

---

HOUSE BILL 1419

---

State of Washington

60th Legislature

2007 Regular Session

By Representatives McCoy, Jarrett, Hudgins, Campbell, Chase, Dunshee, Hunt, Upthegrove, Williams, Hasegawa, Schual-Berke, Simpson and Santos

Read first time 01/18/2007. Referred to Committee on Select Committee on Environmental Health.

1 AN ACT Relating to hazardous waste releases and cleanup at other  
2 sites requiring twenty or more years to remediate; adding new sections  
3 to chapter 70.105 RCW; creating new sections; and declaring an  
4 emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) The department of ecology has clear authority, allowable under  
8 federal law, to require enforceable schedules for the removal and  
9 treatment of all hazardous wastes to the extent practicable, including  
10 mixed wastes, stored in underground tanks, as well as cleanup of the  
11 leaks and releases from the tanks to the extent practicable;

12 (b) Advisory boards at toxic cleanup and noncompliant sites are  
13 valuable to the state in providing a vehicle for public input to the  
14 department of ecology and the sites;

15 (c) One such board, the Hanford advisory board, is a product of  
16 several years of negotiations resulting in a forum bringing all  
17 stakeholders to the table, and provides significant assistance to the  
18 state in exercising its responsibility to oversee cleanup of the

1 Hanford nuclear reservation. Changes to the Hanford advisory board  
2 would be detrimental to the state of Washington;

3 (d) There is compelling evidence as set forth in an August 2006  
4 petition signed by more than twenty members and alternates of the  
5 Hanford advisory board that the board's continued existence is  
6 threatened by proposals from the United States department of energy to  
7 revise the board's charter and potentially damage this forum that  
8 brings disparate parties together for mutually beneficial dialogue;

9 (e) Advice number 13 from the Hanford advisory board dated February  
10 3, 1995, recommends that additional waste not be added to a site not in  
11 compliance with state environmental laws, and this advice has not been  
12 followed by site managers;

13 (f) Advice number 2 from the Hanford advisory board dated July 1994  
14 recommends that disposal facilities on the Hanford nuclear reservation  
15 should be reserved for waste from the site and not accept off-site  
16 waste. This advice has not been followed;

17 (g) Advice numbers 170 and 153 from the Hanford advisory board  
18 dated 2005 and 2003, among others, recommends that waste not be buried  
19 in unlined burial grounds, and waste in unlined burial trenches should  
20 be characterized and retrieved. This advice also has not been  
21 followed; and

22 (h) Advice number 192 from the Hanford advisory board dated  
23 September 2006 recommends a mandate of one hundred percent treatment  
24 capacity for all wastes and that storage tanks be emptied to the extent  
25 practicable. This advice also has not been followed.

26 (2) Therefore, it is the purpose of this act and the policy of the  
27 state of Washington to ensure cleanup and compliance at sites at which  
28 hazardous wastes have seriously contaminated the environment and where  
29 ongoing violations of chapter 70.105D RCW are projected to take more  
30 than twenty years to complete the cleanup and compliance. It is  
31 further the purpose of this act to ensure public involvement in the  
32 cleanup of these sites.

33 (3) It is further the policy of the state to ensure cleanup and  
34 compliance at these sites before permitting the addition of more waste  
35 that is not generated from the cleanup of the site, and which may add  
36 to long-term cumulative impacts to health and the environment, until  
37 the hazardous waste on-site has been cleaned up and is stored, treated,  
38 or disposed of in compliance with all state and federal laws.

1 (4) It is further the policy of the state to discontinue the use  
2 of, and ensure characterization and remediation of, unlined trenches  
3 where hazardous wastes have been disposed. These policies must guide  
4 state action for approval of plans, permits, orders, or agreements  
5 under the federal facility compliance act of 1992 (42 U.S.C. Sec. 6961  
6 et seq.). It is not the intent of this act to interfere with the  
7 transportation, manufacturing, storage, or use of any hazardous  
8 substance necessary for medical research, medical treatment,  
9 manufacturing or industrial processes, or national defense.

10 (5) This act applies to all sites with releases of hazardous waste  
11 as defined in section 2 of this act that are not in compliance with  
12 state or federal hazardous waste laws, including but not limited to the  
13 Hanford nuclear reservation. This act does not expand the scope of  
14 hazardous waste regulated under chapter 70.105 RCW or the level at  
15 which hazardous wastes are regulated.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.105 RCW  
17 to read as follows:

18 The definitions in this section apply throughout sections 1 through  
19 5 of this act unless the context clearly requires otherwise. Terms not  
20 defined in this section have the same meaning as defined in RCW  
21 70.105.010.

22 (1) "Department" means the department of ecology.

23 (2) "Federal resource conservation and recovery act" means the  
24 federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et  
25 seq.).

26 (3) "Hanford" means the geographic area comprising the Hanford  
27 nuclear reservation, owned and operated by the United States department  
28 of energy or any successor federal agency.

29 (4) "Hazardous waste" includes all dangerous and extremely  
30 hazardous waste. "Hazardous waste" also includes solid wastes composed  
31 of both radioactive and hazardous components having the characteristics  
32 of dangerous waste including, but not limited to, being carcinogenic,  
33 mutagenic, or teratogenic, to the fullest extent authorized for state  
34 regulation under the federal resource conservation and recovery act and  
35 the federal facility compliance act of 1992 (42 U.S.C. Sec. 6961 et  
36 seq.). "Hazardous waste" does not include source, special nuclear, or

1 byproduct material as defined by the atomic energy act of 1954 (42  
2 U.S.C. Sec. 2011 et seq.) except to the extent authorized by federal  
3 law.

4 (5) "Site" means the contiguous geographic area under the same  
5 ownership, lease, or operation where a hazardous waste facility or  
6 units are located, or where there has been a release of hazardous  
7 substances. In the event of a release of hazardous substances, "site"  
8 includes any area, or body of surface or ground water, where a  
9 hazardous substance has been deposited, stored, disposed of, placed,  
10 migrated to, or otherwise come to be located.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.105 RCW  
12 to read as follows:

13 (1) Permits issued under this chapter must provide for the  
14 operation and funding of a broadly representative advisory board at any  
15 site or facility at which all of the following apply:

16 (a) There has been a release of hazardous substances at levels  
17 exceeding relevant state standards for remedial or corrective action  
18 under this chapter or chapter 70.105D RCW;

19 (b) There are substantial violations of storage, treatment, and  
20 disposal requirements under this chapter or the federal resource  
21 conservation and recovery act; and

22 (c) The department estimates that it will require more than a total  
23 of twenty years to remediate and bring the site into compliance with  
24 this chapter.

25 (2) The advisory board must include:

26 (a) Seven representatives of elected local governing bodies;

27 (b) One representative of local business interests, the  
28 representative having no financial interest in the site;

29 (c) Five representatives of local workers who are not in management  
30 positions, at least two of whom must represent recognized labor unions  
31 when present in the remediation workforce;

32 (d) One representative of local environmental interests;

33 (e) Five representatives of regional citizen, environmental, and  
34 public interest organizations with an active interest in cleanup of the  
35 site, drawn from and nominated by those regional organizations;

36 (f) One local representative of public health organizations;

37 (g) One regional representative of public health organizations;

1 (h) Three representatives of tribal governments, no two of which  
2 may be members from the same tribe;

3 (i) Two representatives of any adjacent state potentially affected  
4 by reason of being downstream of a release, one of whom must represent  
5 the broad interests of the citizens of such a state and one of whom may  
6 be selected by that state's governor; and

7 (j) Up to four at large representatives who have expressed a  
8 general interest in cleanup issues at the site and who might otherwise  
9 contribute to ethnic, racial, or gender diversity on the board. These  
10 at large representatives should be selected to bring additional  
11 leadership skills and technical, economic, and hazardous waste  
12 expertise to the board. Other, nonvoting ex officio members may also  
13 be appointed as necessary.

14 (3) If such an independent advisory board exists for a site or  
15 sites on the effective date of this section, that board will be deemed  
16 to fulfill the requirements of this act and must be maintained under a  
17 charter agreed to by the department in its present form as a  
18 requirement of any permit under this chapter for the site. To meet the  
19 criteria of independence: (a) The advisory board must be able to  
20 address relevant issues as selected by board members with advice of the  
21 department without limitation by a permittee, potentially liable party  
22 under chapter 70.105D RCW, or other entity; (b) the representatives of  
23 the entities described as composing the board must be selected by those  
24 entities, unless an individual's participation violates applicable  
25 standards for conflicts of interest; and (c) adequate funding to meet  
26 the duties of the board as described in this chapter is ensured. If  
27 any provision of the charter is contrary to state law, the department  
28 shall inform the board and provide a reasonable period for the charter  
29 to be amended to eliminate any inconsistency with state law. If an  
30 advisory board for a site or sites does not exist on the effective date  
31 of this section, the department shall provide for the selection and  
32 initial formation of the board.

33 (4) Permits issued under this chapter for such a site or facility  
34 must specify that the advisory board be continued with adequate  
35 funding, provided by the owner or operator of the site, to perform its  
36 chartered functions until final closure or certification of the  
37 completion of remedial or corrective action.

1 (5) The department shall request the advisory board created or  
2 maintained under this section to advise the department on procedural  
3 and substantive matters necessary for informed public involvement and  
4 comment. The department shall provide the board a reasonable  
5 opportunity to comment upon a proposed remedial, corrective, or closure  
6 regulatory action by the department, and the department shall consider  
7 and respond to timely comments from the board before making a decision.

8 (6) Within the charges assessed under RCW 70.105.280, the  
9 department shall include the reasonable costs for public involvement.  
10 Public involvement opportunities must be provided for all permits for  
11 federal and for nonfederal facilities. Relevant public involvement  
12 costs include those for programs administered by the department under  
13 the model toxics control act, chapter 70.105D RCW. The charges must  
14 not discriminate against federal functions, must be based on a fair  
15 approximation of use of the regulatory system, and must be structured  
16 to produce revenues that will not exceed the total cost to the state of  
17 the benefits to be supplied by the public involvement.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.105 RCW  
19 to read as follows:

20 (1) Facilities storing hazardous waste in underground tanks from  
21 which there have been releases, or storing wastes in violation of  
22 storage and treatment requirements under this chapter or the federal  
23 resource conservation and recovery act, must be closed in compliance  
24 with the requirements of this section. Permits issued under this  
25 chapter governing the retrieval, treatment, and disposal of hazardous  
26 waste in underground storage tanks must require retrieval of hazardous  
27 wastes from the tanks, and characterization and removal and remediation  
28 of releases, to the maximum extent practicable. Retrieval from single  
29 shell tanks must be placed on an enforceable schedule designed to  
30 prevent releases and reduce other risks from noncompliant storage. The  
31 department may issue a permit relating to the closure of waste  
32 management units containing tank systems consisting of one or more  
33 interconnected tanks in which hazardous wastes were previously or are  
34 currently stored only after the department considers the cumulative  
35 impacts of all tank residuals and leaks from such systems at the site  
36 under chapter 43.21C RCW. Permit actions may not be taken to close  
37 individual tanks, or which may prevent the retrieval of residual

1 hazardous wastes remaining in a tank, in any element of the tank  
2 system, or in the soil due to leaks from the tank system, prior to  
3 compliance with this section and determination of the quantity, nature,  
4 and potential impacts from the residuals or releases. The department  
5 shall require all potentially effective and practicable actions to be  
6 taken to characterize and remediate releases and potential releases  
7 prior to authorizing use of a landfill closure, as defined by the  
8 department in rules implementing this chapter, for underground  
9 hazardous waste tank systems. The department may require research and  
10 development of technologies for characterization or retrieval under  
11 this section.

12 (2) The department shall adopt a plan to treat and dispose of one  
13 hundred percent of the hazardous waste retrieved from underground  
14 storage tanks. The department shall incorporate into permits for the  
15 facility or site an enforceable schedule for constructing, or obtaining  
16 the services of, treatment facilities on a timeline sufficient to  
17 ensure that the waste will be treated when retrieved from the tanks.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.105 RCW  
19 to read as follows:

20 (1) Permits under this chapter are required and conditioned under  
21 this section for sites or facilities meeting the following criteria:

22 (a) A release of hazardous waste has occurred and it is estimated  
23 that it will take twenty or more years to remediate following the best  
24 available science;

25 (b) The release, or the cumulative impact of all hazardous waste  
26 releases at the site, are projected by the department to have the  
27 potential to exceed surface or ground water standards established under  
28 federal or state laws, including but not limited to maximum  
29 concentration limits, or to exceed cleanup standards adopted to protect  
30 human health or the environment under RCW 70.105D.030; and

31 (c) The site contains units or facilities that are in substantial  
32 noncompliance with the requirements of this chapter or any order or  
33 agreement under this chapter or chapter 70.105D RCW. Evidence of  
34 substantial noncompliance includes, but is not limited to: Storage of  
35 hazardous wastes without treatment capacity in excess of relevant time  
36 limitations; storage of hazardous wastes in unlined soil trenches  
37 without characterization and appropriate retrieval and treatment;

1 storage of hazardous wastes in single shell or other noncompliant tanks  
2 or units; failure to empty storage vessels in compliance with this  
3 chapter; or failure to plan for or respond to emergencies or to report  
4 releases.

5 (2) For facilities and sites meeting the criteria of subsection (1)  
6 of this section, the department shall not issue a permit, or modify any  
7 existing permit, to allow for the treatment, storage, or disposal of  
8 any additional hazardous wastes not generated at the site or facility  
9 as part of a remedial or corrective action, except as allowed under  
10 subsection (3) of this section, until:

11 (a) The site or facility is in full compliance with the  
12 requirements of this chapter, the rules adopted under this chapter and  
13 the federal resource conservation and recovery act, for obtaining and  
14 maintaining a closure permit for any facility or unit from which a  
15 release of hazardous substances has occurred or is threatened to occur,  
16 after characterization and corrective action;

17 (b) The department has issued a formal determination that no  
18 further remedial action is necessary to remedy such a release under  
19 chapter 70.105D RCW;

20 (c) Cumulative impacts from the facility and from other units and  
21 releases at the site have been determined and a risk budget adopted for  
22 the facility, which ensures that the cumulative impacts and health  
23 risks, including cancer risk from all carcinogenic releases, will not  
24 exceed relevant standards under chapter 70.105D RCW or other laws; and

25 (d) The department has formally determined that the noncompliant  
26 conditions no longer exist at the site or facility and that the site or  
27 facility remains in substantial compliance with all relevant orders or  
28 agreements.

29 (3) The department may permit treatment capacity at sites subject  
30 to the limitations of this section to be utilized for remediation or  
31 cleanup wastes from other sites, consistent with a site treatment plan  
32 approved by the department under the federal resource conservation and  
33 recovery act, provided that the department determines, after public  
34 notice and comment and consideration of impacts and alternatives in an  
35 environmental impact statement prepared under chapter 43.21C RCW, that  
36 use of the capacity will not:

37 (a) Significantly increase any emissions, discharges, risks, or  
38 consequences of potential accidents;

1 (b) Result in permanent disposal of off-site wastes in the soil at  
2 the site when the disposal would otherwise violate this section;

3 (c) Be stored in excess of any applicable time limits or any  
4 applicable requirement;

5 (d) Decrease funding for cleanup and corrective actions at the  
6 site; or

7 (e) Result in delay of treatment or remediation of wastes at the  
8 site.

9 (4) The department shall ensure that permits require discontinuing  
10 the use of, and require characterization and remediation of, unlined  
11 trenches where hazardous wastes have been disposed. The department  
12 shall order any site owner or operator utilizing landfills or burial  
13 grounds containing unlined soil trenches in which hazardous wastes are  
14 reasonably believed by the department to have been disposed to:

15 (a) Cease disposal of all hazardous or solid wastes in unlined soil  
16 trenches, to the extent that the department is not preempted from  
17 regulation of such wastes by the atomic energy act of 1954 (42 U.S.C.  
18 Sec. 2011 et seq.) or other federal law, and provided that such an  
19 order does not interfere with obligations of the state under the  
20 Northwest interstate compact for low-level radioactive waste  
21 management;

22 (b) Initiate an investigation to provide the department with an  
23 inventory, based on actual characterization of trenches, of all  
24 hazardous wastes disposed in unlined trenches;

25 (c) Initiate an investigation of releases or potential releases of  
26 any hazardous substances from unlined trenches;

27 (d) Prepare a plan for waste retrieval, treatment, closure, and  
28 monitoring for the unlined soil trenches; and

29 (e) Install within two years and maintain a ground water and soil  
30 column monitoring system that is in compliance with all requirements of  
31 this chapter and the federal resource conservation and recovery act.

32 NEW SECTION. **Sec. 6.** The provisions of this act are to be  
33 liberally construed to effectuate the policies and purposes of this  
34 act. In the event of conflict between the provisions of this act and  
35 any other act, the provisions of this act shall govern.

1        NEW SECTION.   **Sec. 7.**  If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.   **Sec. 8.**  This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 immediately.

--- END ---