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Senate Bill 175 (as passed by the Senate)**Sponsor: Senator Christopher D. Dingell****Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 4-15-87****RATIONALE**

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 [see BACKGROUND]. Some contend that legislation imposing stringent fugitive dust source regulations is necessary in order to convince the EPA to join with the State and the Federation of Aware Industrial Representatives (FAIR) in petitioning the U.S. Sixth Circuit Court of Appeals to vacate its order to impose the sanctions on May 12, 1987.

CONTENT

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

- 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%.
- Require fugitive dust sources to be operated in compliance with an operating plan approved by the Air Pollution Control Commission.
- Require storage piles exceeding certain emission levels to be covered, enclosed, sprayed with water or a surfactant solution, or treated by an equivalent method.
- Require that certain methods be followed in loading and unloading operations, and that traffic and parking areas be subject to certain treatments.
- 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.
- Allow the Commission to establish alternate provisions if certain conditions were met.
- Exempt from the bill's fugitive dust regulation provisions, political subdivisions of the State, including cities, villages, townships, counties, authorities, school districts, and commissions.

Fugitive Dust

"Fugitive dust" would be defined as "particulate matter which is generated from indoor processes, activities, or operations and which is emitted into the outer air through building openings and general exhaust ventilation, except stacks . . . [and] also means particulate matter which is emitted into the outer air from outdoor processes, activities, or operations due to the forces of the 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 Table 36 of R 336.1371 of the Michigan Administrative Code.

Under the bill, causing or allowing the emission from any road, lot, or storage pile, of fugitive dust that had an opacity greater than 5% (as determined by a testing method specified in the bill) or from any other source that had an opacity greater than 20% 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 reduce significantly "the 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, 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 submittal. 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 at least all of the following:

- The name and address of the facility and of the owner or operator responsible for the program's implementation.
- 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.
- 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 utilized; and equivalent methods utilized.
- A test procedure for testing waste or recycled oils used for fugitive dust control for toxic contaminants.
- The frequency of application, application rates, and dilution rates (if applicable) of dust suppressants and of cleaning paved traffic pattern roads and parking facilities.
- Other information necessary for the Commission's review of the operating program.

With the exception of dust sources operating programs that were approved by the Commission between April 23, 1985, and May 12, 1987, pursuant to R 336.1373 of the Michigan Administrative Code, the bill would require the owner or operator of a source to submit an operating program

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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 equivalent methods. Batch loading operations to storage piles would have to use spray systems, limited drop heights, enclosures, or other equivalent 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 other 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 a person from causing or allowing 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:

- 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 and forms a stable crust upon drying.)
- 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 more than 5% but less than 20%. (The above exception pertaining to fly ash also would apply to this provision.)
- Loading trucks to prevent contact of the load with sideboards or side panels, so that the rear part of the load comes 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 R 28.1457 of the Michigan Administrative Code. (These transporting requirements would not apply to vehicles with less than a two ton capacity that are 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:

- 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.
- 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.
- 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.

Proposed MCL 336.25 and 336.25a

BACKGROUND

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 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 but 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. In addition to the bill, Senate Concurrent Resolution 113 states that it would be "the intent of the Michigan Legislature to enact legislation to impose standards for fugitive dust in compliance with the U.S. Environmental Protection Agency in order to avoid the construction ban scheduled for Wayne and Monroe counties beginning May 12, 1987. It is also the intent of this legislature to repeal this legislation if the construction ban goes into effect, if the EPA does not approve the statute, or if a new federal particulate matter standard is set to eliminate the need for the new legislation".

FISCAL IMPACT

The passage of Senate Bill 175 would result in indeterminate administrative costs for the Department of Natural Resources. The Air Pollution Control Commission,

within the Department of Natural Resources, would be required to implement and enforce this proposal. The exact administrative costs associated with the proposal are unknown.

ARGUMENTS

Supporting Argument

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.

Supporting Argument

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.

Opposing Argument

The bill would not encompass "reasonably available control technology" as required by the Clean Air Act. For instance, the bill's wind speed exemption would be too lenient; the alternative compliance provision for cases in which the bill's compliance requirements were not "economically reasonable" would be vague and lenient; and 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.

Opposing Argument

Standards such as those the bill would establish properly 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.

Legislative Analyst: P. Affholter

Fiscal Analyst: A. Rich

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.