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SECOND SUBSTITUTE SENATE BILL 5343

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State of Washington

62nd Legislature

2012 Regular Session

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Delvin, Hatfield, Honeyford, Becker, Shin, and Schoesler)

READ FIRST TIME 01/23/12.

1 AN ACT Relating to air emissions from anaerobic digesters;  
2 reenacting and amending RCW 70.94.152; and adding a new section to  
3 chapter 70.94 RCW.

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

5 **Sec. 1.** RCW 70.94.152 and 1996 c 67 s 1 and 1996 c 29 s 1 are each  
6 reenacted and amended to read as follows:

7 (1)(a) The department of ecology or board of any authority may  
8 require notice of the establishment of any proposed new sources,  
9 except:

10 (i) Single-family and duplex dwellings or de minimis new sources as  
11 defined in rules adopted under subsection (11) of this section; and

12 (ii) New sources that are exempted in this chapter.

13 (b) The department (~~of ecology~~) or board may require such notice  
14 to be accompanied by a fee, and determine the amount of (~~such~~) the  
15 fee(~~(:— PROVIDED, That the amount of)~~). The fee may not exceed the  
16 cost of reviewing the plans, specifications, and other information and  
17 administering (~~such~~) the notice(~~(:— PROVIDED FURTHER, That)~~). Any  
18 such notice given or notice of construction application submitted to

1 either the board or to the department (~~(of ecology)~~) shall preclude  
2 ((a)) further submittal of a duplicate application to any board or to  
3 the department (~~(of ecology)~~).

4 (2) The department shall, after opportunity for public review and  
5 comment, adopt rules that establish a workload-driven process for  
6 determination and review of the fee covering the direct and indirect  
7 costs of processing a notice of construction application and a  
8 methodology for tracking revenues and expenditures. All new source  
9 fees collected by (~~the delegated local air~~) authorities from sources  
10 shall be deposited in the dedicated accounts of their respective  
11 treasuries. All new source fees collected by the department from  
12 sources shall be deposited in the air pollution control account.

13 (3) Within thirty days of receipt of a notice of construction  
14 application, the department (~~(of ecology)~~) or board may require, as a  
15 condition precedent to the establishment of the new source or sources  
16 covered thereby, the submission of plans, specifications, and such  
17 other information as it deems necessary to determine whether the  
18 proposed new source will be in accord with applicable rules and  
19 regulations in force under this chapter. If, on the basis of plans,  
20 specifications, or other information required under this section, the  
21 department (~~(of ecology)~~) or board determines that the proposed new  
22 source will not be in accord with this chapter or the applicable  
23 ordinances, resolutions, rules, and regulations adopted under this  
24 chapter, it shall issue an order denying permission to establish the  
25 new source. If, on the basis of plans, specifications, or other  
26 information required under this section, the department (~~(of ecology)~~)  
27 or board determines that the proposed new source will be in accord with  
28 this chapter, and the applicable rules and regulations adopted under  
29 this chapter, it shall issue an order of approval for the establishment  
30 of the new source or sources, which order may provide such conditions  
31 as are reasonably necessary to assure the maintenance of compliance  
32 with this chapter and the applicable rules and regulations adopted  
33 under this chapter. Every order of approval under this chapter must be  
34 reviewed prior to issuance by a professional engineer or staff under  
35 the supervision of a professional engineer in the employ of the  
36 department (~~(of ecology)~~) or board.

37 (4) The determination required under subsection (3) of this section

1 shall include a determination of whether the operation of the new air  
2 contaminant source at the location proposed will cause any ambient air  
3 quality standard to be exceeded.

4 (5) New source review of a modification shall be limited to the  
5 emission unit or units proposed to be modified and the air contaminants  
6 whose emissions would increase as a result of the modification.

7 (6) Nothing in this section shall be construed to authorize the  
8 department (~~(of ecology)~~) or board to require the use of emission  
9 control equipment or other equipment, machinery, or devices of any  
10 particular type, from any particular supplier, or produced by any  
11 particular manufacturer.

12 (7) Any features, machines, and devices constituting parts of or  
13 called for by plans, specifications, or other information submitted  
14 pursuant to subsection (1) or (3) of this section shall be maintained  
15 and operate in good working order.

16 (8) The absence of an ordinance, resolution, rule, or regulation,  
17 or the failure to issue an order pursuant to this section shall not  
18 relieve any person from his or her obligation to comply with applicable  
19 emission control requirements or with any other provision of law.

20 (9) Within thirty days of receipt of a notice of construction  
21 application the department (~~(of ecology)~~) or board shall either notify  
22 the applicant in writing that the application is complete or notify the  
23 applicant in writing of all additional information necessary to  
24 complete the application. Within sixty days of receipt of a complete  
25 application the department or board shall either (a) issue a final  
26 decision on the application, or (b) for those projects subject to  
27 public notice, initiate notice and comment on a proposed decision,  
28 followed as promptly as possible by a final decision. A person seeking  
29 approval to construct or modify a source that requires an operating  
30 permit may elect to integrate review of the operating permit  
31 application or amendment required by RCW 70.94.161 and the notice of  
32 construction application required by this section. A notice of  
33 construction application designated for integrated review shall be  
34 processed in accordance with operating permit program procedures and  
35 deadlines.

36 (10) A notice of construction approval required under subsection  
37 (3) of this section shall include a determination that the new source  
38 will achieve best available control technology. If more stringent

1 controls are required under federal law, the notice of construction  
2 shall include a determination that the new source will achieve the more  
3 stringent federal requirements. Nothing in this subsection is intended  
4 to diminish other state authorities under this chapter.

5 (11) No person is required to submit a notice of construction or  
6 receive approval for a new source that is deemed by the department (~~of~~  
7 ~~ecology~~) or board to have de minimis impact on air quality. The  
8 department (~~of~~~~ecology~~) shall adopt and periodically update rules  
9 identifying categories of de minimis new sources. The department (~~of~~  
10 ~~ecology~~) may identify de minimis new sources by category, size, or  
11 emission thresholds.

12 (12) For purposes of this section, "de minimis new sources" means  
13 new sources with trivial levels of emissions that do not pose a threat  
14 to human health or the environment.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94 RCW  
16 to read as follows:

17 (1) One or more generators operating at an electric generating  
18 project are exempt from the requirements of this chapter if:

19 (a) The generators are fueled solely by biogas that:

20 (i) Is produced by an anaerobic digester that qualifies for the  
21 solid waste permitting exemption specified in RCW 70.95.330; and

22 (ii) Contains less than 0.1 percent sulfur, after a startup period  
23 not exceeding one hundred eighty days;

24 (b) The aggregate heat input to any one generator does not exceed  
25 ten million British thermal units per hour;

26 (c) The exemption is permissible under federal law; and

27 (d) The generator is not located in a federally designated  
28 nonattainment area for hazardous air pollutants under the federal clean  
29 air act and amendments of 1990.

30 (2) Modified generators may retain the exemption, provided that  
31 they continue to meet the requirements specified in subsection (1) of  
32 this section.

33 (3) The definitions in this subsection apply throughout this  
34 section unless the context clearly requires otherwise.

35 (a) "Anaerobic digester" means a vessel that processes organic  
36 material into biogas and digestate using microorganisms in a  
37 decomposition process within a closed, oxygen-free container.

1 (b) "Generator" means an internal combustion engine that converts  
2 biogas into electricity, and includes any backup combustion device to  
3 burn biogas when an engine is idled for maintenance.

4 (4) This section applies retroactively to January 1, 2004, with  
5 respect to generators that were subject to requirements imposed  
6 pursuant to this chapter prior to the effective date of this section.

7 NEW SECTION. **Sec. 3.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

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