

2 ESHB 1411 - S COMM AMD

3 By Committee on Environment, Energy & Water

4 ADOPTED 03/07/02

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 70.105D.010 and 1994 c 254 s 1 are each amended to
8 read as follows:

9 (1) Each person has a fundamental and inalienable right to a
10 healthful environment, and each person has a responsibility to preserve
11 and enhance that right. The beneficial stewardship of the land, air,
12 and waters of the state is a solemn obligation of the present
13 generation for the benefit of future generations.

14 (2) A healthful environment is now threatened by the irresponsible
15 use and disposal of hazardous substances. There are hundreds of
16 hazardous waste sites in this state, and more will be created if
17 current waste practices continue. Hazardous waste sites threaten the
18 state's water resources, including those used for public drinking
19 water. Many of our municipal landfills are current or potential
20 hazardous waste sites and present serious threats to human health and
21 environment. The costs of eliminating these threats in many cases are
22 beyond the financial means of our local governments and ratepayers.
23 The main purpose of chapter 2, Laws of 1989 is to raise sufficient
24 funds to clean up all hazardous waste sites and to prevent the creation
25 of future hazards due to improper disposal of toxic wastes into the
26 state's land and waters.

27 (3) Many farmers and small business owners who have followed the
28 law with respect to their uses of pesticides and other chemicals
29 nonetheless may face devastating economic consequences because their
30 uses have contaminated the environment or the water supplies of their
31 neighbors. With a source of funds, the state may assist these farmers
32 and business owners, as well as those persons who sustain damages, such
33 as the loss of their drinking water supplies, as a result of the
34 contamination.

35 (4) It is in the public's interest to efficiently use our finite
36 land base, to integrate our land use planning policies with our clean-

1 up policies, and to clean up and reuse contaminated industrial
2 properties in order to minimize industrial development pressures on
3 undeveloped land and to make clean land available for future social
4 use.

5 (5) Because it is often difficult or impossible to allocate
6 responsibility among persons liable for hazardous waste sites and
7 because it is essential that sites be cleaned up well and
8 expeditiously, each responsible person should be liable jointly and
9 severally.

10 (6) Because releases of hazardous substances can adversely affect
11 the health and welfare of the public, the environment, and property
12 values, it is in the public interest that affected communities be
13 notified of where releases of hazardous substances have occurred and
14 what is being done to clean them up.

15 NEW SECTION. Sec. 2. A new section is added to chapter 70.105D
16 RCW to read as follows:

17 (1) Except as provided in subsection (5) of this section, any owner
18 or operator of a facility that is actively transitioning from operating
19 under a federal permit for treatment, storage, or disposal of hazardous
20 waste issued under 42 U.S.C. Sec. 6925 to operating under the
21 provisions of this chapter, who has information that a hazardous
22 substance has been released to the environment at the owner or
23 operator's facility that may be a threat to human health or the
24 environment, shall issue a notice to the department within ninety days.
25 The notice shall include a description of any remedial actions planned,
26 completed, or underway.

27 (2) The notice must be posted in a visible, publicly accessible
28 location on the facility, to remain in place until all remedial actions
29 except confirmational monitoring are complete.

30 (3) After receiving the notice from the facility, the department
31 must review the notice and mail a summary of its contents, along with
32 any additional information deemed appropriate by the department, to:

33 (a) Each residence and landowner of a residence whose property
34 boundary is within three hundred feet of the boundary of the property
35 where the release occurred or if the release occurred from a pipeline
36 or other facility that does not have a property boundary, within three
37 hundred feet of the actual release;

1 (b) Each business and landowner of a business whose property
2 boundary is within three hundred feet of the boundary of the property
3 where the release occurred;

4 (c) Each residence, landowner of a residence, and business with a
5 property boundary within the area where hazardous substances have come
6 to be located as a result of the release;

7 (d) Neighborhood associations and community organizations
8 representing an area within one mile of the facility and recognized by
9 the city or county with jurisdiction within this area;

10 (e) The city, county, and local health district with jurisdiction
11 within the areas described in (a), (b), and (c) of this subsection; and

12 (f) The department of health.

13 (4) A notice produced by a facility shall provide the following
14 information:

15 (a) The common name of any hazardous substances released and, if
16 available, the chemical abstract service registry number of these
17 substances;

18 (b) The address of the facility where the release occurred;

19 (c) The date the release was discovered;

20 (d) The cause and date of the release, if known;

21 (e) The remedial actions being taken or planned to address the
22 release;

23 (f) The potential health and environmental effects of the hazardous
24 substances released; and

25 (g) The name, address, and telephone number of a contact person at
26 the facility where the release occurred.

27 (5) The following releases are exempt from the notification
28 requirements in this section:

29 (a) Application of pesticides and fertilizers for their intended
30 purposes and according to label instructions;

31 (b) The lawful and nonnegligent use of hazardous household
32 substances by a natural person for personal or domestic purposes;

33 (c) The discharge of hazardous substances in compliance with
34 permits issued under chapter 70.94, 90.48, or 90.56 RCW;

35 (d) De minimis amounts of any hazardous substance leaked or
36 discharged onto the ground;

37 (e) The discharge of hazardous substances to a permitted waste
38 water treatment facility or from a permitted waste water collection

1 system or treatment facility as allowed by a facility's discharge
2 permit;

3 (f) Any releases originating from a single-family or multifamily
4 residence, including but not limited to the discharge of oil from a
5 residential home heating oil tank with the capacity of five hundred
6 gallons or less;

7 (g) Any spill on a public road, street, or highway or to surface
8 waters of the state that has previously been reported to the United
9 States coast guard and the state division of emergency management under
10 chapter 90.56 RCW;

11 (h) Any release of hazardous substances to the air;

12 (i) Any release that occurs on agricultural land, including land
13 used to grow trees for the commercial production of wood or wood fiber,
14 that is at least five acres in size, when the effects of the release do
15 not come within three hundred feet of any property boundary. For the
16 purposes of this subsection, agricultural land includes incidental uses
17 that are compatible with agricultural or silvicultural purposes,
18 including, but not limited to, land used for the housing of the owner,
19 operator, or employees, structures used for the storage or repair of
20 equipment, machinery, and chemicals, and any paths or roads on the
21 land; and

22 (j) Releases that, before the effective date of this section, have
23 been previously reported to the department, or remediated in compliance
24 with a settlement agreement under RCW 70.105D.040(4) or enforcement
25 order or agreed order issued under this chapter or have been the
26 subject of an opinion from the department under RCW 70.105D.030(1)(i)
27 that no further remedial action is required.

28 An exemption from the notification requirements of this section
29 does not exempt the owner or operator of a facility from any other
30 notification or reporting requirements, or imply a release from
31 liability under this chapter.

32 (6) If a significant segment of the community to be notified speaks
33 a language other than English, an appropriate translation of the notice
34 must also be posted and mailed to the department in accordance with the
35 requirements of this section.

36 (7) The facility where the release occurred is responsible for
37 reimbursing the department within thirty days for the actual costs
38 associated with the production and mailing of the notices under this
39 section.

1 **Sec. 3.** RCW 70.105D.030 and 2001 c 291 s 401 are each amended to
2 read as follows:

3 (1) The department may exercise the following powers in addition to
4 any other powers granted by law:

5 (a) Investigate, provide for investigating, or require potentially
6 liable persons to investigate any releases or threatened releases of
7 hazardous substances, including but not limited to inspecting,
8 sampling, or testing to determine the nature or extent of any release
9 or threatened release. If there is a reasonable basis to believe that
10 a release or threatened release of a hazardous substance may exist, the
11 department's authorized employees, agents, or contractors may enter
12 upon any property and conduct investigations. The department shall
13 give reasonable notice before entering property unless an emergency
14 prevents such notice. The department may by subpoena require the
15 attendance or testimony of witnesses and the production of documents or
16 other information that the department deems necessary;

17 (b) Conduct, provide for conducting, or require potentially liable
18 persons to conduct remedial actions (including investigations under (a)
19 of this subsection) to remedy releases or threatened releases of
20 hazardous substances. In carrying out such powers, the department's
21 authorized employees, agents, or contractors may enter upon property.
22 The department shall give reasonable notice before entering property
23 unless an emergency prevents such notice. In conducting, providing for,
24 or requiring remedial action, the department shall give preference to
25 permanent solutions to the maximum extent practicable and shall provide
26 for or require adequate monitoring to ensure the effectiveness of the
27 remedial action;

28 (c) Indemnify contractors retained by the department for carrying
29 out investigations and remedial actions, but not for any contractor's
30 reckless or wilful misconduct;

31 (d) Carry out all state programs authorized under the federal
32 cleanup law and the federal resource, conservation, and recovery act,
33 42 U.S.C. Sec. 6901 et seq., as amended;

34 (e) Classify substances as hazardous substances for purposes of RCW
35 70.105D.020(7) and classify substances and products as hazardous
36 substances for purposes of RCW 82.21.020(1);

37 (f) Issue orders or enter into consent decrees or agreed orders
38 that include, or issue written opinions under (i) of this subsection
39 that may be conditioned upon, deed restrictions where necessary to

1 protect human health and the environment from a release or threatened
2 release of a hazardous substance from a facility. Prior to
3 establishing a deed restriction under this subsection, the department
4 shall notify and seek comment from a city or county department with
5 land use planning authority for real property subject to a deed
6 restriction;

7 (g) Enforce the application of permanent and effective
8 institutional controls that are necessary for a remedial action to be
9 protective of human health and the environment and the notification
10 requirements established in section 2 of this act, and impose penalties
11 for violations of that section consistent with RCW 70.105D.050;

12 (h) Require holders to conduct remedial actions necessary to abate
13 an imminent or substantial endangerment pursuant to RCW
14 70.105D.020(12)(b)(ii)(C);

15 (i) Provide informal advice and assistance to persons regarding the
16 administrative and technical requirements of this chapter. This may
17 include site-specific advice to persons who are conducting or otherwise
18 interested in independent remedial actions. Any such advice or
19 assistance shall be advisory only, and shall not be binding on the
20 department. As a part of providing this advice and assistance for
21 independent remedial actions, the department may prepare written
22 opinions regarding whether the independent remedial actions or
23 proposals for those actions meet the substantive requirements of this
24 chapter or whether the department believes further remedial action is
25 necessary at the facility. The department may collect, from persons
26 requesting advice and assistance, the costs incurred by the department
27 in providing such advice and assistance; however, the department shall,
28 where appropriate, waive collection of costs in order to provide an
29 appropriate level of technical assistance in support of public
30 participation. The state, the department, and officers and employees
31 of the state are immune from all liability, and no cause of action of
32 any nature may arise from any act or omission in providing, or failing
33 to provide, informal advice and assistance; and

34 (j) Take any other actions necessary to carry out the provisions of
35 this chapter, including the power to adopt rules under chapter 34.05
36 RCW.

37 (2) The department shall immediately implement all provisions of
38 this chapter to the maximum extent practicable, including investigative

1 and remedial actions where appropriate. The department shall adopt,
2 and thereafter enforce, rules under chapter 34.05 RCW to:

3 (a) Provide for public participation, including at least (i) public
4 notice of the development of investigative plans or remedial plans for
5 releases or threatened releases and (ii) concurrent public notice of
6 all compliance orders, agreed orders, enforcement orders, or notices of
7 violation;

8 (b) Establish a hazard ranking system for hazardous waste sites;

9 (c) Provide for requiring the reporting by an owner or operator of
10 releases of hazardous substances to the environment that may be a
11 threat to human health or the environment within ninety days of
12 discovery, including such exemptions from reporting as the department
13 deems appropriate, however this requirement shall not modify any
14 existing requirements provided for under other laws;

15 (d) Establish reasonable deadlines not to exceed ninety days for
16 initiating an investigation of a hazardous waste site after the
17 department receives notice or otherwise receives information that the
18 site may pose a threat to human health or the environment and other
19 reasonable deadlines for remedying releases or threatened releases at
20 the site;

21 (e) Publish and periodically update minimum cleanup standards for
22 remedial actions at least as stringent as the cleanup standards under
23 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
24 least as stringent as all applicable state and federal laws, including
25 health-based standards under state and federal law; and

26 (f) Apply industrial clean-up standards at industrial properties.
27 Rules adopted under this subsection shall ensure that industrial
28 properties cleaned up to industrial standards cannot be converted to
29 nonindustrial uses without approval from the department. The
30 department may require that a property cleaned up to industrial
31 standards is cleaned up to a more stringent applicable standard as a
32 condition of conversion to a nonindustrial use. Industrial clean-up
33 standards may not be applied to industrial properties where hazardous
34 substances remaining at the property after remedial action pose a
35 threat to human health or the environment in adjacent nonindustrial
36 areas.

37 (3) Before November 1st of each even-numbered year, the department
38 shall develop, with public notice and hearing, and submit to the ways
39 and means and appropriate standing environmental committees of the

1 senate and house of representatives a ranked list of projects and
2 expenditures recommended for appropriation from both the state and
3 local toxics control accounts. The department shall also provide the
4 legislature and the public each year with an accounting of the
5 department's activities supported by appropriations from the state
6 toxics control account, including a list of known hazardous waste sites
7 and their hazard rankings, actions taken and planned at each site, how
8 the department is meeting its top two management priorities under RCW
9 70.105.150, and all funds expended under this chapter.

10 (4) The department shall establish a scientific advisory board to
11 render advice to the department with respect to the hazard ranking
12 system, cleanup standards, remedial actions, deadlines for remedial
13 actions, monitoring, the classification of substances as hazardous
14 substances for purposes of RCW 70.105D.020(7) and the classification of
15 substances or products as hazardous substances for purposes of RCW
16 82.21.020(1). The board shall consist of five independent members to
17 serve staggered three-year terms. No members may be employees of the
18 department. Members shall be reimbursed for travel expenses as
19 provided in RCW 43.03.050 and 43.03.060.

20 (5) The department shall establish a program to identify potential
21 hazardous waste sites and to encourage persons to provide information
22 about hazardous waste sites.

23 **Sec. 4.** RCW 70.105D.050 and 1994 c 257 s 12 are each amended to
24 read as follows:

25 (1) With respect to any release, or threatened release, for which
26 the department does not conduct or contract for conducting remedial
27 action and for which the department believes remedial action is in the
28 public interest, the director shall issue orders or agreed orders
29 requiring potentially liable persons to provide the remedial action.
30 Any liable person who refuses, without sufficient cause, to comply with
31 an order or agreed order of the director is liable in an action brought
32 by the attorney general for:

33 (a) Up to three times the amount of any costs incurred by the state
34 as a result of the party's refusal to comply; and

35 (b) A civil penalty of up to twenty-five thousand dollars for each
36 day the party refuses to comply.

37 The treble damages and civil penalty under this subsection apply to all
38 recovery actions filed on or after March 1, 1989.

1 (2) Any person who incurs costs complying with an order issued
2 under subsection (1) of this section may petition the department for
3 reimbursement of those costs. If the department refuses to grant
4 reimbursement, the person may within thirty days thereafter file suit
5 and recover costs by proving that he or she was not a liable person
6 under RCW 70.105D.040 and that the costs incurred were reasonable.

7 (3) The attorney general shall seek, by filing an action if
8 necessary, to recover the amounts spent by the department for
9 investigative and remedial actions and orders, and agreed orders,
10 including amounts spent prior to March 1, 1989.

11 (4) The attorney general may bring an action to secure such relief
12 as is necessary to protect human health and the environment under this
13 chapter.

14 (5)(a) Any person may commence a civil action to compel the
15 department to perform any nondiscretionary duty under this chapter. At
16 least thirty days before commencing the action, the person must give
17 notice of intent to sue, unless a substantial endangerment exists. The
18 court may award attorneys' fees and other costs to the prevailing party
19 in the action.

20 (b) Civil actions under this section and RCW 70.105D.060 may be
21 brought in the superior court of Thurston county or of the county in
22 which the release or threatened release exists.

23 (6) Any person who fails to provide notification of releases
24 consistent with section 2 of this act or who submits false information
25 is liable in an action brought by the attorney general for a civil
26 penalty of up to five thousand dollars per day for each day the party
27 refuses to comply.

28 NEW SECTION. **Sec. 5.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act take effect
33 January 1, 2003."

1 **ESHB 1411** - S COMM AMD

2 By Committee on Environment, Energy & Water

3 ADOPTED 03/07/02

4 On page 1, line 2 of the title, after "substances;" strike the
5 remainder of the title and insert "amending RCW 70.105D.010,
6 70.105D.030, and 70.105D.050; adding a new section to chapter 70.105D
7 RCW; and providing an effective date."

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