

# HOUSE BILL REPORT

## HB 1584

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**As Reported by House Committee On:**  
Ecology & Parks

**Title:** An act relating to limiting the scope of the state environmental policy act exemption to air operating permits so that steps leading up to the issuance of an air operating permit are not exempt.

**Brief Description:** Regarding state environmental policy act exemptions for air operating permits.

**Sponsors:** Representative Upthegrove.

**Brief History:**

**Committee Activity:**

Ecology & Parks: 2/10/09 [DP].

**Brief Summary of Bill**

- Clarifies that the current exemption for air operating permits from the State Environmental Policy Act only applies to decisions to issue, renew, reopen, or revise an air operating permit and not to other regulatory processes that air contaminant sources must complete under state law.

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### HOUSE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** Do pass. Signed by 11 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins, Kristiansen and Morris.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Newhouse, Assistant Ranking Minority Member; Kretz, Orcutt and Shea.

**Staff:** Anna Jackson (786-7190)

**Background:**

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*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.*

## The State Environmental Protection Act Requirement for an Environmental Impact Statement.

The State Environmental Protection Act (SEPA) requires all branches of government in the state, including state agencies, municipal and public corporations, and counties to include a detailed environmental impact statement (EIS) in every report or recommendation for major actions that significantly affect the quality of the environment.

The EIS must include: (1) the environmental impact of the proposed action; (2) any adverse environmental effects that cannot be avoided if the proposal is implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

## Air Operating Permits for Air Contaminant Sources.

The Department of Ecology (DOE) or a local air pollution control authority issues renewable permits for the operation of all air contaminant sources, subject to certain conditions. The permits, called air operating permits, are issued for a term of five years. Air operating permits are required for all sources of air contaminants covered under the federal Clean Air Act, as well as for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare.

Each air operating permit must state the origin of and specific legal authority for each requirement included. Every requirement in an air operating permit must be based upon the most stringent of the following requirements: (1) the federal Clean Air Act; (2) the Washington Clean Air Act; (3) the requirements of any order or regulation adopted by a local air pollution control authority for permits issued by that authority; (4) state nuclear radiation control statutes and regulations; and (5) state energy facility site evaluation council statutes and regulations.

The Washington Clean Air Act also requires all existing sources of air pollutants in the state to control their emissions by using "reasonably available control technology" (RACT), which is defined as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. The RACT requirements are determined on a case-by-case basis for each source and are only adopted after public notice and opportunity for comment.

Currently, any decisions "pertaining to" the issuance, renewal, or revision of an air operating permit are exempt from the EIS process. The rationale for this exemption is that the information required to be submitted for an EIS largely duplicates the information that must be submitted for the issuance of an air operating permit.

## *Bowers v. SWAPCA.*

A 1996 Pollution Control Hearings Board (Board) decision (*Bowers v. SWAPCA*, PCHB No. 95-106) found that the RACT requirements for a particular source "pertain to" the issuance,

renewal, reopening, or revision of an air operating permit because they eventually are folded into an air operating permit. Accordingly, the Board held that the defendant, a regional air pollution control authority, did not need to submit an EIS in connection with establishing the RACT requirements for the plant in question.

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**Summary of Bill:**

The language "decisions pertaining to" the issuance, renewal, reopening, or revision of an air operating permit is changed to "decisions to" issue, renew, reopen, or revise an air operating permit in order to clarify that the SEPA exemption for air operating permits only applies to decisions related to the permit itself and not to other processes that air contaminant sources must complete under state law.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 10, 2009.

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

**Staff Summary of Public Testimony:**

(In support - from testimony on HB 1253, identical except for the title) This bill closes a loophole in the current law that exists for the state's major sources of air pollution. The Board's interpretation of RCW 43.21C.0381 as exempting *all* regulatory processes leading up to the issuance of an air operating permit from the SEPA does not conform to the intent of SEPA, which is to protect the quality of the environment. This bill dictates that SEPA applies to major polluters, such as Boeing and gas refineries, for all decisions leading up to the issuance of an air operating permit but does *not* change current law in exempting decisions to issue, renew, reopen, or revise an air operating permit from SEPA.

(Opposed) None.

**Persons Testifying:** Representative Upthegrove, prime sponsor; and Bill Green.

**Persons Signed In To Testify But Not Testifying:** None.