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HOUSE BILL 1070

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Bailey, Blake, Smith, Chandler, Hope, and Morris

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1            AN ACT Relating to the permitting of anaerobic digestion under the  
2 clean air act; amending RCW 70.94.161; adding a new section to chapter  
3 70.94 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that it is in the  
6 public interest to encourage and foster the development of clean,  
7 renewable energy technology and intends to create a limited permitting  
8 exemption under chapter 70.94 RCW for anaerobic digestion in order to  
9 minimize any regulatory burdens inhibiting the furtherance of the  
10 stated public interest.

11            **Sec. 2.** RCW 70.94.161 and 2008 c 14 s 6 are each amended to read  
12 as follows:

13            Except as otherwise provided in this section, the department of  
14 ecology, or board of an authority, shall require renewable permits for  
15 the operation of air contaminant sources subject to the following  
16 conditions and limitations:

17            (1) Permits shall be issued for a term of five years. A permit may  
18 be modified or amended during its term at the request of the permittee,

1 or for any reason allowed by the federal clean air act. The rules  
2 adopted pursuant to subsection (2) of this section shall include rules  
3 for permit amendments and modifications. The terms and conditions of  
4 a permit shall remain in effect after the permit itself expires if the  
5 permittee submits a timely and complete application for permit renewal.

6 (2)(a) Rules establishing the elements for a statewide operating  
7 permit program and the process for permit application and renewal  
8 consistent with federal requirements shall be established by the  
9 department by January 1, 1993. The rules shall provide that every  
10 proposed permit must be reviewed prior to issuance by a professional  
11 engineer or staff under the direct supervision of a professional  
12 engineer in the employ of the permitting authority. The permit program  
13 established by these rules shall be administered by the department and  
14 delegated local air authorities. Rules developed under this subsection  
15 shall not preclude a delegated local air authority from including in a  
16 permit its own more stringent emission standards and operating  
17 restrictions.

18 (b) The board of any local air pollution control authority may  
19 apply to the department of ecology for a delegation order authorizing  
20 the local authority to administer the operating permit program for  
21 sources under that authority's jurisdiction. The department shall, by  
22 order, approve such delegation, if the department finds that the local  
23 authority has the technical and financial resources, to discharge the  
24 responsibilities of a permitting authority under the federal clean air  
25 act. A delegation request shall include adequate information about the  
26 local authority's resources to enable the department to make the  
27 findings required by this subsection. However, any delegation order  
28 issued under this subsection shall take effect ninety days after the  
29 environmental protection agency authorizes the local authority to issue  
30 operating permits under the federal clean air act.

31 (c) Except for the authority granted the energy facility site  
32 evaluation council to issue permits for the new construction,  
33 reconstruction, or enlargement or operation of new energy facilities  
34 under chapter 80.50 RCW, the department may exercise the authority, as  
35 delegated by the environmental protection agency, to administer Title  
36 IV of the federal clean air act as amended and to delegate such  
37 administration to local authorities as applicable pursuant to (b) of  
38 this subsection.

1 (3) In establishing technical standards, defined in RCW 70.94.030,  
2 the permitting authority shall consider and, if found to be  
3 appropriate, give credit for waste reduction within the process.

4 (4)(a) Operating permits shall apply to all sources ~~((+a))~~;

5 (i) Where required by the federal clean air act ~~((+r))~~; and ~~((+b))~~

6 (ii) For any source that may cause or contribute to air pollution  
7 in such quantity as to create a threat to the public health or welfare.

8 ~~((Subsection))~~

9 (b) (a) of this subsection ~~((is))~~ does not ~~((intended to))~~ apply  
10 to:

11 (i) The operation of an anaerobic digester consistent with section  
12 3 of this act for the production of renewable energy; or

13 (ii) Small businesses, except when both of the following  
14 limitations are satisfied: ~~((+i))~~ (A) The source is in an area  
15 exceeding or threatening to exceed federal or state air quality  
16 standards; and ~~((+ii))~~ (B) the department provides a reasonable  
17 justification that requiring a source to have a permit is necessary to  
18 meet a federal or state air quality standard, or to prevent exceeding  
19 a standard in an area threatening to exceed the standard. For purposes  
20 of this subsection "areas threatening to exceed air quality standards"  
21 shall mean areas projected by the department to exceed such standards  
22 within five years. Prior to identifying threatened areas the  
23 department shall hold a public hearing or hearings within the proposed  
24 areas.

25 (5) Sources operated by government agencies are not exempt under  
26 this section.

27 (6) Within one hundred eighty days after the United States  
28 environmental protection agency approves the state operating permit  
29 program, a person required to have a permit shall submit to the  
30 permitting authority a compliance plan and permit application, signed  
31 by a responsible official, certifying the accuracy of the information  
32 submitted. Until permits are issued, existing sources shall be allowed  
33 to operate under presently applicable standards and conditions provided  
34 that such sources submit complete and timely permit applications.

35 (7) All draft permits shall be subject to public notice and  
36 comment. The rules adopted pursuant to subsection (2) of this section  
37 shall specify procedures for public notice and comment. Such  
38 procedures shall provide the permitting agency with an opportunity to

1 respond to comments received from interested parties prior to the time  
2 that the proposed permit is submitted to the environmental protection  
3 agency for review pursuant to section 505(a) of the federal clean air  
4 act. In the event that the environmental protection agency objects to  
5 a proposed permit pursuant to section 505(b) of the federal clean air  
6 act, the permitting authority shall not issue the permit, unless the  
7 permittee consents to the changes required by the environmental  
8 protection agency.

9 (8) The procedures contained in chapter 43.21B RCW shall apply to  
10 permit appeals. The pollution control hearings board may stay the  
11 effectiveness of any permit issued under this section during the  
12 pendency of an appeal filed by the permittee, if the permittee  
13 demonstrates that compliance with the permit during the pendency of the  
14 appeal would require significant expenditures that would not be  
15 necessary in the event that the permittee prevailed on the merits of  
16 the appeal.

17 (9) After the effective date of any permit program promulgated  
18 under this section, it shall be unlawful for any person to: (a)  
19 Operate a permitted source in violation of any requirement of a permit  
20 issued under this section; or (b) fail to submit a permit application  
21 at the time required by rules adopted under subsection (2) of this  
22 section.

23 (10) Each air operating permit shall state the origin of and  
24 specific legal authority for each requirement included therein. Every  
25 requirement in an operating permit shall be based upon the most  
26 stringent of the following requirements:

27 (a) The federal clean air act and rules implementing that act,  
28 including provision of the approved state implementation plan;

29 (b) This chapter and rules adopted thereunder;

30 (c) In permits issued by a local air pollution control authority,  
31 the requirements of any order or regulation adopted by that authority;

32 (d) Chapter 70.98 RCW and rules adopted thereunder; and

33 (e) Chapter 80.50 RCW and rules adopted thereunder.

34 (11) Consistent with the provisions of the federal clean air act,  
35 the permitting authority may issue general permits covering categories  
36 of permitted sources, and temporary permits authorizing emissions from  
37 similar operations at multiple temporary locations.

1 (12) Permit program sources within the territorial jurisdiction of  
2 an authority delegated the operating permit program shall file their  
3 permit applications with that authority, except that permit  
4 applications for sources regulated on a statewide basis pursuant to RCW  
5 70.94.395 shall be filed with the department. Permit program sources  
6 outside the territorial jurisdiction of a delegated authority shall  
7 file their applications with the department. Permit program sources  
8 subject to chapter 80.50 RCW shall, irrespective of their location,  
9 file their applications with the energy facility site evaluation  
10 council.

11 (13) When issuing operating permits to coal fired electric  
12 generating plants, the permitting authority shall establish  
13 requirements consistent with Title IV of the federal clean air act.

14 (14)(a) The department and the local air authorities are authorized  
15 to assess and to collect, and each source emitting one hundred tons or  
16 more per year of a regulated pollutant shall pay an interim assessment  
17 to fund the development of the operating permit program during fiscal  
18 year 1994.

19 (b) The department shall conduct a workload analysis and prepare an  
20 operating permit program development budget for fiscal year 1994. The  
21 department shall allocate among all sources emitting one hundred tons  
22 or more per year of a regulated pollutant during calendar year 1992 the  
23 costs identified in its program development budget according to a  
24 three-tiered model, with each of the three tiers being equally  
25 weighted, based upon:

26 (i) The number of sources;

27 (ii) The complexity of sources; and

28 (iii) The size of sources, as measured by the quantity of each  
29 regulated pollutant emitted by the source.

30 (c) Each local authority and the department shall collect from  
31 sources under their respective jurisdictions the interim fee determined  
32 by the department and shall remit the fee to the department.

33 (d) Each local authority may, in addition, allocate its fiscal year  
34 1994 operating permit program development costs among the sources under  
35 its jurisdiction emitting one hundred tons or more per year of a  
36 regulated pollutant during calendar year 1992 and may collect an  
37 interim fee from these sources. A fee assessed pursuant to this

1 subsection (14)(d) shall be collected at the same time as the fee  
2 assessed pursuant to (c) of this subsection.

3 (e) The fees assessed to a source under this subsection shall be  
4 limited to the first seven thousand five hundred tons for each  
5 regulated pollutant per year.

6 (15)(a) The department shall determine the persons liable for the  
7 fee imposed by subsection (14) of this section, compute the fee, and  
8 provide by November 1, 1993, the identity of the fee payer with the  
9 computation of the fee to each local authority and to the department of  
10 revenue for collection. The department of revenue shall collect the  
11 fee computed by the department from the fee payers under the  
12 jurisdiction of the department. The administrative, collection, and  
13 penalty provisions of chapter 82.32 RCW shall apply to the collection  
14 of the fee by the department of revenue. The department shall provide  
15 technical assistance to the department of revenue for decisions made by  
16 the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All  
17 interim fees collected by the department of revenue on behalf of the  
18 department and all interim fees collected by local authorities on  
19 behalf of the department shall be deposited in the air operating permit  
20 account. The interim fees collected by the local air authorities to  
21 cover their permit program development costs under subsection (14)(d)  
22 of this section shall be deposited in the dedicated accounts of their  
23 respective treasuries.

24 (b) All fees identified in this section shall be due and payable on  
25 March 1, 1994, except that the local air pollution control authorities  
26 may adopt by rule an earlier date on which fees are to be due and  
27 payable. The section 5, chapter 252, Laws of 1993 amendments to RCW  
28 70.94.161 do not have the effect of terminating, or in any way  
29 modifying, any liability, civil or criminal, incurred pursuant to the  
30 provisions of RCW 70.94.161 (15) and (17) as they existed prior to July  
31 25, 1993.

32 (16) For sources or source categories not required to obtain  
33 permits under subsection (4) of this section, the department or local  
34 authority may establish by rule control technology requirements. If  
35 control technology rule revisions are made by the department or local  
36 authority under this subsection, the department or local authority  
37 shall consider the remaining useful life of control equipment  
38 previously installed on existing sources before requiring technology

1 changes. The department or any local air authority may issue a general  
2 permit, as authorized under the federal clean air act, for such  
3 sources.

4 (17) Emissions of greenhouse gases as defined in RCW 70.235.010  
5 must be reported as required by RCW 70.94.151. The reporting  
6 provisions of RCW 70.94.151 shall not apply to any other emissions from  
7 any permit program source after the effective date of United States  
8 environmental protection agency approval of the state operating permit  
9 program.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.94 RCW  
11 to read as follows:

12 (1) An anaerobic digester, as that term is defined in RCW  
13 70.95.330, that processes at least fifty percent livestock manure by  
14 volume or an engine or flare powered by fuel from an anaerobic digester  
15 that processes at least fifty percent livestock manure by volume,  
16 qualifies for an exemption from the permitting requirements of RCW  
17 70.94.161 only if:

18 (a) The facility has a combined aggregate heat input of less than  
19 ten million British thermal units of energy per hour; and

20 (b) The facility's sulfur emissions is 0.1 percent or less of its  
21 total emissions.

22 (2) Nothing in this section prohibits the department from making  
23 facility recommendations under RCW 70.94.163 or from establishing a  
24 monitoring program to ensure that an anaerobic digester is being  
25 operated consistent with the stated intent of this section.

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