

FINAL BILL REPORT

ESHB 1089

Synopsis as Enacted

C 252 L 93

Brief Description: Changing air quality operating permit requirements.

By House Committee on Environmental Affairs (originally sponsored by Representatives J. Kohl, Horn, Rust and Pruitt; by request of Department of Ecology).

House Committee on Environmental Affairs
House Committee on Revenue
Senate Committee on Ecology & Parks
Senate Committee on Ways & Means

Background: Like many other environmental regulatory programs, air pollution from industrial sources is regulated by establishing technology-based emission limits. Unlike other environmental regulatory programs, industrial sources of air pollution have not been required to obtain an operating permit. As a result, emission limits, control technology, and general operating specifications are not reviewed for adequacy on a regular basis.

Industrial sources of air pollution are currently subject to three regulatory programs: registration, new source review, and control technology assessments. Industrial sources are required to register each year with the Department of Ecology or a local air pollution control authority. Registration provides air quality regulators with some of the information necessary to allocate emissions among industrial sources. At the time of construction, industrial sources are also required to undergo a new source review, in which air regulators examine the specifications of the plant and pollution control technology to determine if the industrial facility will cause air quality to be "significantly deteriorated." Local air authorities charge a fee to register industrial sources and to perform a new source review; the Department of Ecology charges a fee only for new source reviews. Industrial sources also must install air pollution control technology that meets certain criteria. The level of technology required depends on whether the facility is new or existing and on the air quality in the area where the facility is sited. Control technology assessments are conducted by the Department of Ecology and can be for individual industries or for a group of similar industries. Control technology assessments are

currently conducted for new industrial sources and when an existing source is significantly modified. Existing sources have generally not been subject to control technology assessments on any regular schedule.

The 1990 federal Clean Air Act amendments require states to develop an operating permit program for major sources of air pollution. Major sources are defined as those sources capable of emitting 100 tons per year of certain regulated pollutants; 10 tons per year of a single toxic pollutant; or 25 tons per year of multiple toxic pollutants. The act also requires states to establish a fee structure that covers the costs of the permitting program, and to submit the program for federal approval by October 1, 1993. Failure to gain approval may result in a federally-administered permit program and sanctions, such as loss of federal transportation grants.

State legislation in 1991 established an interim fee of \$10 per ton on sources emitting 100 or more tons of regulated pollutant per year. The fees are divided between the Department of Ecology and local air pollution control authorities to develop a permitting program. The 1991 legislation further directed the Department of Ecology to develop recommendations to the 1993 Legislature on a fee structure for the air operating program. The department was specifically directed to include a number of accountability provisions to ensure that the fee structure included only the costs necessary to implement an operating permit program.

The Department of Ecology formed an advisory task force consisting of industry, small business, environmental groups, local air authorities, and the U.S. Environmental Protection Agency. The task force met over an 18 month period and addressed all four regulatory programs for industrial sources of air pollution: registration, new source review, control technology assessments, and the operating permit program. The task force made detailed recommendations to create a procedure for developing fee structures that: (1) provided the greatest possible accountability to the industries paying the fees; and (2) ensured that the fees were sufficient to implement a program that protects air quality. The recommendations were included in the department's 1993 request legislation.

Summary: The Department of Ecology and local air pollution control authorities are authorized to assess fees for an air operating permit program. Fees for the operating permit program must be based on a number of general and specific accountability provisions. General accountability

provisions are established for other industrial air pollution program.

GENERAL ACCOUNTABILITY PROVISIONS

The fee structures for regulatory activities regarding new source review, control technology assessments, and the operating permit program must incorporate the following accountability provisions: (1) the fee structures must be developed based on the actual costs incurred by the Department of Ecology; (2) the department must track its costs for each category of industry and track fees received from each industry paying a fee; (3) an air operating permit account is created. Fees for new source reviews, control technology assessments, and operating permits must be deposited into the air quality account if the facility is a major source of air pollution; and (4) the department must submit its proposed fee schedules to the public for review and comment prior to finalizing the fees.

REGISTRATION FEES

The Department of Ecology is authorized to collect a fee for registering industrial sources of air pollution. Registration fees collected by the department are to be deposited into its general air pollution control account. Fees collected by local air authorities are to be deposited in their respective treasuries.

AIR OPERATING PERMIT FEES

The \$10 per ton interim fee is abolished. The Department of Ecology and local air authorities with delegated authority to administer the operating permit program may assess fees to cover the direct and indirect costs of developing and implementing the program. The eligible costs for the operating permit program are specifically defined. Each permitting authority must develop a fee schedule and mechanism for fee collection. The department must allocate its program development and oversight costs among all permitting authorities based on the number of permitted facilities under each authority's jurisdiction.

The fee structure established by the department must be developed according to a number of general and specific accountability provisions. The fees are due 45 days after federal approval of the state permit program.

Accountability provisions specific to the operating permit program are established. The department must develop a system of fiscal audits, reports, and periodic performance

audits applicable to the operating permit programs of both the department and local air pollution control authorities. The air operating permit fees must be allocated based upon three equally weighted factors: (1) the number of sources; (2) the complexity of sources; and (3) the amount of pollutants emitted by a facility.

CONTROL TECHNOLOGY ASSESSMENT FEES

The Department of Ecology must establish a schedule for making "reasonably available control technology" (RACT) determinations. The fee schedule adopted by the department must conform to general accountability provisions. In 1995, the Department of Ecology is required to report on fee structures for new permit sources not currently subject to permit requirements.

NEW SOURCE REVIEW FEES

Fees collected by the Department of Ecology must conform to general accountability provisions. Fees collected by local air authorities are to be deposited in their respective treasuries.

MISCELLANEOUS

A definition for the most stringent air pollution control technology required under federal law is added to state law. Other definitions are clarified and moved to the general definitions section of the Clean Air Washington Act. The Department of Health as well as the Department of Ecology may exercise air quality enforcement powers with respect to emissions of radionuclides.

Votes on Final Passage:

House	94	13	
Senate	40	2	(Senate amended)
House	85	11	(House concurred)

Effective: July 25, 1993