning] include piles of the following stacked debris: orchard tear-out, raspberry canes, vineyards, and hay bales? Are there additional common examples?

Ecology Response:

Ecology classifies all of the examples above as piles with the exception of bale burning. Bale burning is not stacked debris. Ecology will continue to regulate bale burns under a separate permit and best management practice. You can find additional information about bale burning at the following links:

- Bale Burn Best Management Practice Guidance
http://www.ecy.wa.gov/programs/air/aginfo/research_pdf_files/BaleBurn09-10.pdf
- Bale Burn Permit Application
<http://www.ecy.wa.gov/pubs/ecy07075.pdf>

Comment # 19:

Make the following changes to the definition of spot burning (WAC 173-430-030 (14)):

- Change “Spot Burn” to “Spot burning”
- Replace “Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists.” with “Field burning a cumulative area not to exceed the acreage published in the fee schedule which is reasonably necessary as a result of unforeseen and unpredicted circumstances and where no practical alternative to burning exists. The cumulative area shall be applied on a per farmer per calendar year basis.
- Delete the word small before weed patches.

Ecology Response:

Ecology and the rule advisory committee decided to use the definition for spot burn from the spot burn best management practice. You can find the Spot Burn Best Management Practice Guidance here:

http://www.ecy.wa.gov/programs/air/aginfo/research_pdf_files/SpotBurn09-10.pdf

Comment # 20:

Does Ecology want to elaborate on how the acreage for these [spot burns] are calculated?

Ecology Response:

The best management practice contains additional information regarding the implementation of spot burn permits. You can find the Spot Burn Best Management Practice Guidance here:

http://www.ecy.wa.gov/programs/air/aginfo/research_pdf_files/SpotBurn09-10.pdf

I. Comments on Agricultural Burning Requirements, Chapter 173-430-040**Comment # 21:**

Make the following changes to WAC 173-430-040 (3) (c):

- Replace “fill out the information requested on” with “complete.”

- Delete “pay the permitting fee” because this requirement is specified in WAC 173-430-040 (4).

Ecology Response:

In this sentence, Ecology only made changes that simplified and clarified language. These suggested changes would fall outside the scope of this rule making.

J. Comments on Agricultural Burning Fees, Chapter 173-430-041

Comment # 22:

Remove the (a) after (6) in WAC 173-430-041 (4) (a) (ii) (A).

Ecology Response:

The proposed rule language published in the Washington State Register does not include this typographical error.

Comment # 23:

Add “if requested in writing within 30 calendar days of the permit expiration date” to WAC 173-430-041 (7).

Ecology Response:

Each permitting authority may develop their own policy regarding timeframes for requesting refunds. So, Ecology did not include a specific timeframe in the rule. However, the permitting authority must transfer funds twice a year by January 15th and July 15th (WAC 173-430-080(7)(a)).

Comment # 24:

Replace “twenty five dollars” with “the minimum fee in WAC 173-430-041 (5)” in WAC 173-430-041 (7) (b).

Ecology Response:

The intent of WAC 173-430-041 (7) (b) is to prevent permitting authorities from having to issue refunds for very small amounts such as \$0.50 or \$10. Ecology felt that \$25 provides a reasonable minimum refund.

Comment # 25:

Check the consistency of capitalization of “Ecology” throughout document.

Ecology Response:

The proposed rule language published in the Washington State Register only capitalizes ecology at the beginning of a sentence.

K. Comments on Responsibilities of a Permitting Authority, Chapter 173-430-080 WAC

Comment # 26:

Replace “are require to” with “may” in 173-430-080 (2) (a)

Ecology Response:

Ecology requires local permitting authorities to use a template so each agency collects the same data. This helps Ecology prepare emissions inventories. However, the permitting authority may modify the formatting and look of the template as long as they collect the required data.

Comment # 27:

Add “of Ecology” after delegated permitting authorities in WAC 173-430-080 (7).

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making.

Comment # 28:

Add “Delegated permitting authorities of local air authorities must provide the local air authority or Ecology with copies of all permits and supporting documentation and unless approved otherwise by the local air authority, transfer the research portion of the fee to Ecology and the smoke management administration portion of the fee to the local air authority” as a provision to give the local air authorities flexibility.

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making. However, we will consider these changes the next time they open this rule up for rule making.

Comment # 29:

It’s SRCAA’s understanding that local air authorities may elect to retain the research portion of the fee.

Ecology Response:

The Task Force determines the fee level and the portion of the fee dedicated to research. Local air authorities may keep the permitting authority administration and smoke management portions of the fee. The local air authorities must send Ecology the research portion of the fee twice a year by January 15th and July 15th (WAC 173-430-080(7)(a)).

Comment # 30:

SRCAA would like the flexibility in allowing the delegated permitting authorities to retain the smoke management administration portion of the fee.

Ecology Response:

Local Clean Airs can work with their delegated permitting authorities to provide this flexibility through delegation agreements.

Comment # 31:

Make the following changes to WAC 173-430-080 (7) (c):

- Add “delegated” before “permitting authorities” and “of Ecology” after “permitting authorities.”

- Replace “local” with “permitting authority” before administration portion.
- Add “of the fee” after “administration portion
- Add “Delegated permitting authorities of local air authorities may deduct the permitting authority administration portion of the fee, and if approved by the local air authority, a portion of the smoke management portion of the fee. Local air authorities may retain all portions of the agricultural burning fee.”

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making.

Comment # 32:

Remove “or its delegate” in WAC 173-430-080 (9) because by definition “permitting authority” includes reference to delegates of Ecology or local air authorities.

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making.

Comment # 33:

Change “permitting authority” to “Ecology” in 173-430-080(1)

Ecology Response:

In this section, Ecology only made changes to simplify language. Additional changes to this section would fall outside the scope of this rule making.

Appendix A: Copies of all written comments

Document 1

Perez, Richelle (ECY)

From: Kevin Futrell [realpropertyattorney@yahoo.com]
Sent: Wednesday, August 04, 2010 10:24 AM
To: Perez, Richelle (ECY)
Subject: Ecology invites comments on rule for agricultural burning fees

Enforcing fines for illegal burning on the weekends would be a better way to fill the revenue shortfall gap and pay for 365 days a year service. I'm opposed to the new fee setup.

comment
E 10

FOR IMMEDIATE RELEASE - Aug. 4, 2010
10-194

Ecology invites comments on rule for agricultural burning fees

OLYMPIA - The Washington Department of Ecology (Ecology) invites the public to review and comment on a proposed rule related to fees assessed for agricultural burning.

Farmers sometimes burn crop residue such as cereal grain stubble and torn-out orchard trees after harvest.

Smoke from this burning can harm the health of people who breathe in the smoke's harmful particles and toxics.

Ecology regulates agricultural burning to protect public health while keeping burning available as an important tool for farmers.

Ecology's Air Quality Program does this through its smoke management system. This system operates seven days a week, including holidays, to help farmers - a substantial investment in effort and support.

Growers must have permits to burn most types of agricultural residue. The 2010 Washington Legislature amended the law (RCW

70.94.6528) that authorizes a permit fee for agricultural burning. The change raises the permit fee cap from \$2.50 per acre to a maximum of

\$3.75 per acre. This is the first increase to the fee cap since 1991.

The Legislature also approved a new way to assess fees. Fees can now be assessed for pile burning instead of on a per-acre basis. This new fee is capped at \$1 per ton of material burned.

Current fees cover only about 25 percent of the smoke management program's costs. Increasing fees will help ensure Ecology can continue to support farmers and citizens 365 days per year. This also will reduce the need to use the state's scarce general fund money to supplement the smoke management program.

Under the law, the state's Agricultural Burning Practices and Research Task Force determines agricultural burning fees. The task force proposes these fees to take effect in January 2011:

* Field burning - \$30 for the first 10 acres; \$3 for each additional acre.

* Spot burning - \$30 for 10 acres or less.

* Pile burning - \$80 for the first 100 tons; 50 cents for each additional ton.

The public can comment on the proposed rule and fees during two public hearings:

* 7 p.m. Aug. 26, 2010, at Columbia County Rural Library District, 111 S. 3rd St., Dayton.

* 6 p.m. Sept. 2 at Wenatchee Public Library, 310 Douglas St.

Ecology will accept comments through Sept. 9. You can submit comments by:

* E-mail to Richelle.Perez@ecy.wa.gov.

* Fax to (360) 407-7534.

* Mail to Richelle Perez, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

Ecology will review all comments. The agency expects to adopt a final rule in November 2010.

###

Media Contacts: Seth Preston, Ecology communications manager, 360-407-6848; 360-584-5744 cell;

seth.preston@ecy.wa.gov

Richelle Perez, air quality specialist, 360-407-7528; richelle.perez@ecy.wa.gov

Read more about the rule-making process:

<http://www.ecy.wa.gov/programs/air/rules/agburnrule.html>

Check out ECOconnect, Ecology's blog: <http://ecologywa.blogspot.com/>

Follow Ecology on Twitter: <http://twitter.com/ecologywa>

Kevin Futrell, J.D.

UW Business - WU Law

Document 2

Perez, Richelle (ECY)

From: JADDarnall@aol.com
Sent: Wednesday, August 04, 2010 5:57 PM
To: Perez, Richelle (ECY)
Cc: kitsap-ag-2020@googlegroups.com
Subject: Chapter 173-430 WAC, Agricultural Burning

Dear Ms Perez....

Just out of curiosity, exactly how is a small farmer supposed to calculate the tonnage of pruning's and such for the new Agricultural Burning fee's... Do you have a sample formula?

Or are we now required to weigh all piles before burning? Will state grants be available for scales?

Why not just outlaw all agricultural enterprises in Washington state?

The bureaucracy seems determined to regulate all small farms & ranches out of business anyway, why not just cut the chase, and deem them illegal to start with. By deeming the whole of agriculture illegal, think of the money the state could save, we could lay off all the nit-picking state regulators, and the legislators wouldn't go into overtime, thinking up new ways to nickel and dime us to death.

Cheers

Jerry Darnall
JJJ Farm
Kingston, WA

comment
B4

Document 3

Perez, Richelle (ECY)

From: Janet Jordan [janetjordan@fastmail.fm]
Sent: Thursday, August 05, 2010 8:31 AM
To: Perez, Richelle (ECY)
Subject: agricultural burning

Comment #11

Agricultural burning would seem to be the ideal situation for biomass incineration, or whatever you might call it -- driving off the volatile gasses from waste material, pulverizing the resulting bio-char, and distributing it over the fields. Unlike the large processes that the Federal government is encouraging, a small operation covering a few acres would not be harmful to the environment since it would not encourage growth for the sake of the burning itself, and the energy that could be harvested from it. The bio-char is helpful to the fields and, unlike composting, the process does not produce methane.

Biomass incineration can take place with such small-scale equipment as an old oil barrel that has been converted to allow separation of the woody mass and the gasses that are being burnt.

Janet Jordan

--

Janet Jordan
janetjordan@fastmail.fm

Comments sought for ag burning fees

Meeting set for Aug. 26 in Dayton

OLYMPIA — The Washington State Department of Agriculture asks the public to read and comment about a proposed rule concerning agricultural burning fees.

Comments can be given in person during two public hearings.

The first hearing is set for 7 p.m., Aug. 26, at Richelle Perez, Department of Ecology, PO Box 47600, Columbia County Rural Library District, 111 S. Third St., Dayton. Olympia, 98504-7600.

The second hearing starts at 6 p.m., Sept. 2, at Wenatchee Public Library, 310 Douglas St., Wenatchee.

Comments can also be submitted through Sept. 9 by e-mail to Richelle Perez@ecy.wa.gov, fax to

After reviewing comments, the state anticipates adopting a final rule in November.

To learn more about the rule-making process, visit www.ecy.wa.gov/programs/air/rules/agburn-rule.html.

— Staff report

To Whom it may concern.

*We are taxed to the max!
NO more fees of any kind!
The next time they need money, they'll want tax every time we go to the toilet. NO! NO!*

*Gerald Kent
1867 W. Foley rd
Othello, WA.*

comment
E9

Document 5

Perez, Richelle (ECY)

From: Dena Ybarra [dena@cbnllc.com]
Sent: Tuesday, August 10, 2010 2:24 PM
To: Perez, Richelle (ECY)
Subject: rule changes in agriculture burn

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,
I am an orchardist in Grant County and was wondering does the changes in the pile burning include orchard removal? If so how do we know how much our trees weigh when we remove them.

comment B2

Thanks,

Dena Ybarra
Columbia Basin Nursery, llc
509-787-4411

Document 6

Perez, Richelle (ECY)

From: Dennis Schwab [djschwab@eburg.com]
Sent: Thursday, August 12, 2010 8:04 PM
To: Perez, Richelle (ECY)
Subject: Comments on Burning Fees

Richelle Perez
Department of Ecology

Dear Richelle,
The Department of Ecology's intent to raise the burning fees for agricultural burning raises a few questions.

1. If the reason for the fees are because the smoke from agricultural burning can harm the health of people who breath in the smoke's harmful particles and toxics, does that mean that the money collected from the fees will be placed in a special medical fund to help pay for the medical care of those people affected by breathing in the harmful smoke? If not, then it seems to be just another way to impose a tax on the farmers who are struggling to make a living, and disposing of harmful weed seeds, and rearing the land for the next crop in the most energy efficient way possible, without the use of harmful chemicals and its long lasting effects.

2. I don't understand how the weight of a slash pile can be determined. Wouldn't it be better to base the fee on the volume of the pile, which is much easier to determine, i.e., length, width, and height?

Thank you and best regards,

Dennis Schwab
PO Box 715
Cle Elum, WA, 98922
509-674-5285

Comment
D8

Comment
 B3

Document 7

Perez, Richelle (ECY)

From: Mike Cook [mikecook@nwi.net]
Sent: Monday, August 16, 2010 8:37 PM
To: Perez, Richelle (ECY)
Subject: Agricultural burning

I support increases in burning fees to cover the state's regulatory costs and to discourage burning.

Mike Cook
Wenatchee

comment cb

Perez, Richelle (ECY)

Document 8

From: Dena Ybarra [dena@cbnllc.com]
Sent: Thursday, August 19, 2010 3:33 PM
To: Perez, Richelle (ECY)
Subject: RE: rule changes in agriculture burn

Hello Richelle,

Thank you for answering my questions. I would like to submit a commit.

I am with Columbia Basin Nursery. We have a fruit tree nursery and about 1000 acres of orchard that we are replanting the older blocks as they are getting less profitable. We farm in Grant County.

I do not agree with changing the charge to pile burning free (per/ton). If the formula that is used increases by 0.7 tons per year I think the orchards will be overcharged. The Washington State Department of Natural Resources currently uses this method for silvicultural burning. I think the biggest difference is that orchards are pruned every year to keep the orchard to a manageable size of tree. Once the orchard tree feels it's space it is maintained at that height for the rest of the orchards life.

Comment B5

Thank you for your consideration.

Dena Ybarra
Columbia Basin Nursery, LLC
509-787-4411

From: Perez, Richelle (ECY) [mailto:rdeg461@ECY.WA.GOV]
Sent: Wednesday, August 18, 2010 8:43 AM
To: Dena Ybarra
Subject: RE: rule changes in agriculture burn

Hi Dena,

Thank you for your questions below and during our phone conversation on Tuesday. I apologize for taking a few days to respond. Please find the answers to your questions below.

Do the changes in the pile burning include orchard removal?

Yes. Ecology will charge the pile burning fee (per/ton) for a permit to burn trees from an orchard removal beginning January 1, 2011.

How do we know how much our trees weigh when we remove them?

Ecology is developing guidance that will help you calculate the weight of your trees. The guidance will include the following two methods:

- A calculation based on the number of acres removed and the age of the trees. Ecology's current data suggests a formula of about 0.7 tons per acre per year.

- Determining the amount of tons from the volume of the pile size. The Washington State Department of Natural Resources currently uses this method for silvicultural burning.

How can I calculate my pile size if I do not know the size of my piles yet? How do I determine the weight of a pile that I continuously add material to ensure a more efficient burn?

You will determine the amount of tons you will burn using the formula based on the number of acres removed and the age of the trees. If you dispose of a portion of the trees using an alternative to burning (such as chipping) you can subtract those tons before you calculate your fee. Ecology regional staff are available to answer any questions regarding the permit application.

Please let me know if you have any additional questions or comments.

Thank you,

Richelle Perez

Washington State Department of Ecology
Air Quality Program
PO Box 47600
Olympia, WA 98504-47600
360-407-7528
Fax 360-407-7534
richelle.perez@ecy.wa.gov

From: Dena Ybarra [mailto:dena@cbnllc.com]
Sent: Tuesday, August 10, 2010 2:24 PM
To: Perez, Richelle (ECY)
Subject: rule changes in agriculture burn

Hello,
I am an orchardist in Grant County and was wondering does the changes in the pile burning include orchard removal? If so how do we know how much our trees weigh when we remove them.

Thanks,

Dena Ybarra
Columbia Basin Nursery, LLC
509-787-4411

Document 9

Chapter 173-430 WAC

AGRICULTURAL BURNING Last Update: 7/26/06WAC

173-430-010	Purpose of the regulation.
173-430-020	General applicability and conditions.
173-430-030	Definition of terms.
173-430-040	Agricultural burning requirements.
173-430-041	Agricultural burning fees.
173-430-042	Setting agricultural burning fees.
173-430-044	Requirements for burning field or turf grass
173-430-045	Alternatives to burning field and/or turf grasses grown for seed.
173-430-050	Best management practices.
173-430-060	Research into alternatives to agricultural burning.
173-430-070	General agricultural burning permit conditions and criteria.
173-430-080	Responsibilities of a permitting authority.
173-430-090	Receiving delegation--Counties, conservation districts, and fire protection agencies.
173-430-100	Severability.

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 Washington State Department of Ecology (Ecology) and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes control strategies for agricultural burning in the state ~~in order to~~ minimize adverse health and the environmental 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. These 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, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-010, filed 7/26/06, effective 8/26/06. 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.]

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. ~~Refer to provided for in (chapter 173-425 WAC) for requirements for silvicultural burning and other outdoor burning.~~

Comment G12
Comment [m1]: Restate to clarify that the reference to "other outdoor burning" isn't being made to WAC 173-425-030(15). In addition, clarify that silvicultural burning requirements aren't in Ch. 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)~~.

Comment G13

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and ~~regulations~~rules, 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 70.94.752445). 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~~ from trees to improve fruit or nut quality, facilitate assist with tree canopy training, and or improve the management of plant and disease, and or pest infestations;

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Comment
G14

(b) **Organic debris along fencelines.** A fenceline or fencerow is the area in possession of a farmer, or the area which the farmer has a present right of position, bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

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Comment G15

Comment [m2]: Clarify that it excludes situations such as organic debris in ditches along fence lines where the ditches are not under the control of the farmer (e.g., city or county right-of-ways).

(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;

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

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[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-020, filed 7/26/06, effective 8/26/06. 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.]

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~~28~~ (6) 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.~~

(34) **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.

(45) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (Ag ~~t~~Task ~~f~~Force).

Comment H16

Comment [m3]: Be consistent throughout the regulation with "Task Force" or "Task force".

(56) **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.~~

(6) **Ecology:** Means the Washington Department of Ecology.

(78) **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.

Comment H17

Comment [m4]: The issue seems to pertain to differentiating a "field" from a "pile" as it applies to agricultural burning. Since pile burning is being defined, might the definition of field burning be omitted? It seems the definition being proposed is partially redundant of the "agricultural operation" definition. If it is necessary to define field burning, consider, "Field burning: Agricultural burning which excludes pile burning".

(8) **Field burning:** Agricultural burning of vegetative

residue on an area of land used in an agricultural operation.

Field burning does not include pile burning.

(9) **Impaired air quality:** Means an 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) Pile burning: Agricultural burning of stacked vegetative residue from an agricultural operation. Burning of windrows does not qualify as pile burning.

(13) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.653460, 70.94.65490, and pursuant to under chapter 76.04 RCW.

~~(14) Spot Burning: Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists~~Field burning a cumulative area not to exceed the acreage published in the fee schedule which is reasonably necessary as a result of unforeseen and unpredicted circumstances and where no practical alternative to burning exists. The cumulative area shall be applied on a per farmer per calendar year basis. Examples of spot burns include small weed patches, spots of heavy residue, equipment plugs, and

Comment H18

Comment [m5]: For clarification, does it include piles of the following stacked debris: orchard tear-out, raspberry canes, vineyards, and hay bales? Are there additional common examples?

Comment H19

harrow dumps]. Burning of windrows does not qualify as a spot
burn.

Comment [m6]: Does Ecology want to elaborate on how the acreage is calculated for these?

(15) Task force: means the agricultural burning practices
and research task force.

Comment H2B

[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745.
06-16-052 (Order 04-10), § 173-430-030, filed 7/26/06, effective
8/26/06. 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.]

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 PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection ~~at the time of when~~ 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 based on the division between the "good" and "moderate" classifications of the 2009 U.S. Environmental Protection Agency's Air Quality Index (AQI) for (twenty-four hours average PM2.5) 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~~the 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~~under the smoke management index.

(f) ~~Pursuant to~~Under RCW 70.94.473 and 70.94.652~~1775~~, no burning ~~shall be~~is 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 70.94.65326 and/or by RCW 70.94.65280.

(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) Application Information. A farmer must ~~fill out the information requested on complete a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval prior to before~~ 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

COMMENT I21

Comment [m7]: Fee requirement is specified in WAC 173-430-040(4).

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~~rules.

(d) The permitting authority must evaluate the application, and approve the permit ~~prior to~~before 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~~the 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~~authority 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 70.94.6514743.

(4) All agricultural burning permits require a fee. The applicant must include the fee when submitting the application. The permitting authority will charge fees as described in WAC 173-430-041. ~~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.~~

Comment [RP8]: This language was moved to a new section WAC 173-430-041 and edited.

~~—— (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
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\$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

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~~(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 at least one of the following:

- ~~the use of a daily burn decision.~~
- ~~permit specific decisions.~~
- ~~and/or metering.~~

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(c) The permitting authority must:

(i) ~~act on a complete application (as determined by the permitting authority) within seven days of receipt.~~

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

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

(iiiiv) ~~If the permitting authority denies the application is denied, they must state the reason for the denial must be stated.~~

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

Comment [RP9]: This language was moved to WAC 173-430-044. We only made minor editorial changes.

~~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 (c) 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.~~

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

[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-040, filed 7/26/06, effective 8/26/06. 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.]

WAC 173-430-041 Agricultural burning ~~fees~~

Comment [RP10]: We revised language moved from WAC 173-430-040 (4) for this section.

(1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528 (5) authorizes the agricultural burning

practices and research task force (Task force) to determine the level of the fee.

(a) 2011 fee schedule. Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) Establishing new fee schedules. Ecology and the Task force will examine the fee schedule using the process in WAC 173-430-042.

(3) Calculating the fee. The fee consists of a minimum fee plus any applicable variable fee.

(a) Minimum fee. The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) Variable fee. Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

<u>Type of Burning</u>	<u>Variable Fee</u>
<u>Field Burning</u>	<u>Fee applied for each additional acre</u>
<u>Spot Burning</u>	<u>None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.</u>
<u>Pile Burning</u>	<u>Fee applied for each additional ton</u>

(4) Fee components. The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration, and;
- Research.

(a) Permitting program administration. The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where Ecology has permitting authority and has not delegated that authority, Ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6)(a) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) Smoke management administration. This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

Comment ~~1000~~ J22

Comment [m11]: Should "(a)" be removed?

(ii) Help fund the education, and smoke management activities of Ecology or the local air authority.

(c) Research fund. The Task Force will determine the research portion of the fee based on applied research needs, regional needs and the research fund budget.

(5) Permit fee schedule. Table 1 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until Ecology and the Task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact Ecology, or contact your local air authority for the most current fee schedule or fee distribution.

Table 1. Agricultural burning fee schedule, starting calendar year 2011

<u>Fee</u>	<u>Minimum Fee</u>	<u>Variable Fee</u>
<u>Field Burning</u>	<u>\$30 for the first 10 acres</u>	<u>\$3.00 for each additional acre</u>
<u>Spot Burn</u>	<u>\$30 for 10 acres or less</u>	<u>None</u>
<u>Pile Burning</u>	<u>\$80 for the first 100 tons</u>	<u>\$0.50 for each additional ton</u>

(6) Permit fee Distribution. Table 2 shows the permit fee distribution, starting in the calendar year 2011. This distribution will remain in place until Ecology and the Task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact Ecology, or contact your local air

authority for the most current fee schedule or fee distribution.

Table 2. Agricultural burning fee distribution

<u>Fee</u>	<u>Permitting Authority Administration</u>	<u>Research</u>	<u>Smoke Management</u>
<u>Field Burning Minimum Fee</u>	<u>\$15.00</u>	<u>\$0</u>	<u>\$15.00</u>
<u>Field Burning Variable Fee</u>	<u>\$1.25 per acre</u>	<u>\$0.50 per acre</u>	<u>\$1.25 per acre</u>
<u>Spot Burn Fee</u>	<u>\$15.00</u>	<u>\$0</u>	<u>\$15.00</u>
<u>Pile Burning Minimum Fee</u>	<u>\$16</u>	<u>\$16</u>	<u>\$48</u>
<u>Pile Burning Variable Fee</u>	<u>\$0.10 per ton</u>	<u>\$0.10 per ton</u>	<u>\$0.30 per ton</u>

(7) Refunds. The farmer may receive a refund if requested in writing within 30 calendar days of the permit expiration date. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars the minimum fee in WAC 173-430-041(5) due to the cost of processing refunds.

comment J23

comment J24

WAC 173-430-042 Adjusting agricultural burning fees

Comment [RP12]: This section is completely new.

(1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528 (5) authorizes the agricultural burning practices and research task force (Task force) to determine the level of the fee.

(3) Process for adjusting the fee schedule for agricultural burning. The process for adjusting the fee schedule requires the following two steps:

- The Task force must determine the fee schedule using the process established in subsection (4) of this section,
- If the Task force decides to adjust the fee schedule, Ecology will finalize the new fee schedule through the process established in subsection (6) of this section.

(4) Task force process to determine agricultural burning fees. The Task force may examine the agricultural burning fee schedule once a year using the process outlines in the section. However, The Task force must examine the agricultural burning fee schedule at least every two years. The Task force process for examining the agricultural burning fee schedule must include the following:

(a) Ecology will submit, to the Task force, a summary of the costs of the permit and smoke management programs before the first Task force meeting of the year.

(b) The agenda for the first Task force meeting of the year must include examining the current fee schedule.

(c) Ecology will notify stakeholders and permit holders of time, date, location, and agenda for the Task force meeting.

(d) Based on the information provided by Ecology, under (a) of this subsection, the Task force will decide if they need to adjust the agricultural burning fee schedule.

(e) If the Task force decides to adjust the agricultural burning fee schedule, they must determine the new fee schedule at a regularly scheduled meeting.

(5) Examining the fee schedule more frequently. The Task force may examine the agricultural burning fee schedule more frequently than every two years, if all of the following occurs:

(a) The Task force determines the fee schedule during one of their regularly scheduled meetings.

(b) Ecology finalizes the fee schedule using the process in subsection (6).

(6) Ecology process to finalize fees set by the Task force. After the Task force determines a new fee schedule, Ecology will:

(a) Post the proposed fee schedule on the agency website

for public review and comment.

(b) Publish a notice of a public hearing.

(i) The notice will include all of the following:

- Time;
- Date;
- Location;
- Last day Ecology will accept written comments.

(ii) At a minimum, Ecology will publish the notice in the following locations:

(A) Washington State Register

(B) Ecology website

(c) Hold a public hearing at least twenty days after completing the actions in (a) and (b) of this subsection.

(d) Accept written comments on the proposed fee schedule. Ecology must receive comments by the time and date specified in the hearing notice, or a later time and date established at the hearing.

(e) Consider comments received and provide a written response to comments to the Task force and anyone who commented.

(f) Ecology will finalize the fee schedule by December 1 of the calendar year before it becomes effective.

(g) Ecology will publish the fee schedule by:

i) Notifying stakeholders and permit holders of the new fees.

(ii) Posting a response to comments on the Ecology

Comment JAS

Comment [m13]: Check consistency of capitalization of "Ecology" throughout document.

website.

(7) Effective date of the new fee schedule. The new fee schedule becomes effective January 1 of the calendar after it is finalized.

WAC 173-430-044 Additional requirements for burning field or turf grasses grown for seed.

Comment [RP14]: This language was moved from WAC 173-430-040 (6) with only minor editorial changes.

(1) 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 is 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 or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of (a) of this subsection is 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) Ecology or the 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 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 will the emission reduction requirement for
the field and turf grass grown for seed be less than that
required in WAC 173-430-044 (1)(a).

**WAC 173-430-045 Alternatives to burning field and/or turf
grasses grown for seed.** (1) When is open burning of field and
turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of
field and turf grasses grown for seed whenever ecology has
concluded, through a process spelled out in the act, that any
procedure, program, technique, or device constitutes a practical
alternate agricultural practice to open burning, and that
alternate is reasonably available.

(2) Has ecology certified practical alternatives to open
burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management
constitutes a practical alternate agricultural practice to the
open burning of field and/or turf grasses grown for seed.

Mechanical residue management means removing, including arranging for removal of, the residue using nonthermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques.

Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

- (a) When the field is planted (establishment);
- (b) When the field is producing seed (harvest years);
- (c) When the field is prepared for replanting (tear-out).

(3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field and/or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a

field under specific production conditions due to slope. In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

~~(iii) Field production is after the first harvest season and prior to the fourth harvest season;~~

(iii*) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

(vi) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed ~~before~~prior to burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vii) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

~~(iii) Field production is after the first harvest season and prior to the fourth harvest season;~~

~~(iii)~~ (iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the

request for a waiver;

(iv) The field will remain, without replanting, in grass production at least through the next harvest season following burning;

(vi) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi±) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than \$300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued pursuant ~~to~~ under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days ~~prior to~~ before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), and/or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology

or the local air authority at least thirty days ~~prior to~~before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved ~~prior to~~before processing a permit application.

[Statutory Authority: RCW 70.94.656. 98-12-016 (Order 97-45), S 173-430-045, filed 5/26/98, effective 6/26/98.]

WAC 173-430-050 Best management practices. (1) The Ag Task force must identify best management practices for agricultural burning that are economically feasible and socially

acceptable. Practical alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.

(2) The ~~Ag-~~Task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The ~~Ag-~~Task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The ~~Ag-~~Task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.

(3) Approved best management practices information will be available from permitting authorities. The ~~Ag-~~Task force, as it deems necessary, will hold public workshops on best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.

(4) The ~~Ag-~~Task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.

(a) An individual or group may request a best management practice clarification from the ~~Ag-~~Task force.

(b) The chair of the ~~Ag-~~Task force may direct the questioned practice to a subgroup of ~~Ag-~~Task force members, provided that agricultural, research, and regulatory interests are included and all ~~Ag-~~Task force members are notified, or may

direct it to the whole ~~Ag-t~~Task force.

(5) The ~~Ag-t~~Task force will ~~modify~~change best management practices as necessary to incorporate the latest research.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-050, filed 1/17/95, effective 2/17/95. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-050, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-050, filed 11/9/77. Formerly WAC 18-16-050.]

WAC 173-430-060 Research into alternatives to agricultural burning. (1) ~~The department shall~~Ecology will administer the research portion of the permit fee to carry out the recommendations of the ~~Ag-t~~Task force. In carrying out the recommendations, ~~the department~~Ecology 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~~the study, ~~the department~~Ecology may contract with public or private entities. Any approved study ~~shall~~must provide for the identification of ~~such~~the alternatives as soon as possible.

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

[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-060, filed 7/26/06, effective 8/26/06. 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.]

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~~the 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~~rules 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.

[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-070, filed 7/26/06, effective 8/26/06. 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.]

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 eEcology. Ecology delegated authorities are required to use applications and permits supplied by eEcology.

Comment K26

(b) A map ~~is required to~~ must 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, and 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~~must 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.

Comment K27

Comment [m15]: This refers to a delegate of Ecology or a local air authority, so clarify that it's in reference to permitting authorities delegated by Ecology.

(7) Delegated permitting authorities of Ecology must provide ecology with copies of all permits and supporting documentation and transfer the research and ~~ecology-~~ ~~administration~~ smoke management administration portion of the fee to Ecology the department. Delegated permitting authorities of local air authorities must provide the local air authority or Ecology with copies of all permits and supporting documentation and unless approved otherwise by the local air authority, transfer the research portion of the fee to Ecology and the smoke management administration portion of the fee to the local air authority.

Comment K28

Comment [m16]: Provision to give the local air authorities flexibility as noted below.

Comment [m17]: It's SRCAA's understanding that local air authorities may elect to retain the research portion of the fee.

Comment [m18]: SRCAA would like the flexibility in allowing the delegated permitting authorities to retain this portion of the fee.

(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.

Comment K29

Comment K30

(c) ~~The department~~ Ecology must deposit all agricultural burning permit fees in the air pollution control account. Delegated Ppermitting authorities of Ecology may deduct the

Comment K31

~~local-permitting authority administration portion of the fee~~
before forwarding the remainder to ~~the department~~Ecology.
~~Delegated permitting authorities of local air authorities may~~
~~deduct the permitting authority administration portion of the~~
~~fee, and if approved by the local air authority, a portion of~~
~~the smoke management portion of the fee. Local air authorities~~
~~may retain all portions of the agricultural burning fee.~~

COMMENT
K31

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

COMMENT K32

(9) The permitting authority ~~or its delegate~~ must require a postburn report for all permits.

Comment [m19]: Propose removing this as "permitting authority", by definition, includes reference to delegates of Ecology or local air authorities.

(10) ~~The permitting authority~~Ecology or its delegate must utilize the web-based data base for issuing all agricultural burning permits.

COMMENT K33

(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, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-080, filed 7/26/06, effective 8/26/06. 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.]

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, or both. 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~~Ecology 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~~must 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~~Ecology 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~~before implementation.

[Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745.

06-16-052 (Order 04-10), § 173-430-090, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-090, filed 1/17/95, effective 2/17/95.]

WAC 173-430-100 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of ~~such~~the provision to other circumstances and the remainder of the regulation will not be affected.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-100, filed 1/17/95, effective 2/17/95.]

Document 10

August 26, 2010

Public hearing.
Dayton library.
Burn fee increase

Comment C7

I support the burn fee increase and here are my reasons why:

1. You can only burn on designated burn days determined by the department of ecology.
2. Department of ecology has a Premier smoke management program to protect public health and allows farmers to burn. This program is constantly being updated with the latest technology, when it has been proven to be better than the current technology used.
3. The environmental community is satisfied with the current program, as it does protect public health.
4. Growers are pretty much satisfied with the program, as they are able to get their fields burnt in a timely manner.
5. This smoke management program costs money. Some of the money comes from the permit fees. The rest comes out of the General Fund of the State of Washington.

With the state being broke, this program is in jeopardy of losing personel and possibly two days of week of making burn calls. This program operates 365 days a year. Losing weekend burn calls is not an option. Less people means taking longer to make a burn call, which means less hours in a day to burn. Less people means they may push the envelope to make a burn call and could mean more marginal burn calls which will impact public health.

6. The current burn team has worked together for a long time and knows the system, which works very well. It would be a shame to have to break this team up due to budget restrictions.

7. Yes, department of ecology has wrecks once in a while, but so does everybody else. You look at the problem, fix it, move on and make things better.

These are some of the reasons I support the burn fee increase.

Thank you.

Jay Penner



Appendix B: Transcripts from public hearings

Hearing Officer

So, my name is Anne Knapp and I'm the hearing officer for tonight's hearing: the proposed amendments to Chapter 173-430 of the Washington Administrative Code. We have introduced staff and staff has already made a presentation. We do not have very many people here to speak tonight and so you will just be able, both of you, to speak for as long as you want to. And we will let you speak first. In case you decide, you would like to say something. As Richelle said, if you have any written comments you want to submit, they should be submitted by September 9th with the information to the address, email address she provided for you.

Let the record show that it is about 7:40, August 26, 2010, and this hearing is being held at the Columbia County Rural Library District, 111 S 3rd St in Dayton, WA.

Legal notices of this hearing were published in the Washington State Register on August 4th, 2010 with this code WSR 10-15-071. Paid advertising was published in:

- The Walla Walla Union-Daily Bulletin on July 26, 2010,
- The Spokesman-Review on July 26, 2010,
- The Wenatchee World on July 26, 2010,
- The Yakima Herald Republic, July 26, 2010, and
- The Daily Journal of Commerce on July 26, 2010.

In addition, notices of the hearing were:

- placed in the Walla Walla County Conservation District newsletter,
- placed in the offices where burn per.. where burn permits are issued,
- and sent via email to 627 interested people,
- and a news release was issued on August 4th, 2010.

So, please step up to the microphone and give us your name and address for the record. And you can have as long as you'd like to speak. You can stand or you can sit in the chair, whatever you feel comfortable with.

Jay Penner

421 Fields Gulch Grove
Waitsburg, WA

I want that to go in the record as that is in Columbia County not Walla Walla County. I am going to speak in favor.

I do support this burn fee increase and here are my reasons why:

1. You can only burn on designated burn days determined by the department of ecology. If there's nobody there to make a burn call you won't get to burn.

Agriculture Burn Rule

2. Department of ecology has a premier smoke management program to protect public health and it allows farmers to burn. This program is constantly being updated with the latest technology, when it has been proven to be better than the current technology used.
3. The environmental clean air community is satisfied with the current program, as it does protect public health.
4. Growers are pretty much satisfied with the program, as they are able to get their fields burnt in a timely manner.
5. This smoke management program costs money. Some of the money comes from permit fees. The rest comes out of the General Fund of the State of Washington. With the state being broke, this program is in jeopardy of losing personnel and possibly two days a week of making burn calls. This program operates 365 days a year. Losing weekend burn calls is not an option. Less people, means taking longer to make a burn call, which means less hours in a day to burn. Less people mean they may push the envelope to make a burn call and could mean more marginal burn calls which will impact public health.
6. The current burn team has worked together for a long time and they know the system, which works very well. It would be a shame to have to break this team up due to budget restrictions.
7. Yes, the department of ecology has had wrecks once in a while, but so does everybody else. You look at the problem, fix it, move on and make things better.

These are some of the reasons why I support this burn fee increase. Thank you.

Hearing Officer

Thank you. Are you going to give us a copy for...Thank you very much.

Would you like to say anything, sir? Ok.

Um, then, for the closing remarks. All testimony received at this hearing as well as at the second hearing scheduled for September 2nd, 2010 in Wenatchee, along with all written comments received by September 9th, 2010 will be part of the official hearing record for this proposal.

Ecology will send notice about the Concise Explanatory Statement publication to:

- Everyone that provided written comments or oral testimony on this rule proposal,
- Everyone that signed-in today for today's hearing and provided an email address,
- And other interested parties on the agency's mailing list for this rule.

So, I'm assuming that both of you will get copies of this. Ok.

Uh, the CES will, among other things, contain the agencies response to questions or issues of concern that were raised during the public comment period.

Our next step is adoption. Ecology Director Ted Sturdevant will look at the public comments, the CES, other rule documentation, and staff recommendations and will make a decision about adopting the

Agriculture Burn Rule

proposal. Adoption is currently for November 10, 2010. If the proposed rule should be adopted that date and filed with the code reviser, it will go into effect 31 days later.

If we can be of further help, please do not hesitate to ask or contact Richelle if you have other questions. And I want to thank you on behalf of the Department of Ecology for coming.

And let the record show this was adjourned at about 7:45.



Agriculture Burn Rule

Hearing Officer

This is Clynda Case, hearing officer for this evening's hearing: the proposed amendments to Chapter 173-430 for the Washington Administrative Code, Agricultural Burning.

Let the record show that it is 6:30 on September 2nd, 2010. And no public has shown up to Wenatchee Public Library Downstairs Conference Room at 310 Douglas St. Wenatchee, WA.

Legal notices of this hearing were published in Washington State Register, August 4th, 2010 WSR 10-15-071. Legal notices of this hearing were published in the Washington State Register, August 4th, 2010, WSR 10-15-071. Paid advertising was published in:

- The Walla Walla Union-Daily Bulletin on July 26, 2010,
- The Spokesman-Review on July 26, 2010,
- Wenatchee World on July 26, 2010, and.

In addition, notices of the hearing were:

- placed in the Walla Walla Conserv...Walla Walla County Conservation District newsletter,
- via email sent to 627 interested persons,
- and a news release was issued on August 4th, 2010.

Since there is no public we are not having any testimony. We are now going to close the hearing and its 6:33.