
HOUSE BILL 1704

State of Washington

55th Legislature

1997 Regular Session

By Representative McMorris

Read first time 02/05/97. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to entry for the purposes of water pollution
2 investigations on agricultural land; amending RCW 90.48.120; adding a
3 new section to chapter 90.48 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that there is a need
6 to establish a clear process for handling complaints regarding water
7 quality from uses of private agricultural land near waters of the
8 state.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW
10 to read as follows:

11 (1) In exercising its authority under RCW 90.48.090, in
12 investigating conditions on private agricultural land, the department
13 must comply with this section.

14 (2) Except in the case of an emergency, the department shall
15 provide at least seven days' notice to a person alleged to have engaged
16 in polluting activities before entering private agricultural property
17 to investigate conditions relating to actions causing pollution of the
18 waters of the state. This notice must also be provided to the private

1 property owner if that person is different from the person alleged to
2 have engaged in polluting activities.

3 (3) When the department receives a complaint that pollution has
4 occurred, the department must document the time the alleged pollution
5 occurred, and the name and address of the person who made the
6 complaint. If the evidence was collected by a department employee, the
7 department must document the name of the employee. Information
8 revealing the identity of the person who made the complaint is exempt
9 from public inspection and copying to the extent that RCW 42.17.310
10 applies.

11 (4) When the department has an agreement or permit with a person
12 alleged to have engaged in polluting activities, the department shall
13 observe the provisions of the agreement or permit.

14 (5) Nothing in this section shall preclude the department from
15 executing a valid search warrant for legal entry onto private property
16 used for agricultural production to investigate compliance with the
17 provisions of RCW 90.48.080 and 90.48.120.

18 **Sec. 3.** RCW 90.48.120 and 1992 c 73 s 25 are each amended to read
19 as follows:

20 (1) Whenever, in the opinion of the department, any person shall
21 violate or creates a substantial potential to violate the provisions of
22 this chapter or chapter 90.56 RCW, or fails to control the polluting
23 content of waste discharged or to be discharged into any waters of the
24 state, the department shall notify such person of its determination by
25 registered mail. Such determination shall not constitute an order or
26 directive under RCW 43.21B.310. Within thirty days from the receipt of
27 notice of such determination, such person shall file with the
28 department a full report stating what steps have been and are being
29 taken to control such waste or pollution or to otherwise comply with
30 the determination of the department. Whereupon the department shall
31 issue such order or directive as it deems appropriate under the
32 circumstances, and shall notify such person thereof by registered mail.

33 (2) Whenever the department deems immediate action is necessary to
34 accomplish the purposes of this chapter or chapter 90.56 RCW, it may
35 issue such order or directive, as appropriate under the circumstances,
36 without first issuing a notice or determination pursuant to subsection
37 (1) of this section. An order or directive issued pursuant to this

1 subsection shall be served by registered mail or personally upon any
2 person to whom it is directed.

3 (3) The department shall not make a determination as provided under
4 subsection (1) of this section that a violation is occurring or is
5 substantially likely to occur on private agricultural property without
6 cogent, site-specific scientific evidence. The department shall not
7 deem immediate action necessary as provided under subsection (2) of
8 this section to accomplish the purposes of this chapter or chapter
9 90.56 RCW on private agricultural property without cogent, site-
10 specific scientific evidence.

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