
SENATE BILL 5182

State of Washington

61st Legislature

2009 Regular Session

By Senators Haugen and Sheldon

Read first time 01/15/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to requiring offset credits in air operating
2 permits for sawmills using forest waste products as feedstock in
3 cogeneration facilities; amending RCW 70.94.161; and adding a new
4 section to chapter 70.94 RCW.

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

6 **Sec. 1.** RCW 70.94.161 and 2008 c 14 s 6 are each amended to read
7 as follows:

8 The department of ecology, or board of an authority, shall require
9 renewable permits for the operation of air contaminant sources subject
10 to the following conditions and limitations:

11 (1) Permits shall be issued for a term of five years. A permit may
12 be modified or amended during its term at the request of the permittee,
13 or for any reason allowed by the federal clean air act. The rules
14 adopted pursuant to subsection (2) of this section shall include rules
15 for permit amendments and modifications. The terms and conditions of
16 a permit shall remain in effect after the permit itself expires if the
17 permittee submits a timely and complete application for permit renewal.

18 (2)(a) Rules establishing the elements for a statewide operating
19 permit program and the process for permit application and renewal

1 consistent with federal requirements shall be established by the
2 department by January 1, 1993. The rules shall provide that every
3 proposed permit must be reviewed prior to issuance by a professional
4 engineer or staff under the direct supervision of a professional
5 engineer in the employ of the permitting authority. The permit program
6 established by these rules shall be administered by the department and
7 delegated local air authorities. Rules developed under this subsection
8 shall not preclude a delegated local air authority from including in a
9 permit its own more stringent emission standards and operating
10 restrictions.

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

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

32 (3) In establishing technical standards, (~~defined in RCW~~
33 ~~70.94.030,~~) the permitting authority shall:

34 (a) Give credit for waste reduction in the instance specified in
35 section 2 of this act; and

36 (b) Consider and, if found to be appropriate, give credit for other
37 waste reduction within the process.

1 (4) Operating permits shall apply to all sources (a) where required
2 by the federal clean air act, and (b) for any source that may cause or
3 contribute to air pollution in such quantity as to create a threat to
4 the public health or welfare. Subsection (b) of this subsection is not
5 intended to apply to small businesses except when both of the following
6 limitations are satisfied: (i) The source is in an area exceeding or
7 threatening to exceed federal or state air quality standards; and (ii)
8 the department provides a reasonable justification that requiring a
9 source to have a permit is necessary to meet a federal or state air
10 quality standard, or to prevent exceeding a standard in an area
11 threatening to exceed the standard. For purposes of this subsection
12 "areas threatening to exceed air quality standards" shall mean areas
13 projected by the department to exceed such standards within five years.
14 Prior to identifying threatened areas the department shall hold a
15 public hearing or hearings within the proposed areas.

16 (5) Sources operated by government agencies are not exempt under
17 this section.

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

26 (7) All draft permits shall be subject to public notice and
27 comment. The rules adopted pursuant to subsection (2) of this section
28 shall specify procedures for public notice and comment. Such
29 procedures shall provide the permitting agency with an opportunity to
30 respond to comments received from interested parties prior to the time
31 that the proposed permit is submitted to the environmental protection
32 agency for review pursuant to section 505(a) of the federal clean air
33 act. In the event that the environmental protection agency objects to
34 a proposed permit pursuant to section 505(b) of the federal clean air
35 act, the permitting authority shall not issue the permit, unless the
36 permittee consents to the changes required by the environmental
37 protection agency.

1 (8) The procedures contained in chapter 43.21B RCW shall apply to
2 permit appeals. The pollution control hearings board may stay the
3 effectiveness of any permit issued under this section during the
4 pendency of an appeal filed by the permittee, if the permittee
5 demonstrates that compliance with the permit during the pendency of the
6 appeal would require significant expenditures that would not be
7 necessary in the event that the permittee prevailed on the merits of
8 the appeal.

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

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

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

21 (b) This chapter and rules adopted thereunder;

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

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

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

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

30 (12) Permit program sources within the territorial jurisdiction of
31 an authority delegated the operating permit program shall file their
32 permit applications with that authority, except that permit
33 applications for sources regulated on a statewide basis pursuant to RCW
34 70.94.395 shall be filed with the department. Permit program sources
35 outside the territorial jurisdiction of a delegated authority shall
36 file their applications with the department. Permit program sources
37 subject to chapter 80.50 RCW shall, irrespective of their location,

1 file their applications with the energy facility site evaluation
2 council.

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

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

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

18 (i) The number of sources;

19 (ii) The complexity of sources; and

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

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

25 (d) Each local authority may, in addition, allocate its fiscal year
26 1994 operating permit program development costs among the sources under
27 its jurisdiction emitting one hundred tons or more per year of a
28 regulated pollutant during calendar year 1992 and may collect an
29 interim fee from these sources. A fee assessed pursuant to this
30 subsection (14)(d) shall be collected at the same time as the fee
31 assessed pursuant to (c) of this subsection.

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

35 (15)(a) The department shall determine the persons liable for the
36 fee imposed by subsection (14) of this section, compute the fee, and
37 provide by November 1, 1993, the identity of the fee payer with the
38 computation of the fee to each local authority and to the department of

1 revenue for collection. The department of revenue shall collect the
2 fee computed by the department from the fee payers under the
3 jurisdiction of the department. The administrative, collection, and
4 penalty provisions of chapter 82.32 RCW shall apply to the collection
5 of the fee by the department of revenue. The department shall provide
6 technical assistance to the department of revenue for decisions made by
7 the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All
8 interim fees collected by the department of revenue on behalf of the
9 department and all interim fees collected by local authorities on
10 behalf of the department shall be deposited in the air operating permit
11 account. The interim fees collected by the local air authorities to
12 cover their permit program development costs under subsection (14)(d)
13 of this section shall be deposited in the dedicated accounts of their
14 respective treasuries.

15 (b) All fees identified in this section shall be due and payable on
16 March 1, 1994, except that the local air pollution control authorities
17 may adopt by rule an earlier date on which fees are to be due and
18 payable. The section 5, chapter 252, Laws of 1993 amendments to RCW
19 70.94.161 do not have the effect of terminating, or in any way
20 modifying, any liability, civil or criminal, incurred pursuant to the
21 provisions of RCW 70.94.161 (15) and (17) as they existed prior to July
22 25, 1993.

23 (16) For sources or source categories not required to obtain
24 permits under subsection (4) of this section, the department or local
25 authority may establish by rule control technology requirements. If
26 control technology rule revisions are made by the department or local
27 authority under this subsection, the department or local authority
28 shall consider the remaining useful life of control equipment
29 previously installed on existing sources before requiring technology
30 changes. The department or any local air authority may issue a general
31 permit, as authorized under the federal clean air act, for such
32 sources.

33 (17) Emissions of greenhouse gases as defined in RCW 70.235.010
34 must be reported as required by RCW 70.94.151. The reporting
35 provisions of RCW 70.94.151 shall not apply to any other emissions from
36 any permit program source after the effective date of United States
37 environmental protection agency approval of the state operating permit
38 program.

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

3 (1) When issuing an air operating permit to a sawmill that uses
4 forest waste products as biomass fuel in a cogeneration facility
5 producing electrical energy, the permitting authority shall grant an
6 offset credit reflecting the incremental emissions benefit that occurs
7 because the forest waste products are not disposed of by open field or
8 forest land burning if they would ordinarily be disposed of in that
9 manner.

10 (2) The applicant shall provide the permitting authority with
11 information necessary to make determinations required by this section,
12 including, but not limited to, the quality, type, and source of forest
13 waste products to be used as fuel in the cogeneration facility.

14 (3) To qualify for the offset credit specified in this section, the
15 cogeneration facility must:

16 (a) Produce no more than fifty megawatts of electricity; and

17 (b) Use the appropriate degree of pollution control technology to
18 the extent required by the permitting authority.

19 (4) This section does not relieve a facility from satisfying all
20 applicable requirements of the federal clean air act (42 U.S.C. Sec.
21 7401 et seq.), or any rules or regulations adopted pursuant to that
22 act.

--- END ---