

## LEGISLATIVE BILL 156

Approved by the Governor April 26, 2011

Introduced by Utter, 33.

FOR AN ACT relating to environmental protection; to amend section 81-1505.04, Reissue Revised Statutes of Nebraska; to change annual emission fee 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) (a) 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.

(b) Beginning with calendar year 2001 emissions, fees shall not be paid for a mid-sized electric generation facility on amounts in excess of four hundred tons per year for any regulated pollutant.

(c) A mid-sized electric generation facility owned by a municipality shall continue to be considered a separate mid-sized electric generation facility for purposes of this section even if the facility is subsequently permitted with another general unit larger than one hundred fifteen megawatts under separate ownership. Each facility under separate ownership shall be considered a separate major source for purposes of this section.

~~(e)~~ (d) For purposes of this section, mid-sized electric generation facility means a facility that:

(i) Uses coal as the primary source of fuel in the facility's largest generation unit;

(ii) Has a name plate generating capacity of between seventy and one hundred fifteen megawatts in the facility's largest generation unit; and

(iii) Is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction.

(2) (a) The emission fee may be increased or decreased annually by the department 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 means 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, reasonable direct and indirect costs of developing and administering the air quality permit program, as required under the federal Clean Air Act, as the act existed on May 31, 2001, 42 U.S.C. 7661a through f, include:

(i) Consideration of any associated overhead charges for personnel, equipment, buildings, and vehicles;

(ii) Reviewing and acting on any application for a permit or permit revision;

(iii) Implementing and enforcing the terms of any permit, not including any court costs or other costs associated with any formal enforcement action;

(iv) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;

(v) Preparing generally applicable regulations or guidance;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions;

(viii) Developing and implementing any emissions trading programs as defined by the department; and

(ix) 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 the act existed on May 31, 2001, 42 U.S.C. 7401 et seq.

(3) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect program costs incurred in the previous fiscal year 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. 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.

(4) 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.