
SENATE BILL 6123

State of Washington

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By Senators Fraser, Deccio, Amondson, Loveland, Snyder, Sellar, Skratek, Pelz and Winsley

Read first time 01/13/94. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to authority of the state under the model toxics
2 control act; amending RCW 70.105D.010, 70.105D.020, and 70.105D.030;
3 adding a new section to chapter 70.105D RCW; and adding a new section
4 to chapter 70.105 RCW.

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

6 **Sec. 1.** RCW 70.105D.010 and 1989 c 2 s 1 are each amended to read
7 as follows:

8 (1) Each person has a fundamental and inalienable right to a
9 healthful environment, and each person has a responsibility to preserve
10 and enhance that right. The beneficial stewardship of the land, air,
11 and waters of the state is a solemn obligation of the present
12 generation for the benefit of future generations.

13 (2) A healthful environment is now threatened by the irresponsible
14 use and disposal of hazardous substances. There are hundreds of
15 hazardous waste sites in this state, and more will be created if
16 current waste practices continue. Hazardous waste sites threaten the
17 state's water resources, including those used for public drinking
18 water. Many of our municipal landfills are current or potential
19 hazardous waste sites and present serious threats to human health and

1 environment. The costs of eliminating these threats in many cases are
2 beyond the financial means of our local governments and ratepayers.
3 The main purpose of this act is to raise sufficient funds to clean up
4 all hazardous waste sites and to prevent the creation of future hazards
5 due to improper disposal of toxic wastes into the state's land and
6 waters.

7 (3) Many farmers and small business owners who have followed the
8 law with respect to their uses of pesticides and other chemicals
9 nonetheless may face devastating economic consequences because their
10 uses have contaminated the environment or the water supplies of their
11 neighbors. With a source of funds, the state may assist these farmers
12 and business owners, as well as those persons who sustain damages, such
13 as the loss of their drinking water supplies, as a result of the
14 contamination.

15 (4) It is in the public's interest to efficiently use our finite
16 land base, to integrate our land use planning policies with our clean-
17 up policies, and to clean up and reuse contaminated industrial
18 properties in order to minimize industrial development pressures on
19 undeveloped land.

20 (5) Because it is often difficult or impossible to allocate
21 responsibility among persons liable for hazardous waste sites and
22 because it is essential that sites be cleaned up well and
23 expeditiously, each responsible person should be liable jointly and
24 severally.

25 **Sec. 2.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
26 as follows:

27 (1) "Agreed order" means an order issued by the department under
28 this chapter that the potentially liable person receiving the order
29 agrees to comply with. An agreed order may be used to require a
30 remedial action but it is not a settlement under RCW 70.105D.040(4) and
31 may not contain a covenant not to sue, or provide protection from
32 claims for contribution, or provide eligibility for public funding of
33 remedial actions under RCW 70.105D.070(2)(d)(xi).

34 (2) "Department" means the department of ecology.

35 ((+2)) (3) "Director" means the director of ecology or the
36 director's designee.

37 ((+3)) (4) "Facility" means (a) any building, structure,
38 installation, equipment, pipe or pipeline (including any pipe into a

1 sewer or publicly owned treatment works), well, pit, pond, lagoon,
2 impoundment, ditch, landfill, storage container, motor vehicle, rolling
3 stock, vessel, or aircraft, or (b) any site or area where a hazardous
4 substance, other than a consumer product in consumer use, has been
5 deposited, stored, disposed of, or placed, or otherwise come to be
6 located.

7 ~~((4))~~ (5) "Federal cleanup law" means the federal comprehensive
8 environmental response, compensation, and liability act of 1980, 42
9 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

10 ~~((5))~~ (6) "Hazardous substance" means:

11 (a) Any dangerous or extremely hazardous waste as defined in RCW
12 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
13 designated by rule pursuant to chapter 70.105 RCW;

14 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
15 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

16 (c) Any substance that, on March 1, 1989, is a hazardous substance
17 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
18 9601(14);

19 (d) Petroleum or petroleum products; and

20 (e) Any substance or category of substances, including solid waste
21 decomposition products, determined by the director by rule to present
22 a threat to human health or the environment if released into the
23 environment.

24 The term hazardous substance does not include any of the following
25 when contained in an underground storage tank from which there is not
26 a release: Crude oil or any fraction thereof or petroleum, if the tank
27 is in compliance with all applicable federal, state, and local law.

28 ~~((6))~~ (7) "Owner or operator" means:

29 (a) Any person with any ownership interest in the facility or who
30 exercises any control over the facility; or

31 (b) In the case of an abandoned facility, any person who had owned,
32 or operated, or exercised control over the facility any time before its
33 abandonment;

34 The term does not include:

35 (i) An agency of the state or unit of local government which
36 acquired ownership or control involuntarily through bankruptcy, tax
37 delinquency, abandonment, or circumstances in which the government
38 involuntarily acquires title. This exclusion does not apply to an
39 agency of the state or unit of local government which has caused or

1 contributed to the release or threatened release of a hazardous
2 substance from the facility; or

3 (ii) A person who, without participating in the management of a
4 facility, holds indicia of ownership primarily to protect the person's
5 security interest in the facility.

6 ~~((+7))~~ (8) "Person" means an individual, firm, corporation,
7 association, partnership, consortium, joint venture, commercial entity,
8 state government agency, unit of local government, federal government
9 agency, or Indian tribe.

10 ~~((+8))~~ (9) "Potentially liable person" means any person whom the
11 department finds, based on credible evidence, to be liable under RCW
12 70.105D.040. The department shall give notice to any such person and
13 allow an opportunity for comment before making the finding, unless an
14 emergency requires otherwise.

15 ~~((+9))~~ (10) "Public notice" means, at a minimum, adequate notice
16 mailed to all persons who have made timely request of the department
17 and to persons residing in the potentially affected vicinity of the
18 proposed action; mailed to appropriate news media; published in the
19 newspaper of largest circulation in the city or county of the proposed
20 action; and opportunity for interested persons to comment.

21 ~~((+10))~~ (11) "Release" means any intentional or unintentional
22 entry of any hazardous substance into the environment, including but
23 not limited to the abandonment or disposal of containers of hazardous
24 substances.

25 ~~((+11))~~ (12) "Remedy" or "remedial action" means any action or
26 expenditure consistent with the purposes of this chapter to identify,
27 eliminate, or minimize any threat or potential threat posed by
28 hazardous substances to human health or the environment including any
29 investigative and monitoring activities with respect to any release or
30 threatened release of a hazardous substance and any health assessments
31 or health effects studies conducted in order to determine the risk or
32 potential risk to human health.

33 (13) "Industrial properties" means properties zoned as
34 manufacturing or industrial areas through a local comprehensive land
35 use planning process and that are marked by traditional industrial
36 activities such as processing and manufacturing of materials, marine
37 terminal and transportation areas, processing, fabrication, assembly,
38 treatment or distribution of manufactured products, and storage of bulk
39 materials.

1 **Sec. 3.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
2 as follows:

3 (1) The department may exercise the following powers in addition to
4 any other powers granted by law:

5 (a) Investigate, provide for investigating, or require potentially
6 liable persons to investigate any releases or threatened releases of
7 hazardous substances, including but not limited to inspecting,
8 sampling, or testing to determine the nature or extent of any release
9 or threatened release. If there is a reasonable basis to believe that
10 a release or threatened release of a hazardous substance may exist, the
11 department's authorized employees, agents, or contractors may enter
12 upon any property and conduct investigations. The department shall
13 give reasonable notice before entering property unless an emergency
14 prevents such notice. The department may by subpoena require the
15 attendance or testimony of witnesses and the production of documents or
16 other information that the department deems necessary;

17 (b) Conduct, provide for conducting, or require potentially liable
18 persons to conduct remedial actions (including investigations under (a)
19 of this subsection) to remedy releases or threatened releases of
20 hazardous substances. In carrying out such powers, the department's
21 authorized employees, agents, or contractors may enter upon property.
22 The department shall give reasonable notice before entering property
23 unless an emergency prevents such notice. In conducting, providing for,
24 or requiring remedial action, the department shall give preference to
25 permanent solutions to the maximum extent practicable and shall provide
26 for or require adequate monitoring to ensure the effectiveness of the
27 remedial action;

28 (c) Indemnify contractors retained by the department for carrying
29 out investigations and remedial actions, but not for any contractor's
30 reckless or wilful misconduct;

31 (d) Carry out all state programs authorized under the federal
32 cleanup law and the federal resource, conservation, and recovery act,
33 42 U.S.C. Sec. 6901 et seq., as amended;

34 (e) Classify substances as hazardous substances for purposes of RCW
35 70.105D.020(~~(+5)~~) (6) and classify substances and products as
36 hazardous substances for purposes of RCW 82.21.020(1); (~~and~~)

37 (f) Enter into consent decrees or agreed orders that include deed
38 restrictions ensuring exclusive industrial use at properties where
39 industrial clean-up standards are employed; and

1 (g) Take any other actions necessary to carry out the provisions of
2 this chapter, including the power to adopt rules under chapter 34.05
3 RCW.

4 (2) The department shall immediately implement all provisions of
5 this chapter to the maximum extent practicable, including investigative
6 and remedial actions where appropriate. The department(~~(, within nine~~
7 ~~months after March 1, 1989,)~~) shall adopt, and thereafter enforce,
8 rules under chapter 34.05 RCW to:

9 (a) Provide for public participation, including at least (i) the
10 establishment of regional citizen's advisory committees, (ii) public
11 notice of the development of investigative plans or remedial plans for
12 releases or threatened releases, and (iii) concurrent public notice of
13 all compliance orders, enforcement orders, or notices of violation;

14 (b) Establish a hazard ranking system for hazardous waste sites;

15 (c) Establish reasonable deadlines not to exceed ninety days for
16 initiating an investigation of a hazardous waste site after the
17 department receives information that the site may pose a threat to
18 human health or the environment and other reasonable deadlines for
19 remedying releases or threatened releases at the site; ~~((and))~~

20 (d) Publish and periodically update minimum cleanup standards for
21 remedial actions at least as stringent as the cleanup standards under
22 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
23 least as stringent as all applicable state and federal laws, including
24 health-based standards under state and federal law; and

25 (e) Provide for the application of industrial clean-up standards at
26 industrial properties, and adopt rules that prohibit industrial
27 properties where these standards have been applied from being converted
28 to other uses unless additional remedial actions are conducted to
29 address the new uses of the property. These standards may not be
30 applied to industrial properties where hazardous substances remaining
31 at the property after remedial action pose a threat to human health and
32 the environment in nonindustrial adjacent areas.

33 (3) Before November 1st of each even-numbered year, the department
34 shall develop, with public notice and hearing, and submit to the ways
35 and means and appropriate standing environmental committees of the
36 senate and house of representatives a ranked list of projects and
37 expenditures recommended for appropriation from both the state and
38 local toxics control accounts. The department shall also provide the
39 legislature and the public each year with an accounting of the

1 department's activities supported by appropriations from the state
2 toxics control account, including a list of known hazardous waste sites
3 and their hazard rankings, actions taken and planned at each site, how
4 the department is meeting its top two management priorities under RCW
5 70.105.150, and all funds expended under this chapter.

6 (4) The department shall establish a scientific advisory board to
7 render advice to the department with respect to the hazard ranking
8 system, cleanup standards, remedial actions, deadlines for remedial
9 actions, monitoring, the classification of substances as hazardous
10 substances for purposes of RCW 70.105D.020(~~(+5)~~) (6) and the
11 classification of substances or products as hazardous substances for
12 purposes of RCW 82.21.020(1). The board shall consist of five
13 independent members to serve staggered three-year terms. No members
14 may be employees of the department. Members shall be reimbursed for
15 travel expenses as provided in RCW 43.03.050 and 43.03.060.

16 (5) The department shall establish a program to identify potential
17 hazardous waste sites and to encourage persons to provide information
18 about hazardous waste sites.

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

21 (1) In addition to any settlement powers granted to the state
22 through RCW 70.105D.040(4), the attorney general may also enter into
23 prospective purchaser settlements with persons not currently liable for
24 remedial action at a facility who propose to purchase, redevelop, or
25 reuse a facility, including a vacant or abandoned manufacturing or
26 industrial facility, provided that:

27 (a) The settlement is in the public interest;

28 (b) The settlement will provide a plan for the clean up of the
29 facility and yield substantial new resources to facilitate cleanup;

30 (c) The settlement will expedite remedial action consistent with
31 the rules adopted under this chapter; and

32 (d) Based on available information, the department determines that
33 the redevelopment or reuse of the facility is not likely to contribute
34 to the existing release or threatened release, interfere with remedial
35 actions that may be needed at the site, or increase health risks to
36 persons at or in the vicinity of the site.

1 (2) This settlement may be assigned or transferred provided that
2 the assignee or transferee is not already liable for any release or
3 threatened release at the facility.

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

6 No solid waste generated at a site pursuant to an agreed order or
7 consent decree under chapter 70.105D RCW shall be subject to
8 designation as a dangerous waste or extremely hazardous waste under
9 this chapter, provided that:

10 (1) Solid wastes that qualify as hazardous waste under federal law
11 shall still be designated as either dangerous waste or extremely
12 hazardous waste;

13 (2) With respect to solid wastes removed from a site, this
14 exclusion shall only apply to solid wastes disposed of at a facility
15 designated in the consent decree, order, or agreed order, or for
16 department-conducted actions at a site chosen by the department.

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