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## Environment Committee

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### HB 1434

**Brief Description:** Regarding the inclusion of community involvement in environmental decision making.

**Sponsors:** Representatives Pollet, Upthegrove, McCoy, Fitzgibbon, Ryu, Moscoso, Reykdal, Orwall, Fey, Hudgins, Lias and Kagi.

#### Brief Summary of Bill

- Grants the Department of Ecology (DOE) authority to require environmental permit applicants and potentially liable parties in highly impacted communities to participate in a mediated community dialogue process prior to the issuance of final permits or the establishment of final cleanup plans
- Gives the DOE authority to require parties to complete supplemental environmental projects in conjunction with the settlement of violations of environmental permits.
- Directs certain state agencies to incorporate environmental justice into their agency missions.

**Hearing Date:** 2/14/13

**Staff:** Jacob Lipson (786-7196).

#### **Background:**

##### Environmental Justice.

The U.S. Environmental Protection Agency (EPA) defines environmental justice as the fair treatment and equal opportunity for all people under environmental laws, regulations, and policies, regardless of race, income, color, or national origin. Federal activity around environmental justice derives from at least two primary authorities:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination in all federally-assisted programs, on the grounds of race, color, or national origin.
- In 1994, President Clinton signed Executive Order 12898, which directed federal agencies to make achieving environmental justice part of their agency missions by

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identifying and addressing disproportionately high or adverse environmental or human health effects of agency programs, policies, and activities on minority and low-income populations.

At the state level, the Department of Ecology (DOE) has developed a checklist for internal use to facilitate the incorporation of environmental justice considerations into agency decisions.

#### Clean Air Act.

There are several types of air emission permits issued in Washington. The federal Clean Air Act requires all states to have statewide operating permit programs for businesses and industries that are the largest sources of air pollution.

- The DOE, the Energy Facility Site Evaluation Council, and any of seven local air quality authorities in Washington have received the EPA's approval to administer Washington's air operating permit program. Air operating permits are required for the ongoing operation of major source facilities that emit more than 100 tons per year of certain pollutants, 10 tons per year of a single hazardous air pollutant, or 25 tons per year of a combination of hazardous air pollutants. Certain other minor synthetic sources of emissions below the major source threshold for air operating permits may be covered by voluntary emission restrictions.
- 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) permit application must be filed with the applicable agency and must be approved following a New Source Review.
- The DOE is also delegated the authority to issue federal Prevention of Significant Deterioration (PSD) permits for major sources of industrial air emissions.

#### Clean Water Act.

The federal Clean Water Act sets effluent-based limitations on pollutant discharges into navigable waters. The EPA has delegated federal Clean Water Act authority to the DOE, which issues a variety of permits under state and federal laws that stipulate conditions for discharges into state waters. Water discharge permits can either be an individual permit issued to a single regulated facility, or a general permit for a group of similar dischargers at diverse locations. The DOE issues general permits for categories of dischargers like industrial and municipal stormwater dischargers, sand and gravel operations, water treatment plants, and Concentrated Animal Feeding Operations.

#### Hazardous Waste Management.

In implementing the state Hazardous Waste Management law and the federal Resource Conservation and Recovery Act, the DOE requires dangerous waste generators to properly dispose of waste at approved dangerous waste management sites and facilities. Facilities that treat, store, dispose, transfer, or recycle dangerous wastes must apply for a dangerous waste permit. Currently, there are fewer than 30 active permits held by facilities which treat, store or dispose of dangerous waste in Washington. Dangerous waste generators must follow certain rules related to their use and temporary storage of wastes, but need not hold a permit unless they store dangerous wastes for longer than 90 days.

### Permitting Timelines and Public Involvement.

The various air, water, and hazardous waste permits each follow individualized permitting processes and timelines. However, most environmental permits include stages in which:

- the DOE reviews an application for completeness;
- the DOE determines a permit application is complete;
- the DOE issues a draft permit;
- the public comments on draft DOE permits in writing or at a public hearing, or both; and
- the DOE takes a final action to approve or deny a permit application.

The stages of the permitting process do not necessarily take place in the above-listed sequential order, and certain permit applications may be opened to multiple public comment periods.

### The Model Toxics Control Act.

The state Model Toxics Control Act (MTCA) establishes procedures for requiring potentially liable persons to clean up hazardous waste sites. If a potentially liable person associated with a site is identified, the DOE oversees, rather than directly conducts, the site's cleanup activity.

The DOE maintains a list of sites where a hazardous substance has been released and may threaten human health or the environment, and tracks the progress of site cleanups. The cleanup of a hazardous waste site is a multi-stage process:

- After a potential contaminated site is discovered and reported to the DOE, the site receives an initial investigation, and is assessed and ranked based on the hazardousness of substances and the relative risk it poses to human health and the environment.
- After being ranked, a remedial investigation and feasibility study (RI/FS) is conducted to determine the extent and magnitude of the site's contamination; a public comment period precedes the issuance of a report based on the RI/FS for certain sites.
- After the RI/FS report is issued, a draft cleanup plan is subject to public review and comment.
- After the finalization of a cleanup plan, the site cleanup begins, and, once cleanup standards related to the presence of hazardous materials are achieved, the site may be de-listed.

The timelines associated with the progression through the procedural stages of cleanup vary depending on site conditions, the investigatory and cleanup activities of potentially liable persons, and other logistical factors.

### State and Local Toxics Control Accounts.

The state MTCA authorizes a hazardous substance tax of 0.7 percent on petroleum and other hazardous substances, the receipts of which are split between an account for state MTCA operations (the State Toxics Control Account) and to provide grants to local governments for MTCA-related projects (the Local Government Toxics Control Account). One percent of the funds deposited into both the state and local accounts are allocated for public participation grants to non-profit public interest and citizen groups to involve the public in the cleanup of contamination and the prevention of pollution.

### Supplemental Environmental Projects.

The DOE recovers monetary penalties for violations of air, water, and hazardous waste management permits. The amount of the penalties violators are liable for differs by permit type. Penalty amounts are appealable to the Pollution Control Hearings Board and in state court. In

cases referred to it for enforcement actions, the Office of the Attorney General may act on behalf of the DOE to recover monetary penalties. In conjunction with the settlement of these enforcement actions, the DOE sometimes enters into settlements which, in addition to or instead of recovering penalties, direct the violator to perform a supplemental environmental project.

#### Translation and Interpretation Services in State Operations.

State agencies are not, as a general matter, required to translate their documents into other languages, or to provide interpreters to the public. However, there are certain situations, such as during court proceedings, where a state agency must make available translation or interpretation services for a member of the public. In other situations, the Legislature has encouraged, but not mandated, state agencies to provide assistance and make referrals on translation and interpretation services. In general, state agency contracting for interpreter services is provided through the Department of Enterprise Services.

#### **Summary of Bill:**

##### Identification of Highly Impacted Communities.

The Department of Ecology (DOE) is directed to identify and maintain a list of highly impacted communities which must include, at a minimum, census tracts with unemployment rates 20 percent above the state average, or census tracts that have a median household income of less than 75 percent of the state median household income.

The DOE is also authorized to develop additional processes for identifying highly impacted communities. These additional processes for identifying highly impacted communities may take into account the community's public health impacts and cultural practices, and the race, language, and national origin of community residents.

##### Community Dialogue Process.

In a highly impacted community, operators of facilities applying for air, water, or hazardous waste management permits may be required by DOE to enter into a community dialogue process. The air, water, and hazardous waste permits triggering community notification and the community dialogue process are defined to include minor synthetic and major air sources under the Clean Air Act, and individual industrial stormwater, sand and gravel, and Concentrated Animal Feeding Operation permits. Individual permits under other Clean Water Act general permits are not included.

In addition to environmental permit applicants, the DOE may also require potentially liable persons associated with contaminated sites managed under the Model Toxics Control Act (MTCA) to enter into a community dialogue process.

In deciding whether to require a community dialogue process, the DOE must consider:

- whether the concerns of the highly impacted community will be addressed by the normal public comment process;
- the likelihood of a productive dialogue resulting from the community dialogue process;
- and
- the likelihood that the community dialogue process will reduce conflict among the parties.

A community dialogue process must include at least one community meeting facilitated by a neutral professional mediator who is chosen by the mutual consent of the involved parties. At the conclusion of the community dialogue process, the mediator must prepare a report identifying areas of agreement and unresolved issues. The entities involved in the community dialogue process are also authorized to enter into a contractual good neighbor agreement to which the government is not a party.

The DOE and local air authorities may consider the mediator's report and any good neighbor agreements in deciding whether to approve a permit application or in selecting a final cleanup plan.

The DOE may not require a facility with multiple permits to participate in more than one community dialogue process every five years. The DOE may authorize a facility to enter into a single consolidated community dialogue process with multiple community organizations.

#### Notification Timelines.

Community organizations in highly impacted communities may request to receive notification from the DOE or a local clean air authority no later than 15 days after the DOE initiates review on a new or renewed air, water, or hazardous waste management permit application, or no later than 15 days prior to the anticipated completion of a remedial investigation and feasibility study of a contaminated site under MTCA cleanup procedures.

No later than 30 days after the DOE reviews an air, water, or hazardous waste management permit for completeness, or 90 days prior to the anticipated issuance of a draft MTCA cleanup plan, the DOE must determine if the permit applies to a facility in a highly-impacted community.

After determining that a facility in a highly impacted community has submitted a complete permit application, the DOE must provide a notification to community organizations which includes an explanation of the community dialogue process and the process by which the DOE will decide whether to require a community dialogue process.

The community dialogue process is not allowed to delay or extend the DOE's issuance of permits or adoption of cleanup plans.

#### Funding.

Community dialogue processes in highly impacted communities are funded using an allocation of 0.5 percent of the deposits into both the State Toxics Control Account and the Local Toxics Control Account. This allocation is separate from the 1 percent allocation to public participation grants from the state and local accounts.

#### Supplemental Environmental Projects.

The DOE is authorized to require a person in violation of an environmental permit or cleanup order in a highly impacted community to conduct a supplemental environmental project in conjunction with the settlement of any enforcement actions stemming from the violation. Supplemental environmental projects must take place within or primarily benefit the highly impacted community, and meet additional specifications related to the scope, timeline, and purpose of the project. The DOE must consider the cost and benefits of the supplemental project in determining the amount of penalties recovered in the settlement of enforcement actions related

to an environmental permit violation. The DOE must also seek to involve the highly impacted community in developing the supplemental environmental project.

Environmental Justice in Agency Missions.

The departments of Ecology, Natural Resources, Fish and Wildlife, Transportation, Commerce, and Agriculture are, to the extent practical, directed to make achieving environmental justice part of their agency missions.

Other Provisions.

Washington residents are declared to have a right to participate meaningfully and receive fair treatment during the implementation and enforcement of environmental rules, laws, and policies, regardless of their race, color, culture, national origin, or income level. Individuals are also declared to have a right to breathe, eat, drink, work, and recreate without risking their health due to environmental degradation.

The DOE is directed to provide interpreters for hearings or meetings, and translate or interpret public documents where practicable and appropriate.

The DOE is given rulemaking authority.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect on January 1, 2014.