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HOUSE BILL 2879

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Linville, G. Chandler and Mastin; by request of Attorney General

Read first time . Referred to Committee on .

1 AN ACT Relating to the appeals period for environmental appeals to  
2 administrative bodies; and amending RCW 43.21B.190, 43.21B.230,  
3 43.21B.300, and 43.21B.310.

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

5 **Sec. 1.** RCW 43.21B.190 and 1995 c 382 s 4 are each amended to read  
6 as follows:

7 Within thirty days after the final decision and order of the  
8 hearings board upon such an appeal has been (~~communicated~~) posted in  
9 the United States mail to the interested parties, such interested party  
10 aggrieved by the decision and order of the hearings board may appeal to  
11 the superior court.

12 **Sec. 2.** RCW 43.21B.230 and 1997 c 125 s 2 are each amended to read  
13 as follows:

14 Any person having received notice of a denial of a petition, a  
15 notice of determination, notice of or an order made by the department  
16 may appeal to the hearings board, within thirty days from the date the  
17 notice of such denial, order, or determination is posted in the United  
18 States mail, properly addressed, postage prepaid, to the appealing

1 party. The notice of such denial, order, or determination shall  
2 include a declaration by the responsible official at the department  
3 certifying that the notice of such denial, order, or determination was  
4 posted in the United States mail on the date certified. The appeal  
5 shall be perfected by serving a copy of the notice of appeal upon the  
6 department or air pollution authority established pursuant to chapter  
7 70.94 RCW, as the case may be, within the time specified herein and by  
8 filing the original thereof with proof of service with the clerk of the  
9 hearings board.

10 **Sec. 3.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to  
11 read as follows:

12 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
13 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
14 90.56.330 shall be imposed by a notice in writing, (~~either by~~  
15 ~~certified mail with return receipt requested~~) which shall include a  
16 declaration by the responsible official at the department certifying  
17 that the notice was posted in the United States mail on the date  
18 certified, or by personal service, to the person incurring the penalty  
19 from the department, the administrator of the office of marine safety,  
20 or the local air authority, describing the violation with reasonable  
21 particularity. Within fifteen days after the notice is received, the  
22 person incurring the penalty may apply in writing to the department,  
23 the administrator, or the authority for the remission or mitigation of  
24 the penalty. Upon receipt of the application, the department, the  
25 administrator, or authority may remit or mitigate the penalty upon  
26 whatever terms the department, the administrator, or the authority in  
27 its discretion deems proper. The department or the authority may  
28 ascertain the facts regarding all such applications in such reasonable  
29 manner and under such rules as it may deem proper and shall remit or  
30 mitigate the penalty only upon a demonstration of extraordinary  
31 circumstances such as the presence of information or factors not  
32 considered in setting the original penalty.

33 (2) Any penalty imposed under this section may be appealed to the  
34 pollution control hearings board in accordance with this chapter if the  
35 appeal is filed with the hearings board and served on the department,  
36 the administrator, or authority thirty days after (~~receipt by the~~  
37 ~~person penalized~~) posting in the United States mail of the notice  
38 imposing the penalty or thirty days after (~~receipt~~) posting in the

1 United States mail of the notice of disposition of the application for  
2 relief from penalty.

3 (3) A penalty shall become due and payable on the later of:

4 (a) Thirty days after receipt of the notice imposing the penalty;

5 (b) Thirty days after receipt of the notice of disposition on  
6 application for relief from penalty, if such an application is made; or

7 (c) Thirty days after receipt of the notice of decision of the  
8 hearings board if the penalty is appealed.

9 (4) If the amount of any penalty is not paid to the department or  
10 the administrator within thirty days after it becomes due and payable,  
11 the attorney general, upon request of the department or the  
12 administrator, shall bring an action in the name of the state of  
13 Washington in the superior court of Thurston county, or of any county  
14 in which the violator does business, to recover the penalty. If the  
15 amount of the penalty is not paid to the authority within thirty days  
16 after it becomes due and payable, the authority may bring an action to  
17 recover the penalty in the superior court of the county of the  
18 authority's main office or of any county in which the violator does  
19 business. In these actions, the procedures and rules of evidence shall  
20 be the same as in an ordinary civil action.

21 (5) All penalties recovered shall be paid into the state treasury  
22 and credited to the general fund except those penalties imposed  
23 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
24 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
25 disposition of which shall be governed by that provision, RCW  
26 70.105.080, which shall be credited to the hazardous waste control and  
27 elimination account, created by RCW 70.105.180, and RCW 90.56.330,  
28 which shall be credited to the coastal protection fund created by RCW  
29 90.48.390.

30 **Sec. 4.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
31 as follows:

32 (1) Any order issued by the department, the administrator of the  
33 office of marine safety, or authority pursuant to RCW 70.94.211,  
34 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or  
35 90.48.120(2) or any provision enacted after July 26, 1987, or any  
36 permit, certificate, or license issued by the department may be  
37 appealed to the pollution control hearings board if the appeal is filed  
38 with the board and served on the department or authority within thirty

1 days after (~~receipt~~) posting of the order in the United States mail.  
2 Except as provided under chapter 70.105D RCW, this is the exclusive  
3 means of appeal of such an order.

4 (2) The department, the administrator, or the authority in its  
5 discretion may stay the effectiveness of an order during the pendency  
6 of such an appeal.

7 (3) At any time during the pendency of an appeal of such an order  
8 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the  
9 hearings board for a stay of the order or for the removal thereof.

10 (4) Any appeal must contain the following in accordance with the  
11 rules of the hearings board:

12 (a) The appellant's name and address;

13 (b) The date and docket number of the order, permit, or license  
14 appealed;

15 (c) A description of the substance of the order, permit, or license  
16 that is the subject of the appeal;

17 (d) A clear, separate, and concise statement of every error alleged  
18 to have been committed;

19 (e) A clear and concise statement of facts upon which the requester  
20 relies to sustain his or her statements of error; and

21 (f) A statement setting forth the relief sought.

22 (5) Upon failure to comply with any final order of the department  
23 or the administrator, the attorney general, on request of the  
24 department or the administrator, may bring an action in the superior  
25 court of the county where the violation occurred or the potential  
26 violation is about to occur to obtain such relief as necessary,  
27 including injunctive relief, to insure compliance with the order. The  
28 air authorities may bring similar actions to enforce their orders.

29 (6) An appealable decision or order shall be identified as such and  
30 shall contain a conspicuous notice to the recipient that it may be  
31 appealed only by filing an appeal with the hearings board and serving  
32 it on the department within thirty days of receipt.

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