S.6833-A (Harckham)

STAFF CONTACT : Ken Pokalsky | Vice President | 5186944460

BILL

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SUBJECT

Suspension or Revocation of Air Permits

DATE

April 29, 2025

OPPOSE

The Business Council offers its **most strong objections** to this legislation which provides for the **suspension** of administratively extended Title V air permits, and the **denial** of Title V permit renewal applications, due to the lack of timely Department of Environmental Conservation action on lawfully submitted permit renewal applications.

Under this proposal, the ability of an industrial or energy generation facility to continue to lawfully operate can be terminated due to administrative failures wholly beyond its control.

Under the State Administrative Procedures Act (SAPA § 401. 2) when a permitted entity makes a "timely and sufficient" application for a permit renewal, the existing permit does not expire until the permitting agency has made a final determination on the application, or until the end of any judicial review. This provision assures that a permitted facility can continue to lawfully operate despite a failure of a regulatory agency to complete a timely review of its renewal application.

There are instances where the Department of Environmental Conservation's permit renewal review process has extended for several years after its receipt of a "timely and sufficient" application. These delays, which can be frustrating for both facility operators and other interested stakeholders, can be based on several factors, including the Department's challenges in interpreting and applying vague statutory provisions (e.g., CLCPA consistency determinations, environmental justice and disadvantaged communities impact analysis), review of extensive public comments on permit applications, and limitations on the Department's technical and permitting staff resources.

We also have concerns with provisions of the bill (§70-0115.3(b)((iii)) related to the reliability of the state's electricity grid. The bill would only allow for the extra extension of a powerplant's permit if the ISO, PSC or a distribution utility determines that suspension of its permit would comprise energy reliability AND a permanent solution has been identified but not yet constructed or permitted.

This reads as if a "permanent solution" to addressing a recognized reliability issue is not identified at the time a crucially necessary powerplant's permit would expire under this legislation, the permit would expire anyway, and the facility would not be able to lawfully operate. Among the other significant problems with this bill, this specific provision would directly jeopardize the reliability of the state's electric grid.

In apparent recognition of the DEC's resource needs, the state legislature in the SFY 2025 budget authorized an increase in facility permit fees used to finance DEC's Title V permitting program This include an increase in the Title V permit "base fee" to $8,500, a significant increase in the cap on per-ton Title V permit fees (up to $300 per ton), elimination of the per-facility cap on fees, and a directive for the DEC to "implement new or revise existing" permit fees "to extent necessary" to comply with Clean Air Act section 7711(d), with fees to be calculated "in the manner set forth in the Act" – in other words, assuring that the state's delegated Title V program is approved by the federal EPA and is adequately supported through pemit fees.

However, this new fee structure does not take effect until 1/1/27. In the current budget process, neither the Administration nor the legislature has proposed any significant increase in DEC's Division of Air Resources funding that may be needed to help them address any backlog in permit reviews.

Under this proposal, if DEC permit reviews are not completed within 36 months of the latter of the effective date of this legislation or the date the application was submitted, the permit "shall automatically be suspended and the application shall automatically be denied." This drastic action would preclude the facility from lawfully operating, and the legislation provides no remedy for an impacted facility. The only exception in the bill is in instances where the forced closure of a power generation facility is determined to have an impact on grid reliability.

Moreover, the bill provides that if if DEC permit reviews are not completed within 24 months of the latter of the effective date of this legislation or the date the application was submitted, the permit applicant is required to pay in effect a penalty equivalent to its annual Title V permit fees, with such payment to be used for projects that benefit the communities "directly affected by" emissions from the facility. In short, the permit application is subject to civil penalties based on the Department's failure to act on a timely basis.

While we share the legislature's frustration with the delayed process for reviewing some Title V permit applications, we strongly object to this proposed remedy which imposes drastic and unreasonable restrictions on facilities' ability to operate, based on Departmental actions beyond their control.

A more reasonable approach would be to more fully assess the reasons for significant delays in permit reviews, and the advancement of targeted fixes, whether they be an increase in agency resources, clarification in administrative or substantive permit mandates or others.

However, we strongly object to this proposal that would automatically suspend permits based on delayed Departmental reviews, and we strongly oppose adoption of S.6833-A.