

HOUSE BILL REPORT

2SSB 5343

As Reported by House Committee On:

Environment

General Government Appropriations & Oversight

Title: An act relating to air emissions from anaerobic digesters.

Brief Description: Concerning air emissions from anaerobic digesters.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Delvin, Hatfield, Honeyford, Becker, Shin and Schoesler).

Brief History:

Committee Activity:

Environment: 2/17/12, 2/21/12 [DPA];

General Government Appropriations & Oversight: 2/22/12, 2/23/12 [DPA(APPG w/o ENVI)].

Brief Summary of Second Substitute Bill (As Amended by Committee)

- Exempts generators operating at an electric generating project that meet certain conditions from the permit provisions related to the emissions limit for sulfur established by the Department of Ecology (DOE) or a local air authority until December 31, 2018.
- Specifies that upon request, the DOE or a local air authority must provide technical assistance to a generator meeting the requirements in the bill in reducing its emissions.
- Requires the DOE to submit a report to the Legislature by December 1, 2012, containing information related to feed sources for anaerobic digesters.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 17 members: Representatives Uptegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Fitzgibbon, Hansen, Jinkins, Morris, Moscoso, Nealey, Pearson, Pollet, Shea, Takko, Taylor and Wylie.

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.

Staff: Anna Jackson (786-7194).

Background:

Air Quality.

Activities affecting Washington's air quality are regulated at federal, state, and local levels. The federal Clean Air Act (federal CAA) establishes both policies for protecting air quality and specific requirements applicable to states and to industries. National Ambient Air Quality Standards (NAAQS) have been established under the authority of the federal CAA. The federal CAA requires states to take action to improve air quality in areas that do not attain NAAQS and to maintain air quality in areas that do. The federal CAA also sets technology-based standards applicable to many individual sources of air pollution.

Washington fulfills its responsibility under the federal CAA through the Washington Clean Air Act (state CAA). The state CAA vests authority to regulate air quality in the Department of Ecology (DOE), the Energy Facility Site Evaluation Council, and any of seven local air authorities in the state. Generally, local air authorities conduct most of the air quality enforcement actions in Washington, and the local air authorities have the power to adopt emission standards more stringent than the state's.

Notice of Construction Permit.

Prior to establishing or modifying a new source or emissions unit that would be required to register with or obtain an operating permit from the DOE or a local air authority, a Notice of Construction (NOC) application must be filed with the applicable agency and must be approved following a new source review. The applicable agency may also require a NOC from any other new source prior to construction, other than a single-family or duplex dwelling or de minimis new sources.

Anaerobic Digestion.

Anaerobic digestion is the bacterial breakdown of organic materials in the absence of oxygen. This biological process produces biogas, which is principally composed of methane and carbon dioxide. Biogas is typically produced from feed stocks such as sewage sludge, livestock manure, and wet organic materials. Anaerobic digesters are devices that use the natural process of anaerobic digestion to treat waste, produce energy, or both.

Summary of Amended Bill:

A generator operating at an electric generating project with an installed generator capacity of at least 750 kilowatts but not exceeding 1,000 kilowatts, that began operating after 2008, and that is located on agricultural lands of long-term commercial significance pursuant to the Growth Management Act, is not bound by permit provisions related to the emissions limit for sulfur established by the DOE or a local air authority until December 31, 2018, if it is fueled by biogas that:

- is produced by an anaerobic digester that qualifies for a solid waste permitting exemption; and
- contains less than 0.1 percent sulfur by volume after a startup period not exceeding 180 days.

A generator that meets these requirements may not be located in a federally designated nonattainment or maintenance area.

Upon request, the DOE or a local air authority must provide technical assistance to a generator meeting the above requirements in reducing its emissions.

The DOE is required to submit a report to the Legislature by December 31, 2012, containing information regarding the degree to which current state air quality regulations consider different feed sources for anaerobic digesters, and strategies to address the different feed sources used in anaerobic digesters.

Amended Bill Compared to Second Substitute Bill:

The amended bill strikes all of the provisions in the second substitute bill.

The amended bill exempts generators operating at an electric generating project that meet certain conditions from the permit provisions related to the emissions limit for sulfur established by the DOE or a local air authority until December 31, 2018.

The amended bill specifies that upon request, the DOE or a local air authority must provide technical assistance to a generator meeting the requirements in the bill in reducing its emissions.

The amended bill requires the DOE to submit a report to the Legislature by December 1, 2012, containing information related to feed sources for anaerobic digesters.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2012.

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

Staff Summary of Public Testimony:

(In support) This is an issue about whether you want clean air or clean water. There are not many dairy farms left in Washington, but anaerobic digesters are a wonderful tool to deal with animal waste. Animal waste used to run straight into the rivers, and this bill would help maintain clean water by allowing the use of all anaerobic digesters. This bill has been around for a while; the proponents have tried to work with the DOE, and we continue to try to find a solution to deal with these digesters. These digesters not only efficiently deal with waste, but

produce energy as well that is more aesthetically pleasing than wind turbines – they present a win-win situation.

This bill represents a lot of work and effort. It would set the federal standard as the standard that should be followed for regulation of anaerobic digesters, which is a clear standard.

DeRuyter and Sons Dairy (Dairy) is the largest digester in the state and creates enough electricity for 600-800 homes. The Dairy is also creating a fertilizer that will use the rest of its byproduct. The Dairy has reduced waste and hence odors on its farm by the use of its digester. Currently, the Dairy has to get a permit from the local clean air authority, and is concerned that no credit is received for collecting the methane from the farm for use in the digester. The owner predicts he will have to shut down the digester at the end of the year due to the price of electricity. The permitting process has been doable so far, and the Dairy is complying with the permit requirements, but the methane is also being destroyed in the process and the owner believes some credit is deserved for doing so.

These digesters benefit water quality, as well as air quality. Currently, digesters do not receive credits for what is coming off of the farms; wastes are being broken down and fed into a generator. All of the digesters have permits and meet the federal emission standards. If digesters are exempt from the state permit, it will not change their current practices. It would damage the generators to increase sulfur emissions, so it is not in the owners' best interest to do so. If the current state regulations increased, the digesters would be out of compliance and would be forced to go out of business. Qualco Energy currently spends about \$20,000 per year on air quality testing, which is a lot for a small generator.

This bill was discussed last year, and the issue remains the same. Over the past year, the DOE has talked with industry and local air agencies and no solution has been reached for digesters. The DOE's new General Order basically re-packages existing regulations, and does not really help digesters – it only applies to new facilities, so only one digester currently in development would be eligible to use this streamlined permitting process. Dairy farms with digesters are looking for solutions to help existing digesters. Every year, digesters conduct air tests that are required under the federal Environmental Protection Agency (EPA) requirements, and these would still be required under the bill. Digesters would also remain under the EPA small source requirements. The bill has improved from last year in that it adds the requirement that digesters in a nonattainment area would not qualify for the state exemption. The owners of digesters in this state are asking the Legislature to recognize the benefits from digesters to agriculture and other sectors.

(With concerns) The DOE supports the expanded use of digestion technology, but has overarching, substantive concerns with this bill related to compliance with federal law. This bill would violate federal law in two ways: first, it would authorize levels of air pollution at the property boundary not authorized under federal law, and second, under the State Implementation Plan, new sources must use best available control technology. Under the DOE's analysis, these digesters could violate both of these federal standards. The DOE could exempt digesters from state permits, but this would not remove or affect the federal standards. Also, exempting digesters from state permits would put the digester industry at great legal and economic risk, since they would no longer have a state or federal permit. Permits are valuable in that they provide a shield from potential federal intervention under

the federal Clean Air Act. Some existing digesters would qualify under the new General Order, rather than remaining under their current permit. The applicant cost for the two new digesters being developed is about \$6,000, while under the General Order it would be around \$1,000. The DOE is concerned about setting public policy in this bill that would create a conflict with federal law and that would ultimately hurt this promising industry.

(Opposed) None.

Persons Testifying: (In support) Senator Haugen, prime sponsor; Jay Gordon, Washington State Dairy Federation; Dan DeRuyter, Global Dairy Research; Daryl Williams, Tullalip Indian Tribe; and Kevin Maas, Farm Power Northwest.

(With concerns) Stu Clark, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass as amended by Committee on General Government Appropriations & Oversight and without amendment by Committee on Environment. Signed by 13 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Moscoso, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong, Blake, Fitzgibbon, Ladenburg, Pedersen, Van De Wege and Wilcox.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On Environment:

The striking amendment adds a null and void clause if specific funding is not provided by June 30, 2012.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2012.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The Washington Dairy Federation own six digesters. The bill applies to two of these digesters, which are located in Skagit and Whatcom counties. It has been a struggle to meet state requirements over the years. Farmers and the Department of Ecology (DOE) have wrestled with the uncertainty of state requirements. Most farms are trying to figure out how

to make the new technology work. The basis of the bill is to allow the owners of digesters to follow the federal standard. The federal standard is fairly clear.

(Opposed) The DOE is opposed to the bill on policy grounds. There are potential costs for the DOE and for local agencies. These are substantive costs that were not in the Governor's budget. The DOE may need to test gases at the facilities to see if they are in compliance with the thresholds in the bill, investigate whether rules need to be changed, modify the State Implementation Plan, and provide technical assistance through 2018. The DOE would need to examine the suite of feed stocks, which have different qualities and different emissions characteristics. The bill would require the DOE to undertake a fairly large research project. The bill is estimated to cost \$50-\$100,000 for the DOE, with additional costs for local agencies.

Persons Testifying: (In support) Jay Gordon, Washington State Dairy Federation.

(Opposed) Marshall Taylor, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.