H-3835.1

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**HOUSE BILL 2429**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Duerr, Kloba, Ramel, Fitzgibbon, Gregerson, Peterson, Macri, and Pollet

AN ACT Relating to certain expanded polystyrene products; reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new chapter to Title 70 RCW; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(3) "Expanded polystyrene cooler" means a portable container used for cold storage made of expanded polystyrene, except for expanded polystyrene containers used for drugs or medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.).

(4)(a) "Expanded polystyrene food service products" includes food containers, plates, clamshell-style containers, hot and cold beverage cups, meat and vegetable trays, egg cartons, products used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption, and other products made of expanded polystyrene and used for selling or providing food and beverages for consumption on or off the premises.

(b) "Expanded polystyrene food service product" does not include: (i) Prepackaged soup or other food that a food service establishment sells or otherwise provides to its customers in expanded polystyrene containers that have been filled and sealed before receipt by the food service establishment; and (ii) food that has been filled and sealed in expanded polystyrene containers outside of the state before receipt by the food service establishment.

(5) "Food packager" means any person located in Washington who places meat, fish, eggs, bakery products, or other food in packaging materials, for the purpose of retail sale of those products.

(6) "Food service establishment" means establishments that provide, serve, or deliver food, beverages, or prepared food for consumption including establishments:

(a) With the primary business purpose of serving food to be consumed on the premises or providing prepared meals or other food or beverage items that a consumer purchases and intends to eat elsewhere, including home delivery; or

(b) That serve food, beverages, and prepackaged food and beverages: (i) Via a drive through; (ii) in a packaged form for takeout or takeaway; or (iii) from food trucks, stands, or kiosks that may or may not provide shelter or seating for consumers.

(7) "Local health jurisdiction" or "jurisdictional health department" means an administrative agency organized under chapter 70.05 RCW, a health district organized under chapter 70.46 RCW, or a combined city-county health department organized under chapter 70.08 RCW that administers public health and safety regulations and codes, including food safety and restaurant inspections.

(8) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces expanded polystyrene food service products, polystyrene packaging materials, or expanded polystyrene coolers.

(9) "Polystyrene packaging material" means void-filling packaging products made of expanded polystyrene, including rigid and loose fill packaging material, also referred to as packing peanuts.

NEW SECTION. **Sec.**  Beginning January 1, 2022, the manufacture, sale, and distribution of expanded polystyrene food service products, expanded polystyrene packaging material, and expanded polystyrene coolers in or into the state is prohibited. Packages sent into the state filled with expanded polystyrene packaging material are exempt from this section.

NEW SECTION. **Sec.**  Beginning July 1, 2022:

(1) Except as provided for in subsection (2) of this section, food service establishments in the state may not sell or provide expanded polystyrene food service products to a customer, or serve food or beverages for consumption on or off the premises using expanded polystyrene food service products.

(2) Beginning January 1, 2025, food packagers in the state and food service establishments may not package raw, uncooked, or butchered meat, fish, poultry, or seafood in expanded polystyrene food service products.

(3) The department may grant a waiver to a food service establishment from the restrictions established in subsections (1) and (2) of this section, for a period of up to one year, if the department determines that achieving compliance would present an undue hardship or practical difficulty not generally applicable to other food service establishments in similar circumstances.

NEW SECTION. **Sec.**  (1)(a) An owner or operator of a food service establishment or food packager violating the provisions of section 3 of this act must be provided a notice of violation for the first and second violation of section 3 of this act.

(b) For the third and subsequent violations of section 3 of this act, an owner or operator of a food service establishment or food packager is subject to a civil penalty of two hundred fifty dollars for each day.

(2) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

NEW SECTION. **Sec.**  (1) The department must enforce this act through notification and information regarding the prohibition on expanded polystyrene food service products provided to manufacturers, distributors, food service establishments, food packagers, interested parties, local solid waste and sustainability programs, and local health jurisdictions. The department must:

(a) Prepare and distribute information regarding the prohibitions on the use of expanded polystyrene to manufacturers, distributors, food service establishments, food packagers, and local health jurisdictions;

(b) Provide to local health jurisdictions information and notice to inform food service establishments and their customers about the requirements of this chapter;

(c) Establish an internet-based forum to receive complaints regarding violations of this chapter; and

(d) Develop and provide outreach and educational resources for the state's diverse ethnic populations, through translated and culturally appropriate materials, and targeted outreach in appropriate languages.

(2) A local health jurisdiction conducting inspections of food service establishments must ensure the notice:

(a) And information provided by the department regarding the restrictions on the use of expanded polystyrene food service products are received by inspected food service establishments; and

(b) Regarding the restrictions on the use of expanded polystyrene food service products and information regarding the complaint forum is posted in a conspicuous area in food service establishments.

NEW SECTION. **Sec.**  Beginning July 1, 2022:

(1) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter must recall the product and reimburse the retailer or any other purchaser for the product.

(2) A manufacturer of products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70.105D.190.

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, sections 2 and 3 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, sections 2 and 3 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

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(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

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(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Section 7 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  Section 8 of this act takes effect June 30, 2021.

**--- END ---**