
HOUSE BILL 1106

State of Washington

54th Legislature

1995 Regular Session

By Representatives Reams, Rust, Goldsmith, Kremen, Wolfe, R. Fisher, Chopp and Scott; by request of Governor Lowry

Read first time 01/12/95. Referred to Committee on Government Operations.

1 AN ACT Relating to voluntary compliance with agency rules
2 consistent with the recommendations of the governor's task force on
3 regulatory reform; amending RCW 18.104.155, 49.17.180, 70.94.431,
4 70.105.080, 70.132.050, 70.138.040, 86.16.081, 90.03.600, 90.48.144,
5 90.58.210, 90.58.560, and 90.76.080; adding a new chapter to Title 43
6 RCW; and creating new sections.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that, due to the
9 volume and complexity of laws and rules it is appropriate for
10 regulatory agencies to adopt programs and policies that encourage
11 voluntary compliance by those affected by specific rules. The
12 legislature recognizes that a cooperative partnership between agencies
13 and regulated parties that emphasizes education and assistance before
14 the imposition of penalties will achieve greater compliance with laws
15 and rules and that most individuals and businesses who are subject to
16 regulation will attempt to comply with the law, particularly if they
17 are given sufficient information. In this context, enforcement should
18 assure that the majority of a regulated community that complies with
19 the law are not placed at a competitive disadvantage and that a

1 continuing failure to comply that is within the control of a party who
2 has received technical assistance is considered by an agency when it
3 determines the amount of any civil penalty that is issued.

4 NEW SECTION. **Sec. 2.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Civil penalty" means a monetary penalty administratively
8 issued by a regulatory agency for noncompliance with state or federal
9 law or rules. The term does not include any criminal penalty, damage
10 assessments, wages, premiums, or taxes owed, or interest or late fees
11 on any existing obligation.

12 (2) "Regulatory agency" means an agency as defined in RCW 34.05.010
13 that has the authority to issue civil penalties. The term does not
14 include the state patrol or any institution of higher education as
15 defined in RCW 28B.10.016.

16 (3) "Technical assistance" includes:

17 (a) Information on the laws, rules, and compliance methods and
18 technologies applicable to the regulatory agency's programs;

19 (b) Information on methods to avoid compliance problems;

20 (c) Assistance in applying for permits; and

21 (d) Information on the mission, goals, and objectives of the
22 program.

23 NEW SECTION. **Sec. 3.** All regulatory agencies shall develop
24 programs to encourage voluntary compliance by providing technical
25 assistance consistent with statutory requirements and the limits of the
26 agency's budget. The programs shall include but are not limited to
27 technical assistance visits.

28 NEW SECTION. **Sec. 4.** (1) For the purposes of this chapter, a
29 technical assistance visit is a visit by a regulatory agency to a
30 facility, business, or other location that:

31 (a) Has been requested or is voluntarily accepted; and

32 (b) Is declared by the regulatory agency at the beginning of the
33 visit to be a technical assistance visit.

34 (2) A technical assistance visit also includes a consultative visit
35 pursuant to RCW 49.17.250.

1 (3) During a technical assistance visit, or within a reasonable
2 time thereafter, a regulatory agency shall inform the owner or operator
3 of the facility of any violations of law or agency rules identified by
4 the agency and provide technical assistance concerning compliance.

5 NEW SECTION. **Sec. 5.** The owner and operator shall be given a
6 reasonable period of time to correct violations identified during a
7 technical assistance visit before any civil penalty provided for by law
8 is imposed for those violations. A regulatory agency may revisit a
9 facility, business, or other location after a technical assistance
10 visit and a reasonable period of time has passed to correct violations
11 identified by the agency in writing and issue civil penalties as
12 provided for by law for any uncorrected violations.

13 NEW SECTION. **Sec. 6.** A regulatory agency that observes a
14 violation during a technical assistance visit may issue a civil penalty
15 as provided for by law if: (1) The individual or business has
16 previously been subject to an enforcement action for the same or
17 similar type of violation of the same statute or rule or has been given
18 previous notice of the same or similar type of violation of the same
19 statute or rule; or (2) the issue involves sales taxes due to the state
20 and the individual or business is not remitting previously collected
21 sales taxes to the state; or (3) the violation has a probability of
22 placing a person in danger of death or bodily harm, has a probability
23 of causing more than minor environmental harm, or has a probability of
24 causing physical damage to the property of another in an amount
25 exceeding one thousand dollars.

26 NEW SECTION. **Sec. 7.** (1) If in the course of any site inspection
27 or visit that is not a technical assistance visit, the department of
28 ecology becomes aware of conditions that are not in compliance with
29 applicable laws and rules enforced by the department and are not
30 subject to civil penalties as provided for in section 8 of this act,
31 the department may issue a notice of correction to the responsible
32 party that shall include:

33 (a) A description of the condition that is not in compliance and a
34 specific citation to the applicable law or rule;

35 (b) A statement of what is required to achieve compliance;

1 (c) The date by which the department requires compliance to be
2 achieved;

3 (d) Notice of the means to contact any technical assistance
4 services provided by the department or others; and

5 (e) Notice of when, where, and to whom a request to extend the time
6 to achieve compliance for good cause may be filed with the department.

7 (2) A notice of correction is not a formal enforcement action, is
8 not subject to appeal, and is a public record.

9 (3) If the department issues a notice of correction, it shall not
10 issue a civil penalty for the violations identified in the notice of
11 correction unless the responsible party fails to comply with the
12 notice.

13 NEW SECTION. **Sec. 8.** The department of ecology may issue a civil
14 penalty provided for by law without first issuing a notice of
15 correction if: (1) The person has previously been subject to an
16 enforcement action for the same or similar type of violation of the
17 same statute or rule or has been given previous notice of the same or
18 similar type of violation of the same statute or rule; or (2)
19 compliance is not achieved by the date established by the department in
20 a previously issued notice of correction, if the department has
21 responded to any request for review of such date by reaffirming the
22 original date or establishing a new date; or (3) the violation has a
23 probability of placing a person in danger of death or bodily harm, has
24 a probability of causing more than minor environmental harm, or has a
25 probability of causing physical damage to the property of another in an
26 amount exceeding one thousand dollars.

27 NEW SECTION. **Sec. 9.** The provisions of sections 7 and 8 of this
28 act affecting civil penalties issued by the department of ecology shall
29 not apply to civil penalties for negligent discharge of oil as
30 authorized under RCW 90.56.330 or to civil penalties as authorized
31 under RCW 90.03.600 for unlawful use of water in violation of RCW
32 90.03.250 or 90.44.050.

33 NEW SECTION. **Sec. 10.** (1) Following a consultative visit pursuant
34 to RCW 49.17.250, the department of labor and industries shall issue a
35 report to the employer that the employer shall make available to its
36 employees. The report shall contain:

1 (a) A description of the condition that is not in compliance and a
2 specific citation to the applicable law or rule;

3 (b) A statement of what is required to achieve compliance;

4 (c) The date by which the department requires compliance to be
5 achieved;

6 (d) Notice of means to contact technical assistance services
7 provided by the department; and

8 (e) Notice of when, where, and to whom a request to extend the time
9 to achieve compliance for good cause may be filed with the department.

10 (2) Following a compliance inspection pursuant to RCW 49.17.120,
11 the department of labor and industries shall issue a citation for
12 violations of industrial safety and health standards. The citation
13 shall not assess a penalty if the violations:

14 (a) Are determined not to be of a serious nature;

15 (b) Have not been previously cited;

16 (c) Are not willful; and

17 (d) Do not have a mandatory penalty under chapter 49.17 RCW.

18 NEW SECTION. **Sec. 11.** The date for compliance established by the
19 department of ecology or the department of labor and industries
20 pursuant to section 7 or 10 of this act respectively shall provide for
21 a reasonable time to achieve compliance. Any person receiving a notice
22 of correction pursuant to section 7 of this act or a report or citation
23 pursuant to section 10 of this act may request an extension of time to
24 achieve compliance for good cause from the issuing department.
25 Requests shall be submitted to the issuing department and responded to
26 by the issuing department in writing in accordance with procedures
27 specified by the issuing department in the notice, report, or citation.

28 NEW SECTION. **Sec. 12.** The departments of revenue and labor and
29 industries and the employment security department shall undertake an
30 educational program directed at those who have the most difficulty in
31 determining their tax or premium liability. The departments may rely
32 on information from internal data, trade associations, and businesses
33 to determine which entities should be selected. The educational
34 programs may include, but not be limited to, targeted informational
35 fact sheets, self-audits, or workshops, and may be presented
36 individually by the agency or in conjunction with other agencies.

1 NEW SECTION. **Sec. 13.** The department of revenue, the department
2 of labor and industries in respect to its duties in Title 51 RCW, and
3 the employment security department shall develop and administer a pilot
4 voluntary audit program. Voluntary audits can be requested by
5 businesses from any of these agencies according to guidelines
6 established by each agency. No penalty assessments may be made against
7 participants in such a program except when the agency determines that
8 either a good faith effort has not been made by the taxpayer or premium
9 payer to comply with the law or that the taxpayer has failed to remit
10 previously collected sales taxes to the state. The persons conducting
11 the voluntary audit shall provide the business undergoing the voluntary
12 audit an audit report that describes errors or omissions found and
13 future reporting instructions. This program does not relieve a
14 business from past or future tax or premium obligations.

15 NEW SECTION. **Sec. 14.** The departments of revenue and labor and
16 industries and the employment security department shall each review the
17 penalties it issues related to taxes or premiums to determine if they
18 are consistent and provide for waivers in appropriate circumstances.
19 Each department shall report the results of its review to the
20 legislature no later than December 1, 1995.

21 NEW SECTION. **Sec. 15.** Nothing in this chapter obligates a
22 regulatory agency to conduct a technical assistance visit. The state
23 and officers or employees of the state shall not be liable for damages
24 to a person to the extent that liability is asserted to arise from
25 providing technical assistance, or if liability is asserted to arise
26 from the failure of the state or officers or employees of the state to
27 provide technical assistance. This chapter does not limit the
28 authority of any regulatory agency to take any enforcement action,
29 other than a civil penalty, authorized by law. This chapter shall not
30 limit a regulatory agency's authority to issue a civil penalty as
31 authorized by law based upon a person's failure to comply with specific
32 terms and conditions of any permit or license issued by the agency to
33 that person.

34 NEW SECTION. **Sec. 16.** Agency rules, guidelines, and procedures
35 necessary to implement this act shall be established and implemented
36 expeditiously and not later than July 1, 1996.

1 NEW SECTION. **Sec. 17.** If a regulatory agency determines any part
2 of this chapter to be in conflict with federal law or program
3 requirements, in conflict with federal requirements that are a
4 prescribed condition to the allocation of federal funds to the state,
5 or in conflict with the requirements for eligibility of employers in
6 this state for federal unemployment tax credits, the conflicting part
7 of this chapter shall be inoperative solely to the extent of the
8 conflict. Any rules under this chapter shall meet federal requirements
9 that are a necessary condition to the receipt of federal funds by the
10 state or the granting of federal unemployment tax credits to employers
11 in this state.

12 NEW SECTION. **Sec. 18.** If notified by responsible federal
13 officials of any conflict of this chapter with federal law or program
14 requirements or with federal requirements that are a prescribed
15 condition to the allocation of federal funds to the state, the
16 regulatory agency notified of the conflict shall actively seek to
17 resolve the conflict. If the agency determines that the conflict
18 cannot be resolved without loss of benefits or authority to the state,
19 the agency shall notify the governor, the president of the senate, and
20 the speaker of the house of representatives in writing within thirty
21 days of making that determination.

22 NEW SECTION. **Sec. 19.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 20.** (1) By January 31, 1996, and by January
27 31st of each even-numbered year thereafter, the office of financial
28 management, after consulting with state regulatory agencies, and
29 business, labor, and environmental organizations, shall report to the
30 governor and the legislature regarding the effects of this chapter on
31 the regulatory system in this state. The report shall document:

32 (a) Technical assistance, including but not limited to technical
33 assistance visits, provided by state regulatory agencies consistent
34 with this chapter;

35 (b) Any rules adopted, guidelines developed, or training conducted
36 to implement this chapter;

1 (c) Any changes in the appropriation, allocation, or expenditure of
2 regulatory agency resources to implement this chapter;

3 (d) Any legal action against state regulatory agencies for any
4 alleged failure to comply with this chapter, the costs to the state of
5 the action, and the result;

6 (e) The extent to which this chapter has resulted in either an
7 increase or decrease in regulatory agency use of civil penalties;

8 (f) The extent to which this chapter has contributed to any change
9 in voluntary compliance with state statutes or rules;

10 (g) The extent to which this chapter has improved the acceptability
11 or effectiveness of state regulatory procedures; and

12 (h) Any other information considered by the office of financial
13 management to be useful in evaluating the effect of this chapter.

14 (2) This section shall expire June 30, 2000.

15 **Sec. 21.** RCW 18.104.155 and 1993 c 387 s 21 are each amended to
16 read as follows:

17 (1) Except as provided in sections 7 through 9 of this act, the
18 department of ecology may assess a civil penalty for a violation of
19 this chapter or rules or orders of the department adopted or issued
20 pursuant to it.

21 (2) There shall be three categories of violations: Minor, serious,
22 and major.

23 (a) A minor violation is a violation that does not seriously
24 threaten public health, safety, and the environment. Minor violations
25 include, but are not limited to:

26 (i) Failure to submit completed start cards and well reports within
27 the required time;

28 (ii) Failure to submit variance requests before construction;

29 (iii) Failure to submit well construction fees;

30 (iv) Failure to place a well identification tag on a new well; and

31 (v) Minor or reparable construction problems.

32 (b) A serious violation is a violation that poses a critical or
33 serious threat to public health, safety, and the environment. Serious
34 violations include, but are not limited to:

35 (i) Improper well construction;

36 (ii) Intentional and improper location or siting of a well;

37 (iii) Construction of a well without a required permit;

38 (iv) Violation of decommissioning requirements;

1 (v) Repeated minor violations; or
2 (vi) Construction of a well by a person whose license has expired
3 or has been suspended for not more than ninety days.

4 (c) A major violation is the construction of a well by a person:

5 (i) Without a license; or

6 (ii) After the person's license has been suspended for more than
7 ninety days or revoked.

8 (3)(a) The penalty for a minor violation shall be not less than one
9 hundred dollars and not more than five hundred dollars. Before the
10 imposition of a penalty for a minor violation, the department may issue
11 an order of noncompliance to provide an opportunity for mitigation or
12 compliance.

13 (b) The penalty for a serious violation shall be not less than five
14 hundred dollars and not more than five thousand dollars.

15 (c) The penalty for a major violation shall be not less than five
16 thousand dollars and not more than ten thousand dollars.

17 (4) In determining the appropriate penalty under subsection (3) of
18 this section the department shall consider whether the person:

19 (a) Has demonstrated a general disregard for public health and
20 safety through the number and magnitude of the violations;

21 (b) Has demonstrated a disregard for the well construction laws or
22 rules in repeated or continuous violations; or

23 (c) Knew or reasonably should have known of circumstances that
24 resulted in the violation.

25 (5) Penalties provided for in this section shall be imposed
26 pursuant to RCW 43.21B.300. The department shall provide thirty days
27 written notice of a violation as provided in RCW 43.21B.300(3).

28 (6) For informational purposes, a copy of the notice of violation,
29 resulting from the improper construction of a well, that is sent to a
30 water well contractor or water well construction operator, shall also
31 be sent by the department to the well owner.

32 (7) Penalties collected by the department pursuant to this section
33 shall be deposited in the reclamation account established by chapter
34 89.16 RCW. Subject to legislative appropriation, the penalties may be
35 spent only for purposes related to the restoration and enhancement of
36 ground water resources in the state.

37 **Sec. 22.** RCW 49.17.180 and 1991 c 108 s 1 are each amended to read
38 as follows:

1 (1) Except as provided in section 10 of this act, any employer who
2 willfully or repeatedly violates the requirements of RCW 49.17.060, of
3 any safety or health standard promulgated under the authority of this
4 chapter, of any existing rule or regulation governing the conditions of
5 employment promulgated by the department, or of any order issued
6 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
7 civil penalty not to exceed seventy thousand dollars for each
8 violation. A minimum penalty of five thousand dollars shall be
9 assessed for a willful violation.

10 (2) Any employer who has received a citation for a serious
11 violation of the requirements of RCW 49.17.060, of any safety or health
12 standard promulgated under the authority of this chapter, of any
13 existing rule or regulation governing the conditions of employment
14 promulgated by the department, or of any order issued granting a
15 variance under RCW 49.17.080 or 49.17.090 as determined in accordance
16 with subsection (6) of this section, shall be assessed a civil penalty
17 not to exceed seven thousand dollars for each such violation.

18 (3) Any employer who has received a citation for a violation of the
19 requirements of RCW 49.17.060, of any safety or health standard
20 promulgated under this chapter, of any existing rule or regulation
21 governing the conditions of employment promulgated by the department,
22 or of any order issued granting a variance under RCW 49.17.080 or
23 49.17.090, where such violation is specifically determined not to be of
24 a serious nature as provided in subsection (6) of this section, may be
25 assessed a civil penalty not to exceed seven thousand dollars for each
26 such violation, unless such violation is determined to be de minimis.

27 (4) Any employer who fails to correct a violation for which a
28 citation has been issued under RCW 49.17.120 or 49.17.130 within the
29 period permitted for its correction, which period shall not begin to
30 run until the date of the final order of the board of industrial
31 insurance appeals in the case of any review proceedings under this
32 chapter initiated by the employer in good faith and not solely for
33 delay or avoidance of penalties, may be assessed a civil penalty of not
34 more than seven thousand dollars for each day during which such failure
35 or violation continues.

36 (5) Any employer who violates any of the posting requirements of
37 this chapter, or any of the posting requirements of rules promulgated
38 by the department pursuant to this chapter related to employee or
39 employee representative's rights to notice, including but not limited

1 to those employee rights to notice set forth in RCW 49.17.080,
2 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
3 be assessed a penalty not to exceed seven thousand dollars for each
4 such violation. Any employer who violates any of the posting
5 requirements for the posting of informational, educational, or training
6 materials under the authority of RCW 49.17.050(7), may be assessed a
7 penalty not to exceed seven thousand dollars for each such violation.

8 (6) For the purposes of this section, a serious violation shall be
9 deemed to exist in a work place if there is a substantial probability
10 that death or serious physical harm could result from a condition which
11 exists, or from one or more practices, means, methods, operations, or
12 processes which have been adopted or are in use in such work place,
13 unless the employer did not, and could not with the exercise of
14 reasonable diligence, know of the presence of the violation.

15 (7) The director, or his authorized representatives, shall have
16 authority to assess all civil penalties provided in this section,
17 giving due consideration to the appropriateness of the penalty with
18 respect to the number of affected employees of the employer being
19 charged, the gravity of the violation, the size of the employer's
20 business, the good faith of the employer, and the history of previous
21 violations.

22 (8) Civil penalties imposed under this chapter shall be paid to the
23 director for deposit in the supplemental pension fund established by
24 RCW 51.44.033. Civil penalties may be recovered in a civil action in
25 the name of the department brought in the superior court of the county
26 where the violation is alleged to have occurred, or the department may
27 utilize the procedures for collection of civil penalties as set forth
28 in RCW 51.48.120 through 51.48.150.

29 **Sec. 23.** RCW 70.94.431 and 1991 c 199 s 311 are each amended to
30 read as follows:

31 (1) Except as provided in sections 7 through 9 of this act, and in
32 addition to or as an alternate to any other penalty provided by law,
33 any person who violates any of the provisions of chapter 70.94 RCW,
34 chapter 70.120 RCW, or any of the rules in force under such chapters
35 may incur a civil penalty in an amount not to exceed ten thousand
36 dollars per day for each violation. Each such violation shall be a
37 separate and distinct offense, and in case of a continuing violation,
38 each day's continuance shall be a separate and distinct violation.

1 Any person who fails to take action as specified by an order issued
2 pursuant to this chapter shall be liable for a civil penalty of not
3 more than ten thousand dollars for each day of continued noncompliance.

4 (2) Penalties incurred but not paid shall accrue interest,
5 beginning on the ninety-first day following the date that the penalty
6 becomes due and payable, at the highest rate allowed by RCW 19.52.020
7 on the date that the penalty becomes due and payable. If violations or
8 penalties are appealed, interest shall not begin to accrue until the
9 thirty-first day following final resolution of the appeal.

10 The maximum penalty amounts established in this section may be
11 increased annually to account for inflation as determined by the state
12 office of the economic and revenue forecast council.

13 (3) Each act of commission or omission which procures, aids or
14 abets in the violation shall be considered a violation under the
15 provisions of this section and subject to the same penalty. The
16 penalties provided in this section shall be imposed pursuant to RCW
17 43.21B.300.

18 (4) All penalties recovered under this section by the department
19 shall be paid into the state treasury and credited to the air pollution
20 control account established in RCW 70.94.015 or, if recovered by the
21 authority, shall be paid into the treasury of the authority and
22 credited to its funds. If a prior penalty for the same violation has
23 been paid to a local authority, the penalty imposed by the department
24 under subsection (1) of this section shall be reduced by the amount of
25 the payment.

26 (5) To secure the penalty incurred under this section, the state or
27 the authority shall have a lien on any vessel used or operated in
28 violation of this chapter which shall be enforced as provided in RCW
29 60.36.050.

30 (6) Public or private entities that are recipients or potential
31 recipients of department grants, whether for air quality related
32 activities or not, may have such grants rescinded or withheld by the
33 department for failure to comply with provisions of this chapter.

34 (7) In addition to other penalties provided by this chapter,
35 persons knowingly under-reporting emissions or other information used
36 to set fees, or persons required to pay emission or permit fees who are
37 more than ninety days late with such payments may be subject to a
38 penalty equal to three times the amount of the original fee owed.

1 (8) By January 1, 1992, the department shall develop rules for
2 excusing excess emissions from enforcement action if such excess
3 emissions are unavoidable. The rules shall specify the criteria and
4 procedures for the department and local air authorities to determine
5 whether a period of excess emissions is excusable in accordance with
6 the state implementation plan.

7 **Sec. 24.** RCW 70.105.080 and 1987 c 109 s 12 are each amended to
8 read as follows:

9 (1) Except as provided in sections 7 through 9 of this act, every
10 person who fails to comply with any provision of this chapter or of the
11 rules adopted thereunder shall be subjected to a penalty in an amount
12 of not more than ten thousand dollars per day for every such violation.
13 Each and every such violation shall be a separate and distinct offense.
14 In case of continuing violation, every day's continuance shall be a
15 separate and distinct violation. Every person who, through an act of
16 commission or omission, procures, aids, or abets in the violation shall
17 be considered to have violated the provisions of this section and shall
18 be subject to the penalty herein provided.

19 (2) The penalty provided for in this section shall be imposed
20 pursuant to the procedures in RCW 43.21B.300.

21 **Sec. 25.** RCW 70.132.050 and 1982 c 113 s 5 are each amended to
22 read as follows:

23 Except as provided in sections 7 through 9 of this act, any person
24 who violates any provision of this chapter or any rule adopted under
25 this chapter is subject to a civil penalty not exceeding five hundred
26 dollars for each violation. Each day of a continuing violation is a
27 separate violation.

28 **Sec. 26.** RCW 70.138.040 and 1987 c 528 s 4 are each amended to
29 read as follows:

30 (1) Except as provided in sections 7 through 9 of this act, any
31 person who violates any provision of a department regulation or
32 regulatory order relating to the management of special incinerator ash
33 shall incur in addition to any other penalty provided by law, a penalty
34 in an amount up to ten thousand dollars a day for every such violation.
35 Each and every such violation shall be a separate and distinct offense.
36 (~~If~~In) In case of continuing violation, every day's continuance

1 shall be a separate and distinct violation. Every person who, through
2 an act of commission or omission, procures, aids, or abets in the
3 violation shall be considered to have violated the provisions of this
4 section and shall be subject to the penalty herein provided.

5 (2) The penalty provided for in this section shall be imposed by a
6 notice in writing, either by certified mail with return receipt
7 requested or by personal service, to the person incurring the same from
8 the department, describing the violation with reasonable particularity.
9 Within fifteen days after the notice is received, the person incurring
10 the penalty may apply in writing to the department for the remission or
11 mitigation of such penalty. Upon receipt of the application, the
12 department may remit or mitigate the penalty upon whatever terms the
13 department in its discretion deems proper, giving consideration to the
14 degree of hazard associated with the violation, provided the department
15 deems such remission or mitigation to be in the best interests of
16 carrying out the purposes of this chapter. The department shall have
17 authority to ascertain the facts regarding all such applications in
18 such reasonable manner and under such rules as it may deem proper.

19 (3) Any penalty imposed by this section shall become due and
20 payable thirty days after receipt of a notice imposing the same unless
21 application for remission or mitigation is made or petition for review
22 by the hearings board is filed. When such an application for remission
23 or mitigation is made, any penalty incurred pursuant to this section
24 shall become due and payable thirty days after receipt of notice
25 setting forth the disposition of such application.

26 (4) If the amount of any penalty is not paid to the department
27 within thirty days after it becomes due and payable, the attorney
28 general, upon the request of the director, shall bring an action in the
29 name of the state of Washington in the superior court of Thurston
30 county, or any county in which such violator may do business, to
31 recover such penalty. In all such actions, the procedure and rules of
32 evidence shall be the same as an ordinary civil action except as
33 otherwise provided in this chapter.

34 **Sec. 27.** RCW 86.16.081 and 1987 c 523 s 8 are each amended to read
35 as follows:

36 (1) Except as provided in sections 7 through 9 of this act, the
37 attorney general or the attorney for the local government shall bring

1 such injunctive, declaratory, or other actions as are necessary to
2 ensure compliance with this chapter.

3 (2) Any person who fails to comply with this chapter shall also be
4 subject to a civil penalty not to exceed one thousand dollars for each
5 violation. Each violation or each day of noncompliance shall
6 constitute a separate violation.

7 (3) The penalty provided for in this section shall be imposed by a
8 notice in writing, either by certified mail with return receipt
9 requested or by personal service, to the person incurring the same from
10 the department or local government, describing the violation with
11 reasonable particularity and ordering the act or acts constituting the
12 violation or violations to cease and desist or, in appropriate cases,
13 requiring necessary corrective action to be taken within a specific and
14 reasonable time.

15 (4) Any penalty imposed pursuant to this section by the department
16 shall be subject to review by the pollution control hearings board.
17 Any penalty imposed pursuant to this section by local government shall
18 be subject to review by the local government legislative authority.
19 Any penalty jointly imposed by the department and local government
20 shall be appealed to the pollution control hearings board.

21 **Sec. 28.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
22 read as follows:

23 Except as provided in sections 7 through 9 of this act, the power
24 is granted to the department of ecology to levy civil penalties of up
25 to one hundred dollars per day for violation of any of the provisions
26 of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules,
27 permits, and similar documents and regulatory orders of the department
28 of ecology adopted or issued pursuant to such chapters. The procedures
29 of RCW 90.48.144 shall be applicable to all phases of the levying of a
30 penalty as well as review and appeal of the same.

31 **Sec. 29.** RCW 90.48.144 and 1992 c 73 s 27 are each amended to read
32 as follows:

33 Except as provided in sections 7 through 9 of this act, every
34 person who:

35 (1) Violates the terms or conditions of a waste discharge permit
36 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

1 (2) Conducts a commercial or industrial operation or other point
2 source discharge operation without a waste discharge permit as required
3 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

4 (3) Violates the provisions of RCW 90.48.080, or other sections of
5 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
6 pursuant to either of those chapters, shall incur, in addition to any
7 other penalty as provided by law, a penalty in an amount of up to ten
8 thousand dollars a day for every such violation. Each and every such
9 violation shall be a separate and distinct offense, and in case of a
10 continuing violation, every day's continuance shall be and be deemed to
11 be a separate and distinct violation. Every act of commission or
12 omission which procures, aids or abets in the violation shall be
13 considered a violation under the provisions of this section and subject
14 to the penalty herein provided for. The penalty amount shall be set in
15 consideration of the previous history of the violator and the severity
16 of the violation's impact on public health and/or the environment in
17 addition to other relevant factors. The penalty herein provided for
18 shall be imposed pursuant to the procedures set forth in RCW
19 43.21B.300.

20 **Sec. 30.** RCW 90.58.210 and 1986 c 292 s 4 are each amended to read
21 as follows:

22 (1) Except as provided in sections 7 through 9 of this act, the
23 attorney general or the attorney for the local government shall bring
24 such injunctive, declaratory, or other actions as are necessary to
25 insure that no uses are made of the shorelines of the state in conflict
26 with the provisions and programs of this chapter, and to otherwise
27 enforce the provisions of this chapter.

28 (2) Any person who shall fail to conform to the terms of a permit
29 issued under this chapter or who shall undertake development on the
30 shorelines of the state without first obtaining any permit required
31 under this chapter shall also be subject to a civil penalty not to
32 exceed one thousand dollars for each violation. Each permit violation
33 or each day of continued development without a required permit shall
34 constitute a separate violation.

35 (3) The penalty provided for in this section shall be imposed by a
36 notice in writing, either by certified mail with return receipt
37 requested or by personal service, to the person incurring the same from
38 the department or local government, describing the violation with

1 reasonable particularity and ordering the act or acts constituting the
2 violation or violations to cease and desist or, in appropriate cases,
3 requiring necessary corrective action to be taken within a specific and
4 reasonable time.

5 (4) Within thirty days after the notice is received, the person
6 incurring the penalty may apply in writing to the department for
7 remission or mitigation of such penalty. Upon receipt of the
8 application, the department or local government may remit or mitigate
9 the penalty upon whatever terms the department or local government in
10 its discretion deems proper. Any penalty imposed pursuant to this
11 section by the department shall be subject to review by the shorelines
12 hearings board. Any penalty imposed pursuant to this section by local
13 government shall be subject to review by the local government
14 legislative authority. Any penalty jointly imposed by the department
15 and local government shall be appealed to the shorelines hearings
16 board.

17 **Sec. 31.** RCW 90.58.560 and 1983 c 138 s 2 are each amended to read
18 as follows:

19 (1) Except as provided in sections 7 through 9 of this act, a
20 person who violates RCW 90.58.550, or any rule adopted thereunder, is
21 subject to a penalty in an amount of up to five thousand dollars a day
22 for every such violation. Each and every such violation shall be a
23 separate and distinct offense, and in case of a continuing violation,
24 every day's continuance shall be and be deemed to be a separate and
25 distinct violation. Every act of commission or omission which
26 procures, aids or abets in the violation shall be considered a
27 violation under the provisions of this section and subject to the
28 penalty provided for in this section.

29 (2) The penalty shall be imposed by a notice in writing, either by
30 certified mail with return receipt requested or by personal service, to
31 the person incurring the penalty from the director or the director's
32 representative describing such violation with reasonable particularity.
33 The director or the director's representative may, upon written
34 application therefor received within fifteen days after notice imposing
35 any penalty is received by the person incurring the penalty, and when
36 deemed to carry out the purposes of this chapter, remit or mitigate any
37 penalty provided for in this section upon such terms as he or she deems
38 proper, and shall have authority to ascertain the facts upon all such

1 applications in such manner and under such regulations as he or she may
2 deem proper.

3 (3) Any person incurring any penalty under this section may appeal
4 the penalty to the hearings board as provided for in chapter 43.21B
5 RCW. Such appeals shall be filed within thirty days of receipt of
6 notice imposing any penalty unless an application for remission or
7 mitigation is made to the department. When an application for
8 remission or mitigation is made, such appeals shall be filed within
9 thirty days of receipt of notice from the director or the director's
10 representative setting forth the disposition of the application. Any
11 penalty imposed under this section shall become due and payable thirty
12 days after receipt of a notice imposing the same unless application for
13 remission or mitigation is made or an appeal is filed. When an
14 application for remission or mitigation is made, any penalty incurred
15 hereunder shall become due and payable thirty days after receipt of
16 notice setting forth the disposition of the application unless an
17 appeal is filed from such disposition. Whenever an appeal of any
18 penalty incurred under this section is filed, the penalty shall become
19 due and payable only upon completion of all review proceedings and the
20 issuance of a final order confirming the penalty in whole or in part.

21 (4) If the amount of any penalty is not paid to the department
22 within thirty days after it becomes due and payable, the attorney
23 general, upon the request of the director, shall bring an action in the
24 name of the state of Washington in the superior court of Thurston
25 county or of any county in which such violator may do business, to
26 recover such penalty. In all such actions the procedure and rules of
27 evidence shall be the same as an ordinary civil action except as
28 otherwise in this chapter provided. All penalties recovered under this
29 section shall be paid into the state treasury and credited to the
30 general fund.

31 **Sec. 32.** RCW 90.76.080 and 1989 c 346 s 9 are each amended to read
32 as follows:

33 (1) Except as provided in sections 7 through 9 of this act, a
34 person who fails to notify the department pursuant to tank notification
35 requirements or who submits false information is subject to a civil
36 penalty not to exceed five thousand dollars per violation.

1 (2) Except as provided in sections 7 through 9 of this act, a
2 person who violates this chapter is subject to a civil penalty not to
3 exceed five thousand dollars for each tank per day of violation.

4 NEW SECTION. Sec. 33. Sections 1 through 13, 15, 17, 18, and 20
5 of this act shall constitute a new chapter in Title 43 RCW.

--- END ---