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HOUSE BILL 1555

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State of Washington

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By Representatives McMorris, Foreman, Mastin, Chandler, Chappell, Koster, Boldt, Schoesler, Johnson, Honeyford, Clements, Regala, Basich, Hargrove, L. Thomas, Thompson, Delvin, Elliot, Goldsmith, McMahan, Mulliken, Fuhrman, Stevens and Lisk

Read first time 01/30/95. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to entry for the purposes of water pollution  
2 investigations on agricultural land; amending RCW 90.48.120; adding a  
3 new section to chapter 90.48 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is a need  
6 to establish a clear process for handling complaints regarding water  
7 quality from uses of agricultural land near waters of the state.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW  
9 to read as follows:

10 (1) In exercising its authority under RCW 90.48.090, in  
11 investigating conditions on private agricultural land, the department  
12 must comply with this section.

13 (2) The department shall have the authority to investigate  
14 conditions on private agricultural property relating to actions causing  
15 pollution of the waters of the state where:

16 (a) A complaint is received by the department from any person  
17 demonstrating cogent, site-specific scientific evidence that waters of  
18 the state are being polluted;

1 (b) The complaint is recorded and documented as to the person  
2 filing the complaint to the department, the time of any alleged  
3 pollution, and the persons standing as to the nuisance;

4 (c) The complaint gives the name, address, time of pollution, and  
5 cogent, site-specific scientific evidence that waters of the state are  
6 being polluted. This subsection (2)(c) shall apply to any department  
7 personnel or any other person filing a complaint with the department;  
8 and

9 (d) The department notifies, consults, and receives permission for  
10 entry from:

11 (i) The person against whom the complaint is made; and

12 (ii) The private property owner if that is a different person from  
13 the person in (d)(i) of this subsection.

14 (3) When the department has an agreement or permit with a person  
15 against whom a complaint is made, the department shall observe the  
16 provisions of the agreement or permit.

17 (4) Nothing in this chapter shall preclude the department from  
18 executing a valid search warrant for legal entry onto private property  
19 used for agricultural production to comply with the provisions of this  
20 section and RCW 90.48.120.

21 **Sec. 3.** RCW 90.48.120 and 1992 c 73 s 25 are each amended to read  
22 as follows:

23 (1) Whenever(~~(, in the opinion of)~~) the department(~~(,)~~) has cogent,  
24 site-specific scientific evidence that any person ((shall violate)) is  
25 violating or creates a substantial ((potential)) likelihood, as  
26 demonstrated by cogent, site-specific scientific evidence to violate  
27 the provisions of this chapter or chapter 90.56 RCW, or fails to  
28 control the polluting content of waste discharged or to be discharged  
29 into any waters of the state, the department shall notify such person  
30 of its determination by registered mail. Such determination shall not  
31 constitute an order or directive under RCW 43.21B.310. Within thirty  
32 days from the receipt of notice of such determination, such person  
33 shall file with the department a full report stating what steps have  
34 been and are being taken to control such waste or pollution or to  
35 otherwise comply with the determination of the department. Whereupon  
36 the department shall issue such order or directive as it deems  
37 appropriate under the circumstances, and shall notify such person  
38 thereof by registered mail.

1       (2) Whenever the department deems immediate action is necessary,  
2 after obtaining cogent, site-specific scientific evidence, to  
3 accomplish the purposes of this chapter or chapter 90.56 RCW, it may  
4 issue such order or directive, as appropriate under the circumstances,  
5 without first issuing a notice or determination pursuant to subsection  
6 (1) of this section. An order or directive issued pursuant to this  
7 subsection shall be served by registered mail or personally upon any  
8 person to whom it is directed.

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