CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6203

Chapter 156, Laws of 1998

55th Legislature
1998 Regular Session

SOLID WASTE PERMITTING--REVISIONS

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 7, 1998
YEAS 42 NAYS 2

BRAD OWEN
President of the Senate

Passed by the House March 3, 1998
YEAS 80 NAYS 18

CLYDE BALLARD
Speaker of the House of Representatives

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6203 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O’CONNELL
Secretary

Approved March 25, 1998

March 25, 1998 - 4:42 p.m.

GARY LOCKE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to solid waste permitting; amending RCW 70.95.020, 70.95.170, 70.95.190, and 43.21B.110; adding new sections to chapter 70.95 RCW; and prescribing penalties.

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

Sec. 1. RCW 70.95.020 and 1985 c 345 s 2 are each amended to read as follows:

The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;
To provide technical and financial assistance to local
governments in the planning, development, and conduct of solid waste
handling programs;
(5) To encourage storage, proper disposal, and recycling of
discarded vehicle tires and to stimulate private recycling programs
throughout the state; and
(6) To encourage the development and operation of waste recycling
facilities and activities needed to accomplish the management priority
of waste recycling and to promote consistency in the permitting
requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be
encouraged to use the expertise of private industry and to contract
with private industry to the fullest extent possible to carry out solid
waste recovery and/or recycling programs.

NEW SECTION.  Sec. 2. A new section is added to chapter 70.95 RCW
to read as follows:
(1) The department may by rule exempt a solid waste from the
permitting requirements of this chapter for one or more beneficial
uses. In adopting such rules, the department shall specify both the
solid waste that is exempted from the permitting requirements and the
beneficial use or uses for which the solid waste is so exempted. The
department shall consider: (a) Whether the material will be
beneficially used or reused; and (b) whether the beneficial use or
reuse of the material will present threats to human health or the
environment.
(2) The department may also exempt a solid waste from the
permitting requirements of this chapter for one or more beneficial uses
by approving an application for such an exemption. The department
shall establish by rule procedures under which a person may apply to
the department for such an exemption. The rules shall establish
criteria for providing such an exemption, which shall include, but not
be limited to: (a) The material will be beneficially used or reused;
and (b) the beneficial use or reuse of the material will not present
threats to human health or the environment. Rules adopted under this
subsection shall identify the information that an application shall
contain. Persons seeking such an exemption shall apply to the
department under the procedures established by the rules adopted under
this subsection.
(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department’s decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department’s approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board’s review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department’s solid waste rules as they exist on the effective date of this section, which exemptions and determinations are recognized and confirmed subject to the department’s continuing authority to modify or revoke those exemptions or determinations by rule.

Sec. 3. RCW 70.95.170 and 1997 c 213 s 2 are each amended to read as follows:

Except as provided otherwise in section 5 or 6 of this act, after approval of the comprehensive solid waste plan by the department no
solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit ((from the jurisdictional health department)) pursuant to ((the provisions of)) RCW 70.95.180 or 70.95.190.

Sec. 4. RCW 70.95.190 and 1997 c 213 s 4 are each amended to read as follows:

(1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department’s operating expenses are paid.

NEW SECTION. Sec. 5. A new section is added to chapter 70.95 RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, the department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and

(b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

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(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department’s solid waste rules as they exist on the effective date of this section, which exemptions and determinations are recognized and confirmed subject to the department’s continuing authority to modify or revoke those exemptions or determinations by rule.

NEW SECTION. Sec. 6. A new section is added to chapter 70.95 RCW to read as follows:

(1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department’s waiving the requirement that a permit be issued for a facility under this chapter based on the
issuance of such other permits for the facility is the health department’s "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(3) If, before the effective date of this section, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules.

NEW SECTION. Sec. 7. A new section is added to chapter 70.95 RCW to read as follows:

The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with section 2 or 5 of this act who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day’s continuance shall be a separate and distinct violation.

Sec. 8. RCW 43.21B.110 and 1993 c 387 s 22 are each 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, the administrator of the office of marine safety, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.
(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

(c) 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, (or) 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 section 2 of this act.

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

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

(f) Any other decision by the department, the administrator of the office of marine safety, or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(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) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(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. 9. A new section is added to chapter 70.95 RCW to read as follows:

Nothing in chapter . . ., Laws of 1998 (this act) may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission.
Passed the Senate March 7, 1998.
Approved by the Governor March 25, 1998.
Filed in Office of Secretary of State March 25, 1998.