
SENATE BILL 5393

State of Washington 60th Legislature 2007 Regular Session

By Senators Kline, Poulsen, Pridemore, Rockefeller and Kohl-Welles

Read first time 01/18/2007. Referred to Committee on Water, Energy & Telecommunications.

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.

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