

LEGISLATIVE BILL 634

Approved by the Governor April 15, 1996

Introduced by Bohlke, 33; Fisher, 35; Janssen, 15

AN ACT relating to the environment; to amend section 81-1505.04, Reissue Revised Statutes of Nebraska; to change provisions relating to emission fees; to provide duties; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-1505.04, Reissue Revised Statutes of Nebraska, is amended to read:

81-1505.04. (1) The department shall collect an annual emission fee from major sources of air pollution. Each major source shall pay the emission fee for regulated pollutants in the amount of twenty-five dollars per ton per pollutant or as adjusted pursuant to this section. The fee shall be based upon the amount of emissions of each regulated pollutant as reported or estimated by the source in the previous calendar year, but fees shall not be paid on amounts in excess of four thousand tons per year for any regulated pollutant. In the case of an electric generation facility with a nameplate generating capacity of between seventy and one hundred fifteen megawatts which is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction, fees shall not be paid on amounts in excess of four hundred tons per year for any regulated pollutant through 1997. Any surplus emission fees remaining in the Clean Air Title V Cash Fund on June 30, 1996, and on June 30, 1997, shall be used first to offset any reduction in emission fee revenue resulting from lowering from four thousand tons per year to four hundred tons per year the maximum number of tons of emissions to be charged a fee for certain electric generation facilities as described in this subsection.

(2) It is the intent of the Legislature that, beginning in 1998, fees to be paid to the department by each major source shall be based upon both actual emissions pursuant to subsection (1) of this section and actual costs incurred by the department to administer the program for such source. Under such fee structure, the department shall estimate total annual air quality permit program costs and shall calculate the fee by deriving fifty percent of the total through an emission fee from each major source as described in this section. The remaining fifty percent of the costs shall be collected from each major source by proportionately allocating to each such source its percentage share for direct and indirect costs incurred by the department for permit review, issuance, monitoring, and administration of the federal Clean Air Act Title V program. If the Legislature does not enact such a fee structure prior to June 30, 1998, the department shall calculate the emission fee as set out in subsections (1) and (3) of this section. For the initial annual emission fee, which shall be due no later than November 15, 1995, reported or estimated emission levels shall be based on emissions in calendar year 1994.

(3)(a) The emission fee shall may be increased or decreased annually by the department in each year beginning after 1991 by the percentage difference between the Consumer Price Index for the most recent year ending before the beginning of such year and the Consumer Price Index for the year 1989 or as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit program. For purposes of this section, Consumer Price Index shall mean the change in the price of goods and services for all urban consumers published by the United States Department of Labor at the close of the twelve-month period ending on August 31 of each year.

(b) For purposes of this section, and reasonable direct and indirect costs of developing and administering the air quality permit program, as required under the federal Clean Air Act, as amended, 42 U.S.C. 7661a through f, shall include:

- (i) (1) Consideration of any associated overhead charges for personnel, equipment, buildings, and vehicles;
- (ii) (2) Reviewing and acting on any application for a permit or permit revision;
- (iii) (3) Implementing and enforcing the terms of any permit, not including any court costs or other costs associated with any formal enforcement action;
- (iv) (4) Emissions and ambient monitoring, including adequate

resources to audit and inspect source-operated monitoring programs;
 (v) ~~(5)~~ Preparing generally applicable regulations or guidance;
 (vi) ~~(6)~~ Modeling, analyses, or demonstrations;
 (vii) ~~(7)~~ Preparing inventories and tracking emissions; and
 (viii) ~~(8)~~ Providing support to sources under the Small Business Compliance Advisory Panel.

(c) The council shall establish procedures for the method of calculation and payment of the emission fee in a manner consistent with this section and shall establish the definition of or a table listing the pollutants which are regulated pollutants and a definition of major source. Such definitions or listing shall comply with and not be more stringent than the requirements of the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

(4) On The department shall, on or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document documenting all direct and indirect program costs incurred in the previous fiscal year and emission fees assessed in carrying out the air quality permit program. The Appropriations Committee of the Legislature shall review such report in its analysis of executive programs in order to verify that revenue generated from emission fees was used solely to offset appropriate and reasonable costs associated with the air quality permit program. After January 1, 1997, the report shall identify costs incurred by the department to administer the permit program for each major source. In addition, the department shall identify costs incurred by primary activity not specific to a major source.

(5) The department shall, by December 1, 1996, propose options for determining the amount of the fees referred to in subsection (2) of this section to be contained in a report to the Natural Resources Committee of the Legislature. The department shall include in the report (a) an estimate of the amount of emissions that have been reduced since the emission fee was established in Nebraska and (b) a discussion of options for incentives to reduce emissions. The report shall describe annual program costs for the previous fiscal year, identify primary activities recommended to be included in a cost tracking system, estimate the cost of administering a cost tracking system capable of showing costs for each major source as well as primary activity which is not specific to a major source, and compare the various types of program funding options. The department shall notify all major sources and other interested parties of the development of the report to solicit input from such parties. Upon receipt of the report the Natural Resources Committee of the Legislature shall hold one or more public hearings concerning air quality permit program funding options.

(6) Beginning July 1, 1996, the department shall administer a cost tracking system which shall show costs for each major source and costs for each primary activity that is not specific to a major source. The department shall consult with interested parties regarding identification of primary activities to be tracked by the cost tracking system.

Sec. 2. Original section 81-1505.04, Reissue Revised Statutes of Nebraska, is repealed.