
Ecology & Parks Committee

HB 1253

Brief Description: Regarding state environmental policy act exemptions for air operating permits.

Sponsors: Representative Upthegrove.

Brief Summary of Bill

- Clarifies that the current exemption for air operating permits from the State Environmental Policy Act only applies to decisions to issue, renew, reopen, or revise an air operating permit and not to other regulatory processes that air contaminant sources must complete under state law.

Hearing Date: 1/20/09

Staff: Anna Jackson (786-7190)

Background:

The State Environmental Protection Act Requirement for an Environmental Impact Statement

The State Environmental Protection Act (SEPA) requires all branches of government in the state, including state agencies, municipal and public corporations, and counties to include a detailed environmental impact statement (EIS) in every report or recommendation for major actions that significantly affect the quality of the environment [RCW 43.21C.030].

The EIS must include: (1) the environmental impact of the proposed action; (2) any adverse environmental effects that cannot be avoided if the proposal is implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Air Operating Permits for Air Contaminant Sources

The Department of Ecology (DOE) or a local air pollution control authority issues renewable permits for the operation of all air contaminant sources, subject to certain conditions. The permits, called air operating permits, are issued for a term of five years. Air operating permits are required for all sources of air contaminants covered under the federal Clean Air Act, as well as for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare [RCW 70.94.161].

Each air operating permit must state the origin of and specific legal authority for each requirement included. Every requirement in an air operating permit must be based upon the most stringent of the following requirements: (1) the federal Clean Air Act; (2) the Washington Clean Air Act; (3) the requirements of any order or regulation adopted by a local air pollution control authority for permits issued by that authority; (4) state nuclear radiation control statutes and regulations; and (5) state energy facility site evaluation council statutes and regulations.

The Washington Clean Air Act also requires all existing sources of air pollutants in the state to control their emissions by using "reasonably available control technology" (RACT), which is defined as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. The RACT requirements are determined on a case-by-case basis for each source and are only adopted after public notice and opportunity for comment.

Currently any decisions "pertaining to" the issuance, renewal, or revision of an air operating permit are exempt from the EIS process [RCW 43.21C.0381]. The rationale for this exemption is that the information required to be submitted for an EIS largely duplicates the information that must be submitted for the issuance of an air operating permit.

Bowers v. SWAPCA

A 1996 Pollution Control Hearings Board decision (*Bowers v. SWAPCA*, PCHB No. 95-106) found that the RACT requirements for a particular source "pertain to" the issuance, renewal, reopening, or revision of an air operating permit because they eventually are folded into an air operating permit. Accordingly, the board held that the defendant, a regional air pollution control authority, did not need to submit an EIS in connection with establishing the RACT requirements for the plant in question.

Summary of Bill:

The language "decisions pertaining to" the issuance, renewal, reopening, or revision of an air operating permit is changed to "decisions to" issue, renew, reopen, or revise an air operating permit in order to clarify that the SEPA exemption for air operating permits only applies to decisions related to the permit itself and not to other processes that air contaminant sources must complete under state law.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.