

SENATE BILL REPORT

ESHB 1089

AS REPORTED BY COMMITTEE ON WAYS & MEANS, APRIL 8, 1993

Brief Description: Changing air quality operating permit requirements.

SPONSORS: 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

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Fraser, Chairman; Moore, Sutherland, and Talmadge.

Staff: Gary Wilburn (786-7453)

Hearing Dates: March 31, 1993; April 2, 1993

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ecology & Parks.

Signed by Senators Rinehart, Chairman; Spanel, Vice Chairman; Bauer, Bluechel, Cantu, Gaspard, Hargrove, Hochstatter, Jesernig, Moyer, Niemi, Owen, Pelz, Quigley, Snyder, Sutherland, Talmadge, West, Williams, and Wojahn.

Staff: Denise Graham (786-7715)

Hearing Dates: April 7, 1993; April 8, 1993

BACKGROUND:

The 1990 federal Clean Air Act amendments required 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. Federal law requires states to establish a fee structure that covers the costs of the permitting program, and requires states to apply for federal approval of the program 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 directed the Department of Ecology to seek federal approval to administer an operating permit program. It established an interim fee of \$10 per ton on sources emitting 100 or more tons per year. The fees are divided between the Department of Ecology and local air pollution control authorities to develop the permitting program.

The 1991 legislation further directed the department to make recommendations to the 1993 Legislature on a fee program which addresses the cost of program elements, division of the fees between Ecology and local air authorities, and a methodology for tracking revenues and expenditures. In response, the department formed an advisory task force consisting of industry, small business, environmental groups, local air authorities, and the U.S. Environmental Protection Agency. The recommendations of the task force are reflected in the departmental request legislation to the 1993 Legislature.

Like other environmental regulatory programs, air quality regulation is achieved through technology-based limitations required at the time of construction or modification of a source, and, following the 1990 federal requirements, through a renewable operating permit. Existing regulatory activities for which fees may be assessed include: (1) "new source review," to ensure that technology-based standards are achieved in a new source or a modification of the source; (2) "registration" of sources, used to maintain an inventory of emissions that sources contribute to air pollution; and (3) "control technology assessment," in which the state-of-the-art in air pollution control technology for types of air pollution sources (e.g., oil refineries) are surveyed, and may result in enhanced control requirements.

The Department of Ecology's recommendations to the 1993 Legislature, reflecting the work of the task force, included the following:

Cost Allocation. The air operating permit fee does not include the costs of new source review or control technology assessment. These will be charged to sources only when such activities are conducted for that source. Registration fees will be assessed for all nonmajor sources. The four categories of fees (operating permits, registration, new source review, and technology assessment) are all based on a workload analysis performed each biennium by Ecology or the local air authority.

The costs of the operating permit fee will be allocated by determining the total costs of the program and dividing the total into thirds, based upon: (1) the number of sources; (2) the complexity of sources; and (3) the amount of emissions. The fee for each source will be determined by adding the amount allocated to that source from each of the three equally weighted categories.

State/Local Division of Fees. Ecology will assess fees to sources it regulates, primarily large industrial facilities

and sources in areas without an activated local air authority. Local authorities delegated to run the operating permit program will assess fees to the sources they regulate. Ecology will determine the total costs of program development and local program oversight, which will be allocated among the local air authorities to the fees assessed to individual sources.

Tracking Revenues and Expenditures. Each biennium Ecology will project its costs and fee levels for each of the four activities supported by fees. Ecology will release a proposed budget for public review and comment. Ecology will track its costs by source category and its revenues for individual sources. Ecology and local air authorities will periodically prepare fiscal audits and performance audits. Expenditure of permit fees revenues will be subject to legislative appropriation.

SUMMARY:

Interim Fees. An interim fee for each major source shall be determined by Ecology based upon a workload analysis and operating permit program development budget for 1994. Fees shall be set according to a three-tiered model, which equally weighs the following factors: (1) number of sources; (2) complexity of sources; and (3) size of sources, based upon the quantity of pollutants emitted. These fees are to be collected by the agency with jurisdiction over the source (local authority or Ecology) and remitted to Ecology. At the same time the local authority may collect an interim fee to cover its operating permit program development costs.

Air Operating Permit Fees. Ecology and local air authorities with delegated authority to administer the operating permit program may assess and collect fees to cover the direct and indirect costs of the program. The fees are to be set by rule by each administering agency. Ecology may enter an agreement with the Department of Revenue to collect the state fees. The fees shall first be due 45 days after federal approval of the state permit program.

The fee eligible activities for administration and development of the permit program, as well as oversight of the local programs, are specified. Each permitting authority is to develop a fee schedule and mechanism for fee collection. Ecology is to allocate its program development and oversight costs among all permitting authorities in proportion to the number of permit program sources under their jurisdiction. Each permitting authority is also to adopt by rule a fee schedule to allocate fees among sources subject to general permits.

Ecology's allocation of permit administration, development and oversight costs shall be based upon a three-tiered model that equally weighs: (1) the number of sources; (2) the complexity of sources; and (3) the size of sources as measured by quantity of pollutants emitted.

Ecology is to develop a process for development and review of its fee schedule, and a methodology for tracking revenues and expenditures. It shall also develop a system of fiscal audits, reports, and periodic performance audits applicable to both Ecology and local authorities. The fee schedule development and review is to include a biennial workload analysis and budget that provides for public review and comment. Minimum required elements of the methodology for tracking revenues and expenditures, and the system of audits and reports, are also specified.

Penalties assessed by Ecology for nonpayment of fees or under-reporting emissions upon which fees are based shall be deposited in the air operating permit account.

Operating Permit Program Procedures. The terms and conditions of an expired permit remain in effect if a timely and complete application for renewal was submitted. The deadline for submitting a permit application is extended to 180 days following federal approval of the state program. All "draft" permits instead of all "proposed" permits are to be subject to public notice and comment.

Registration Fees. All registration fees collected by Ecology are to be deposited in the air pollution control account. Those fees collected by local air authorities are to be deposited to their respective treasuries.

New Source Review. Ecology is to develop a workload-driven process for determining new source review fees and a methodology for tracking revenues and expenditures. All fees from permit program sources are to be deposited in the air operating permit account, and fees from nonpermit program sources are to be deposited to the air pollution control account. Fees collected by local air authorities are to be deposited in their respective treasuries. A source requiring both new source review and an operating permit may elect to integrate the review, to be processed in accordance with operating permit program procedures and deadlines.

Miscellaneous. A definition of "lowest achievable emission reduction" (LAER) is included. Other definitions are clarified and moved to the general definitions section of Chapter 70.94 RCW. The Department of Health as well as the Department of Ecology may exercise all air quality enforcement powers with respect to emissions of radionuclides. The Department of Ecology is to establish a schedule for making "reasonably available control technology" (RACT) determinations. Procedures for RACT determinations and assessing fees for such determination are provided.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Guidance from the Federal Clear Air Act in air quality permit issuance for coal fired steam electric plants is clarified. The Department of Ecology is required to report in 1995 on fee structures for new permit sources not currently subject to permit requirements.

Appropriation: none

Revenue: yes

Fiscal Note: available

TESTIMONY FOR (Ecology & Parks):

The bill's fee structures and accountability provisions representing a 1 1/2 year effort by a task force of all interested parties, and will ensure the state may obtain federal delegation to administer the air operating permit program.

TESTIMONY AGAINST (Ecology & Parks): None

TESTIFIED (Ecology & Parks): Representative Rust, prime sponsor; Joe Williams, Dave Bradley, Ecology; Ron Newbry, Pacificorp; Pat Dunn, Columbia Aluminum Companies; Bruce Wishart, Sierra Club; Kris Backes, AWB, Mark Triplett

TESTIMONY FOR (Ways & Means):

This bill has been worked on for the past year or more. Both environmentalists and the regulated community support this bill.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): Kris Backes, Association of Washington Business (pro); Bruce Wishart, Sierra Club (pro)