

VETO MESSAGE ON HB 1866-S2

May 15, 1997

To the Honorable Speaker and Members,

The House of Representatives of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 11, 15, and 31, Engrossed Second Substitute House Bill No. 1866 entitled:

"AN ACT Relating to the establishment of voluntary programs creating environmental excellence program agreements;"

Since I assumed office, I have emphasized the importance of effective and efficient government. The two Executive Orders that I have signed dealt with improving government service by working smarter and finding ways to reduce costs.

One element of better performance is a willingness to be innovative and creative in the pursuit of objectives. Engrossed Second Substitute House Bill No. 1866 reflects just such an approach. It promotes a more efficient and results-oriented regulatory system for state, local and regional agencies that administer a host of environmental and resource protection laws. The bill allows agencies - after careful consultation with all affected stakeholders - to sign agreements with those they regulate that contain conditions different from those that would be imposed under existing statutes.

I am well aware that there is concern about this legislation and that it is perceived to hold the potential for our losing ground in our decades-long effort to protect Washington's precious environment. However, I think there is substantial merit in this bill as adopted by the 1997 Legislature. I am well aware of the tremendous effort that went into amending it throughout the session to accommodate many of the concerns expressed about the early versions.

At the same time as I act on this bill, I am charging the director of the Department of Ecology with the difficult task of rebuilding some of the trust that may have been lost during the course of the debate over House Bill No. 1866. I have tremendous confidence in his ability to bring together parties with strongly felt opposing views, and seek common ground. I have asked the Director and his staff to initiate a process of developing guidance for implementation of the Environmental Excellence Program - guidance that can fill some gaps in the legislation and help create confidence that the bill will not become a path toward lower standards of resource protection.

While I have signed the majority of Engrossed Second Substitute House Bill No. 1866, there are three provisions that necessitate a veto. These are sections 11, 15, and 31.

Section 11 addresses termination of Environmental Excellence Program Agreements. It specifies that one of the bases for such termination decisions is that "the operation of the facility under the agreement has caused endangerment to public health or the environment that cannot be remedied by modification of the agreement...." It then goes on to state that if an Agreement is terminated, the regulatory agency can impose interim requirements no less stringent than those which would apply in the absence of an

agreement. However, the facility is not obligated to comply with these interim requirements until they have exhausted all judicial review.

This is simply unacceptable. If the operation of a facility is endangering the public health or our environment, it cannot be allowed to continue unchecked while an agency tries to modify the agreement to remedy the problem, terminates the agreement and responds to possibly years of legal challenges. A provision must be made for imposing alternate regulatory requirements on a much shorter timetable than specified in section 11. This is one of the issues I have asked Director Fitzsimmons to explore in developing guidance for this program.

Section 15 exempts Environmental Excellence Program Agreements from the State Environmental Policy Act. SEPA allows the public and decision-makers to become aware of the environmental consequences of their decisions and to look at alternate ways of achieving the same objective. If Agreements under this statute are to achieve equal or better environmental performance, nothing that would be revealed through the SEPA process should hamper completion of an agreement. The added opportunity for public consultation should assuage some of the fears expressed that agencies and project sponsors will reach decisions without adequate consideration of the concerns of neighbors, employees, or citizen groups.

Section 31 amends the 1971 Water Resources Act. For 26 years, Washington has had one of the strongest laws in the nation to prevent degradation of our water quality. Under this law, no discharges into state waters are allowed if they would reduce existing water quality. This seems a minimal standard to impose on any waste discharger. But section 31 would allow an Environmental Excellence Program Agreement to supersede this requirement. This is unacceptable and unnecessary in light of section 3 of the bill. Under that section, every agreement to be signed must produce results equal to or better than what would be produced under current standards and requirements. Thus, no agreement could ever arise that would result in a degradation of the state's water quality. For this reason, I have vetoed section 31.

I have today sent a letter to the Director of the Department of Ecology spelling out the issues and approach to be used in developing guidance for implementing Engrossed Second Substitute House Bill No. 1866. This should address many of the concerns that have been raised by opponents of the bill without undermining its objectives.

I emphasize to all those who have been involved with this legislation that it is a 5-year trial. No new agreements can be made after July 2002 unless the Legislature extends the program. Thus we have a window of opportunity to change the way we do business and to demonstrate that new ways are not necessarily worse than the old ways. I urge those on all sides to keep in mind a shared objective of environmental excellence for all of Washington's citizens in a healthy economic climate where business and government operate with the greatest possible efficiency.

For these reasons, I have vetoed sections 11, 15, and 31 of Engrossed Second Substitute House Bill No. 1866.

With the exception of sections 11, 15, and 31, I am approving
Engrossed Second Substitute House Bill No. 1866.

Respectfully submitted,
Gary Locke
Governor