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HOUSE BILL 2377

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State of Washington

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By Representatives Chandler, Chappell, Koster, Schoesler, Johnson, McMorris and Thompson

Read first time 01/10/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to promoting compliance with environmental laws;  
2 and adding a new chapter to Title 34 RCW.

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

4 NEW SECTION. **Sec. 1.** The purpose of this chapter is to enhance  
5 protection of human health and the environment by encouraging regulated  
6 entities to achieve and maintain compliance with environmental laws  
7 through voluntary measures to review compliance, report and remedy any  
8 violations that may be identified, and take measures to prevent future  
9 violations.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply  
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Agency" means a division of state or local government  
13 responsible for the enforcement of or compliance with environmental  
14 laws, other than a local prosecutor.

15 (2) "Compliance assurance review" means an evaluation, review or  
16 assessment of compliance with, or of potential liability arising from,  
17 environmental laws conducted by, or under the direction or with the  
18 consent of, an owner or operator of all or some portion of a facility,

1 regulated activity, or site. The review may include, but is not  
2 limited to, an environmental compliance audit, management system audit,  
3 contamination or remedial action assessment, evaluation based on  
4 private-sector national or international management or operational  
5 standards, or self-evaluation, or the day-to-day implementation of an  
6 environmental compliance assurance program.

7 (3) "Compliance assurance program" means a systematic process or  
8 program utilized at or with regard to a regulated facility or operation  
9 achieving, maintaining, or determining the status of compliance with  
10 environmental laws. Included are activities conducted under  
11 environmental compliance policies or procedures established by or for  
12 the regulated facility or operation and any established channels of  
13 employee reporting or disclosure.

14 (4) "Court" refers to a court of the state of Washington and to an  
15 administrative board or agency before which disputed matters may be  
16 adjudicated, including an environmental hearings board established  
17 under RCW 43.21B.010, 76.09.210, 90.58.170, and 75.20.130.

18 (5) "Data" means objective physical observations or measurements.

19 (6) "Environmental law," which must be construed broadly to fully  
20 implement the purposes of this chapter, means a law relating to  
21 environmental protection including, but not limited to: A federal and  
22 state statute; a municipal or other local environmental ordinance; a  
23 regulation, rule, or other form of requirement having the force of law  
24 implementing a requirement of an environmental statute or ordinance;  
25 and the terms and conditions of a permit, order, or schedule of  
26 compliance.

27 (7) "Document" means any form of record, to the full extent  
28 described by superior court civil rule 34.

29 (8) "Penalty" means an administrative or civil sanction imposed to  
30 punish a person for a violation of an environmental law, including an  
31 agency action to restrict a person from providing or receiving goods,  
32 materials, services, grants, or other benefits. "Penalty" does not  
33 mean a technical or remedial provision ordered by an agency.

34 (9) "Regulated entity" means any form of legal entity regulated  
35 under environmental law, including a trust, association, partnership,  
36 sole proprietorship, and governmental agencies and facilities.

37 NEW SECTION. **Sec. 3.** (1) Except as provided in subsections (2),  
38 (3), and (4) of this section, information developed in the course of a

1 voluntary compliance assurance review, and documents prepared as a part  
2 of or as a result of a voluntary compliance assurance review or  
3 program, are not admissible as evidence in a civil, criminal, or  
4 administrative proceeding.

5 (2) The exclusion of evidence described in this section does not  
6 apply to:

7 (a) Data or other information collected or prepared to comply with  
8 a legally mandated monitoring or sampling requirement prescribed by  
9 statute, regulation, permit, judicial, or administrative order or  
10 consent decree;

11 (b) Information obtained by observation, sampling, or monitoring by  
12 an agency;

13 (c) Data and other factual findings collected during the course of  
14 a voluntary compliance assurance review, but this exclusion does not  
15 include an analysis, interpretation, or discussion of the data or  
16 factual findings; or

17 (d) Information and documents developed in the course of a  
18 voluntary compliance review or program if the owner or operator does  
19 not take reasonable steps to remedy a violation within a reasonable  
20 period of time after identifying it as a violation.

21 (3) Notwithstanding subsection (1) of this section, information  
22 developed in the course of a voluntary compliance review, and documents  
23 prepared as a part of or as a result of a voluntary compliance  
24 assurance review or program, may be admitted in a civil, criminal, or  
25 administrative proceeding:

26 (a) To prove fraud by the regulated entity; or

27 (b) To prove an effort to obstruct a criminal investigation or  
28 prosecution.

29 (4) Notwithstanding subsection (1) of this section, information  
30 developed in the course of a voluntary compliance review, and documents  
31 prepared as a part of or as a result of a voluntary compliance  
32 assurance review or program, may be offered in evidence by or with the  
33 consent of the regulated entity that is the owner or operator of a  
34 facility at which a violation of an environmental law is alleged. If  
35 the evidence is offered by or with the consent of the owner or  
36 operator, other information or documents concerning the alleged  
37 violation may be offered in evidence by an opposing party for the  
38 following purposes:

39 (a) To prove feasibility of remedial measures;

- 1 (b) For impeachment; or  
2 (c) To controvert a position taken by the owner or operator.

3 NEW SECTION. **Sec. 4.** (1) If a regulated entity discloses, in  
4 accordance with section 5 of this act, a violation of an environmental  
5 law, that regulated entity may not be subject to administrative or  
6 civil penalties for the violation disclosed.

7 (2) An agency may not request or use information developed in the  
8 course of a voluntary compliance assurance review, or a document  
9 prepared as a part of or as a result of a voluntary compliance  
10 assurance review or program, as a part of routine inspections or to  
11 initiate a civil or criminal investigation of the regulated entity.

12 (3)(a) An agency may not request or recommend that a criminal  
13 charge be brought against a regulated entity if section 5 of this act  
14 is satisfied, if the violation does not demonstrate or involve:

15 (i) A prevalent management policy or practice that concealed or  
16 condoned a violation of environmental law; or

17 (ii) A high-level official's or manager's conscious involvement in  
18 or willful indifference to the violation.

19 (b) Notwithstanding (a) of this subsection, an agency may recommend  
20 or request prosecution of individual managers or employees for a  
21 substantial or egregious violation. Factors that indicate a  
22 substantial or egregious violation include: (i) A history of repeated  
23 violations; (ii) deliberate violation of an environmental law; (iii)  
24 concealed misconduct or falsified records; (iv) tampering with  
25 monitoring or control equipment; and (v) purposely ignoring an  
26 environmental regulatory requirement.

27 (4)(a) A regulated entity may qualify for additional incentives by  
28 implementing a compliance assurance program that meets the requirements  
29 of American National Standards Institute, ISO (International  
30 Organization for Standardization)-14000, or other recognized standard  
31 and includes provisions for pollution prevention and reduction.

32 (b) If a regulated entity has implemented a compliance assurance  
33 program under (a) of this subsection and achieved some measurable  
34 pollution prevention or reduction, an agency may reduce monitoring or  
35 reporting requirements to which the regulated entity is otherwise  
36 subject.

1        NEW SECTION.    **Sec. 5.** A regulated entity shall satisfy each of the  
2 following conditions:

3        (1) The regulated entity shall disclose the violation in writing to  
4 the responsible agency within a reasonable time after identifying the  
5 violation;

6        (2) The disclosure must result from a voluntary compliance  
7 assurance review or the operation of a compliance assurance program,  
8 and not through a legally mandated monitoring or sampling requirement  
9 prescribed by statute, regulation, permit, or judicial order or decree;

10       (3) The violation must be identified and disclosed before:

11       (a) The commencement of an agency inspection or investigation or  
12 the issuance of an agency request for information that would identify  
13 the violation;

14       (b) Notice of a citizen suit with respect to the violation;

15       (c) The filing of a complaint by a third party with respect to the  
16 violation; and

17       (d) Disclosure of the violation by a person other than a  
18 representative of the regulated entity;

19       (4) The regulated entity shall achieve compliance within sixty days  
20 of identifying the violation. If more than sixty days will be needed,  
21 the regulated entity shall propose a reasonable schedule of compliance;

22       (5) The regulated entity describes the steps taken, or to be taken,  
23 to prevent reoccurrence of the violation disclosed;

24       (6) The regulated entity cooperates with the agency to which the  
25 disclosure is made in connection with an investigation of the issues  
26 identified in the disclosure;

27       (7) The violation is not one that:

28       (a) Resulted in serious actual harm to human health or the  
29 environment, or presents an imminent and substantial endangerment to  
30 human health or the environment; or

31       (b) Is a violation of the specific terms of a judicial order or  
32 decree; and

33       (8) The violation is not part of a pattern of violations at the  
34 facility, or among facilities owned or operated by the regulated  
35 entity, that evidence disregard for environmental laws.

36       NEW SECTION.    **Sec. 6.** Nothing in this chapter shall limit, waive,  
37 or abrogate the scope or nature of a statutory or common law privilege,

1 including without limitation the attorney-client privilege and the work  
2 product doctrine.

3 NEW SECTION. **Sec. 7.** An agency may not adopt a rule or impose a  
4 condition that circumvents the purpose of this chapter.

5 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall  
6 constitute a new chapter in Title 34 RCW.

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