
ENGROSSED SUBSTITUTE HOUSE BILL 1411

State of Washington

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2002 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Veloria, Pennington, Cody, Campbell, Romero, Kenney, Keiser, Schual-Berke, Santos, Dunn, Linville, Boldt, Tokuda, Kagi, Cooper, McIntire and Rockefeller)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to public notification of releases of hazardous
2 substances; amending RCW 70.105D.010, 70.105D.030, and 70.105D.050;
3 adding a new section to chapter 70.105D RCW; and providing an effective
4 date.

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

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

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

13 (2) A healthful environment is now threatened by the irresponsible
14 use and disposal of hazardous substances. There are hundreds of
15 hazardous waste sites in this state, and more will be created if
16 current waste practices continue. Hazardous waste sites threaten the
17 state's water resources, including those used for public drinking
18 water. Many of our municipal landfills are current or potential
19 hazardous waste sites and present serious threats to human health and

1 environment. The costs of eliminating these threats in many cases are
2 beyond the financial means of our local governments and ratepayers.
3 The main purpose of chapter 2, Laws of 1989 is to raise sufficient
4 funds to clean up all hazardous waste sites and to prevent the creation
5 of future hazards due to improper disposal of toxic wastes into the
6 state's land and waters.

7 (3) Many farmers and small business owners who have followed the
8 law with respect to their uses of pesticides and other chemicals
9 nonetheless may face devastating economic consequences because their
10 uses have contaminated the environment or the water supplies of their
11 neighbors. With a source of funds, the state may assist these farmers
12 and business owners, as well as those persons who sustain damages, such
13 as the loss of their drinking water supplies, as a result of the
14 contamination.

15 (4) It is in the public's interest to efficiently use our finite
16 land base, to integrate our land use planning policies with our clean-
17 up policies, and to clean up and reuse contaminated industrial
18 properties in order to minimize industrial development pressures on
19 undeveloped land and to make clean land available for future social
20 use.

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

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

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

33 (1) Except as provided in subsection (5) of this section, any owner
34 or operator of a facility that is actively transitioning from operating
35 under federal laws to operating under the provisions of this chapter,
36 who has information that a hazardous substance has been released to the
37 environment at the owner or operator's facility that may be a threat to
38 human health or the environment, shall issue a notice to the department

1 within ninety days. The notice shall include a description of any
2 remedial actions planned, completed, or underway.

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

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

9 (a) Each residence and landowner of a residence whose property
10 boundary is within three hundred feet of the boundary of the property
11 where the release occurred or if the release occurred from a pipeline
12 or other facility that does not have a property boundary, within three
13 hundred feet of the actual release;

14 (b) Each business and landowner of a business whose property
15 boundary is within three hundred feet of the boundary of the property
16 where the release occurred;

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

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

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

25 (f) The department of health.

26 (4) A notice produced by a facility shall provide the following
27 information:

28 (a) The common name of any hazardous substances released and, if
29 available, the chemical abstract service registry number of these
30 substances;

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

32 (c) The date the release was discovered;

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

34 (e) The remedial actions being taken or planned to address the
35 release;

36 (f) The potential health and environmental effects of the hazardous
37 substances released; and

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

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

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

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

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

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

11 (e) The discharge of hazardous substances to a permitted waste
12 water treatment facility or from a permitted waste water collection
13 system or treatment facility as allowed by a facility's discharge
14 permit;

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

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

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

24 (i) Any release that occurs on agricultural land, including land
25 used to grow trees for the commercial production of wood or wood fiber,
26 that is at least five acres in size, when the effects of the release do
27 not come within three hundred feet of any property boundary. For the
28 purposes of this subsection, agricultural land includes incidental uses
29 that are compatible with agricultural or silvicultural purposes,
30 including, but not limited to, land used for the housing of the owner,
31 operator, or employees, structures used for the storage or repair of
32 equipment, machinery, and chemicals, and any paths or roads on the
33 land; and

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

1 An exemption from the notification requirements of this section
2 does not exempt the owner or operator of a facility from any other
3 notification or reporting requirements, or imply a release from
4 liability under this chapter.

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

9 (7) The facility where the release occurred is responsible for
10 reimbursing the department within thirty days for the actual costs
11 associated with the production and mailing of the notices under this
12 section.

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

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

17 (a) Investigate, provide for investigating, or require potentially
18 liable persons to investigate any releases or threatened releases of
19 hazardous substances, including but not limited to inspecting,
20 sampling, or testing to determine the nature or extent of any release
21 or threatened release. If there is a reasonable basis to believe that
22 a release or threatened release of a hazardous substance may exist, the
23 department's authorized employees, agents, or contractors may enter
24 upon any property and conduct investigations. The department shall
25 give reasonable notice before entering property unless an emergency
26 prevents such notice. The department may by subpoena require the
27 attendance or testimony of witnesses and the production of documents or
28 other information that the department deems necessary;

29 (b) Conduct, provide for conducting, or require potentially liable
30 persons to conduct remedial actions (including investigations under (a)
31 of this subsection) to remedy releases or threatened releases of
32 hazardous substances. In carrying out such powers, the department's
33 authorized employees, agents, or contractors may enter upon property.
34 The department shall give reasonable notice before entering property
35 unless an emergency prevents such notice. In conducting, providing for,
36 or requiring remedial action, the department shall give preference to
37 permanent solutions to the maximum extent practicable and shall provide

1 for or require adequate monitoring to ensure the effectiveness of the
2 remedial action;

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

6 (d) Carry out all state programs authorized under the federal
7 cleanup law and the federal resource, conservation, and recovery act,
8 42 U.S.C. Sec. 6901 et seq., as amended;

9 (e) Classify substances as hazardous substances for purposes of RCW
10 70.105D.020(7) and classify substances and products as hazardous
11 substances for purposes of RCW 82.21.020(1);

12 (f) Issue orders or enter into consent decrees or agreed orders
13 that include, or issue written opinions under (i) of this subsection
14 that may be conditioned upon, deed restrictions where necessary to
15 protect human health and the environment from a release or threatened
16 release of a hazardous substance from a facility. Prior to
17 establishing a deed restriction under this subsection, the department
18 shall notify and seek comment from a city or county department with
19 land use planning authority for real property subject to a deed
20 restriction;

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

26 (h) Require holders to conduct remedial actions necessary to abate
27 an imminent or substantial endangerment pursuant to RCW
28 70.105D.020(12)(b)(ii)(C);

29 (i) Provide informal advice and assistance to persons regarding the
30 administrative and technical requirements of this chapter. This may
31 include site-specific advice to persons who are conducting or otherwise
32 interested in independent remedial actions. Any such advice or
33 assistance shall be advisory only, and shall not be binding on the
34 department. As a part of providing this advice and assistance for
35 independent remedial actions, the department may prepare written
36 opinions regarding whether the independent remedial actions or
37 proposals for those actions meet the substantive requirements of this
38 chapter or whether the department believes further remedial action is
39 necessary at the facility. The department may collect, from persons

1 requesting advice and assistance, the costs incurred by the department
2 in providing such advice and assistance; however, the department shall,
3 where appropriate, waive collection of costs in order to provide an
4 appropriate level of technical assistance in support of public
5 participation. The state, the department, and officers and employees
6 of the state are immune from all liability, and no cause of action of
7 any nature may arise from any act or omission in providing, or failing
8 to provide, informal advice and assistance; and

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

12 (2) The department shall immediately implement all provisions of
13 this chapter to the maximum extent practicable, including investigative
14 and remedial actions where appropriate. The department shall adopt,
15 and thereafter enforce, rules under chapter 34.05 RCW to:

16 (a) Provide for public participation, including at least (i) public
17 notice of the development of investigative plans or remedial plans for
18 releases or threatened releases and (ii) concurrent public notice of
19 all compliance orders, agreed orders, enforcement orders, or notices of
20 violation;

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

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

28 (d) Establish reasonable deadlines not to exceed ninety days for
29 initiating an investigation of a hazardous waste site after the
30 department receives notice or otherwise receives information that the
31 site may pose a threat to human health or the environment and other
32 reasonable deadlines for remedying releases or threatened releases at
33 the site;

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

1 (f) Apply industrial clean-up standards at industrial properties.
2 Rules adopted under this subsection shall ensure that industrial
3 properties cleaned up to industrial standards cannot be converted to
4 nonindustrial uses without approval from the department. The
5 department may require that a property cleaned up to industrial
6 standards is cleaned up to a more stringent applicable standard as a
7 condition of conversion to a nonindustrial use. Industrial clean-up
8 standards may not be applied to industrial properties where hazardous
9 substances remaining at the property after remedial action pose a
10 threat to human health or the environment in adjacent nonindustrial
11 areas.

12 (3) Before November 1st of each even-numbered year, the department
13 shall develop, with public notice and hearing, and submit to the ways
14 and means and appropriate standing environmental committees of the
15 senate and house of representatives a ranked list of projects and
16 expenditures recommended for appropriation from both the state and
17 local toxics control accounts. The department shall also provide the
18 legislature and the public each year with an accounting of the
19 department's activities supported by appropriations from the state
20 toxics control account, including a list of known hazardous waste sites
21 and their hazard rankings, actions taken and planned at each site, how
22 the department is meeting its top two management priorities under RCW
23 70.105.150, and all funds expended under this chapter.

24 (4) The department shall establish a scientific advisory board to
25 render advice to the department with respect to the hazard ranking
26 system, cleanup standards, remedial actions, deadlines for remedial
27 actions, monitoring, the classification of substances as hazardous
28 substances for purposes of RCW 70.105D.020(7) and the classification of
29 substances or products as hazardous substances for purposes of RCW
30 82.21.020(1). The board shall consist of five independent members to
31 serve staggered three-year terms. No members may be employees of the
32 department. Members shall be reimbursed for travel expenses as
33 provided in RCW 43.03.050 and 43.03.060.

34 (5) The department shall establish a program to identify potential
35 hazardous waste sites and to encourage persons to provide information
36 about hazardous waste sites.

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

1 (1) With respect to any release, or threatened release, for which
2 the department does not conduct or contract for conducting remedial
3 action and for which the department believes remedial action is in the
4 public interest, the director shall issue orders or agreed orders
5 requiring potentially liable persons to provide the remedial action.
6 Any liable person who refuses, without sufficient cause, to comply with
7 an order or agreed order of the director is liable in an action brought
8 by the attorney general for:

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

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

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

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

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

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

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

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

37 (6) Any person who fails to provide notification of releases
38 consistent with section 2 of this act or who submits false information
39 is liable in an action brought by the attorney general for a civil

1 penalty of up to five thousand dollars per day for each day the party
2 refuses to comply.

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

7 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act take effect
8 January 1, 2003.

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