



**House
Legislative
Analysis
Section**

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FUGITIVE DUST CONTROL

Senate Bill 175 (substitute H-1)

MAY 07 1987

First Analysis (4-14-87)

Sponsor: Sen. Christopher D. Dingell Mich. State Law Library

House Committee: Conservation & Environment

Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development

THE APPARENT PROBLEM:

Most of Wayne County and a portion of Monroe County, in southeastern Michigan, face an impending construction ban to be imposed by the Environmental Protection Agency (EPA) on May 12, 1987.

The federal Clean Air Act requires states to implement standards, approved by the EPA, for the control of "fugitive dust". In 1985, the EPA rejected Michigan's proposed fugitive dust rules, and the state and the Federation of Aware Industrial Representatives (FAIR) petitioned the U.S. Sixth Circuit Court of Appeals to review the disapproval of Michigan's proposed rules. On November 12, 1986, the court upheld the EPA's rejection of the rules and granted Michigan a six-month stay on the imposition of EPA sanctions. If imposed, the sanctions will amount to a construction ban in the primary nonattainment areas of the State (i.e., those areas not in compliance with the Clean Air Act's dust control requirements).

The ban would apply to the construction of new industrial sources that have the potential to emit more than 100 tons of total suspended particulates (TSP) per year, and to any construction modification of existing sources of air pollution that would result in an additional 40 tons or more of TSP per year. Under the ban, construction or renovation for operations such as auto plants, steel companies, utilities, cement companies, and many other industries would cease. Thus, legislation imposing stringent fugitive dust source regulations is necessary in order to convince the EPA to join with the state and FAIR in petitioning the U.S. Sixth Circuit Court of Appeals to vacate its order to impose the sanctions on May 12, 1987.

THE CONTENT OF THE BILL:

Senate Bill 175 would amend the Air Pollution Act to provide for the regulation of "fugitive dust" sources, and to do the following:

- 1) prohibit the emission from a road, lot, or storage pile of fugitive dust with an "opacity" greater than 5%, or from any other source with an "opacity" above 20%;
- 2) require fugitive dust sources to be operated in compliance with an operating plan approved by the Air Pollution Control Commission;
- 3) require storage piles exceeding certain emission levels to be covered, enclosed, sprayed with water or a surfactant solution, or treated by an equivalent method;
- 4) require that certain methods be followed in loading and unloading operations, and that traffic and parking areas be subject to certain treatments;
- 5) prohibit the operation of a vehicle for transporting bulk materials with a silt content above 1% without employing certain vehicles, covers, dust suppressants, or water;
- 6) allow the commission to establish alternate provisions if certain conditions were met; and
- 7) provide penalties for violations of the act.

Fugitive Dust

The bill would define "fugitive dust" as particulate matter generated from indoor processes, activities, or operations

which is emitted into the outer air through building openings and general exhaust ventilation, except stacks and particulate matter which is emitted into the outer air from outdoor processes, activities, or operations due to wind or human activity. The bill would apply to any fugitive dust source at mining operations, manufacturing operations, railroad transportation, motor freight transportation and warehousing, electric services, sanitary services, and steam supply located in areas listed in the Michigan Administrative Code.

Under the bill, causing or allowing the emission of fugitive dust from roads, lots or storage piles that had an opacity greater than 5% (as determined by a testing method specified in the bill) or of dust that had an opacity greater than 20% from any other source would be prohibited. ("Opacity" would be defined as "the degree to which an emission reduces the transmission of light or obscures an observer's view".) These prohibitions would not apply to storage pile material handling activities when wind speeds were greater than 25 miles per hour.

Operating Program

The bill would require that all fugitive dust sources subject to the bill be operated in compliance with an operating program prepared by the owner or operator of the source and submitted to the Air Pollution Control Commission. Operating programs would have to be designed to significantly reduce emissions to the lowest level that a particular source was capable of achieving by the application of control technology that was "reasonably available, considering technological and economic feasibility", and would be implemented upon the approval of the commission. An operating program would be subject to the review and approval or disapproval of the commission and would be considered approved if not acted on within 90 days of submission. Approved programs would become a part of a legally enforceable order or of an approved permit to install or operate. An operating program would have to include all of the following:

- a) the name and address of the facility and of the owner or operator responsible for the program's implementation;
- b) a map or diagram of the facility showing approximate locations of storage piles, conveyor loading operation, traffic patterns within the facility, and the location of unloading and transporting operations with pollution control equipment;
- c) a description of the best management practices used to achieve compliance, including an engineering specification of particulate collection equipment; application systems for water, oil, chemicals, and dust suppressants; and other methods used;
- d) a procedure for testing waste or recycled oils used for fugitive dust control for toxic contaminants;
- e) the frequency of application, application rates, and dilution rates (if applicable) of dust suppressants and of cleaning paved traffic pattern roads and parking facilities; and
- f) other information necessary for the commission's review of the operating program.

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OVER

With the exception of dust sources operating programs that were approved by the commission between April 23, 1985, and May 12, 1987, the bill would require the owner or operator of a source to submit an operating program required by the bill within 90 days after the bill's effective date. The operating program would have to be amended so that it was current and reflected any significant change in the fugitive dust source or fugitive dust emissions. Amendments to the program would have to be consistent with the bill's requirements and submitted to the commission for review and approval or disapproval.

Storage Piles/Loading/Traffic Areas

The bill would require all storage piles of materials at a facility where total uncontrolled emissions of fugitive dust from such piles is in excess of 50 tons per year and the potential particulate emissions from all sources exceeds 100 tons per year to be protected by a cover or enclosure or sprayed with water or a surfactant solution, or to be treated by an equivalent method. The bill also would require all conveyor loading operations to such storage piles to use spray systems, telescopic chutes, stone ladders, or other methods. Batch loading operations to storage piles would have to use spray systems, limited drop heights, enclosures, or other methods. Unloading operations from storage piles would have to use rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods. All of the above requirements would have to be in accordance with the facility's operating program.

The bill also would require traffic pattern access areas surrounding storage piles and all traffic pattern roads and parking facilities to be paved or treated with water, oils, or chemical dust suppressants; such treatments, as well as the cleaning of all areas, would have to be done in accordance with the facility's operating program. Unloading and transporting operations of materials collected by pollution control equipment would have to be enclosed or to use spraying, pelletizing, screw conveying, or equivalent methods. Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations would be required to be sprayed with water or a surfactant solution, use chode-feeding, or be treated by an equivalent method in accordance with the facility's operating program. This latter requirement would not apply to high-lines at steel mills. (If particulate collection equipment were operated, emissions from such equipment could not exceed 0.03 grains per dry standard cubic foot.)

Transporting Bulk Materials

The bill would prohibit the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% (except for the transporting of iron or steel slag with a temperature of at least 200 degrees Fahrenheit within the facility) without employing one or more of the following:

- a) completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight. (This provision would not apply to fly ash that has been thoroughly wetted to form a stable crust upon drying.)
- b) tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of between 5% and 20%. (The above exception pertaining to fly ash also would apply to this provision.)
- c) loading trucks to prevent contact of the load with sideboards or side panels, so that the rear part of the

load within six inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

Vehicles for transporting bulk materials off of the facility's site would have to be maintained to prevent leakage or spillage and comply with the Michigan Vehicle Code and the Michigan Administrative Code. (These transporting requirements would not apply to vehicles with less than a two ton capacity that were used to transport sand, gravel, stones, peat, or topsoil.)

Alternative Provisions

The commission, upon a request by an owner or operator of a fugitive dust source, could establish alternative provisions to those specified in the bill if all of the following conditions were met:

- a) the fugitive dust emitting process, operation, or activity was subject either to the opacity limits of the bill or to the spray requirements of the bill.
- b) a fugitive dust emitting process, operation, or activity either was in compliance or was on a legally enforceable schedule of compliance with other rules of the commission.
- c) compliance with the bill was not technically or economically reasonable and reasonable measures to reduce fugitive emissions had been implemented, or soon would be implemented, in accordance with a schedule approved by the commission.

Any alternate provisions approved by the commission would have to be submitted to the United States Environmental Protection Agency as an amendment to the state implementation plan.

Penalties

Under the bill the Attorney General, on behalf of the Department of Natural Resources, could commence a civil action for a permanent or temporary injunction or to assess and recover a civil penalty of not more than \$25,000 per day of violation, or both, whenever a person:

- 1) violated the bill or any rule set forth under the bill;
- 2) failed or refused to comply with a performance contract, stipulation, consent order, final order, or order of determination of the commission made under the bill; or
- 3) failed or refused to obtain a permit or to comply with a permit condition.

A person who violated the bill or rules set forth under the bill, or a person who failed or refused to comply with a performance contract, stipulation, consent order, final order, or order of determination of the commission made under the bill, or a person who failed or refused to obtain a permit or to comply with a permit condition would be guilty of a misdemeanor, punishable by imprisonment for more not more than one year or a fine of not more than \$25,000 per day of violation, or both. A second or subsequent conviction under this subsection would be punishable by imprisonment for not more than two years, or a fine of not more than \$50,000 per day of violation, or both.

Further, any person who knowingly made any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under the bill or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required to be maintained under the bill, upon conviction, would be punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or both.

In addition to fines or penalties mentioned above, the court could award to the state the full value of the injuries done to the natural resources of the state, including the cost of restoring the natural resources, and the cost of surveillance, enforcement, and reasonable attorney and expert witness fees and other litigation costs resulting from the violation. Action taken under one subsection of the penalties section of the bill would not preclude action from being taken under another subsection of the penalties section of the bill.

MCL 336.12 et al.

HOUSE COMMITTEE ACTION:

The House Conservation and Environment Committee adopted a substitute to add civil penalties for violations of the bill.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have negligible fiscal implications to the state. (4-13-87)

ARGUMENTS:

For:

The bill represents a good faith effort on the part of the state and Michigan industries to move toward compliance with the requirements of the federal Clean Air Act. Without EPA-approved standards for the control of fugitive dust, Michigan faces court-ordered, EPA-imposed sanctions beginning May 12, 1987. Passage of the bill would demonstrate to the EPA, and to the court, the state's willingness to set stringent standards for fugitive dust control, and could convince the EPA to accept the bill's standards and request the vacation of the court order. Reportedly, representatives of the EPA were involved in the negotiations from which the bill resulted and intend to approve the standards contained in the bill.

For:

A construction ban would devastate the state of economic affairs in Wayne and Monroe Counties. Industrial growth in those areas would be slowed to a standstill at best. The imposition of sanctions also would deter industrial growth in other parts of the state, because potential new and expanding businesses might feel vulnerable to the imposition of EPA sanctions. Further, once EPA sanctions are imposed it is very difficult to overcome them. Portions of Ohio reportedly have been under sanctions since 1979, and attempts to remove the sanctions repeatedly have failed. The bill is necessary to avoid a devastating situation for Michigan industry.

Response: Legislation should be enacted because it is good public policy, not merely because of a threat of sanctions.

For:

Michigan is one of the few states that does not have civil penalties in its air pollution law. The bill would bring Michigan up to date with other states in this respect. In addition, it is difficult to enforce a criminal violation without proving criminal intent. The civil penalties would make it easier to enforce the bill because officers do not have to prove criminal intent. Problems may occur in attempting to prove criminal intent when violations involve big corporations with many resources available to them. It is for this reason that with most environmental regulation, civil penalties are the enforcement tool of choice.

Against:

The bill would not encompass "reasonably available control technology" as required by the Clean Air Act. For instance, the bill's wind speed exemption is too lenient and the alternative compliance provision for cases where the bill's compliance requirements were not "economically reasonable" is vague and lenient. Further, the alternative compliance provision would not encompass enough of the bill's primary compliance measures. The bill's storage pile requirements would not regulate fugitive dust effectively—water is not effective, and there would be no mandated schedule for spraying surfactants or specified minimum moisture level. Finally, the provision that an operating program would be approved automatically if not acted on by the commission within 90 days of submission would fail to assure the use of reasonably available control technology.

Response: The bill's standards would embody "reasonably available control technology". Indeed, the bill specifies that an operating program would have to be designed to reduce fugitive dust emissions to "the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available". In addition, in testimony before the Senate Committee on Criminal Justice, Urban Affairs, and Economic Development, representatives of FAIR and of the Department of Natural Resources suggested that the bill would impose the most stringent set of fugitive dust regulations in the country.

Against:

According to protocol, standards such as those the bill would establish should go through the administrative rules process. Proposing legislation to set such standards is inappropriate.

Response: Legislation has been proposed because it potentially is the strongest and most expeditious manner in which the state can send a signal to the EPA and the court demonstrating its willingness to comply with federal requirements.

Against:

As reported by the House Conservation and Environment Committee, the bill would defeat the purpose for which it was intended because the provisions for civil penalties will delay the bill's progress. The committee amended the bill to provide for civil penalties and to set forth the circumstances under which those penalties would be implemented. However, the original bill was the result of intensive negotiations between industry and government and with the addition of civil penalties to the bill has upset the delicate balance achieved by the negotiations. It could take a considerable amount of time to renegotiate a new version of the bill with which all parties would agree.

POSITIONS:

The American Lung Association supports the civil penalty provisions of the bill. (4-13-87)

The Department of Commerce supports the bill without amendments. (4-10-87).

The Federation of Aware Industrial Representatives supports the bill without amendments. (4-10-87)

The Michigan Manufacturer's Association supports the bill as originally introduced. (4-13-87)