
SUBSTITUTE HOUSE BILL 1411

State of Washington

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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 who knows or reasonably should have known
35 that a release of a hazardous substance that may pose a threat to human
36 health or the environment has occurred at the facility shall issue a
37 notice that the release has occurred and shall describe the remedial
38 actions that are being taken or are planned to address the release.

1 The notice shall be issued to the department of ecology within ninety
2 days of the discovery of the release.

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) Releases that do not pose a threat to human health or the
10 environment;

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; and

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

30 An exemption from the notification requirements as provided in this
31 subsection (5) does not imply a release from liability under this
32 chapter.

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

37 (7) The facility where the release occurred is responsible for
38 reimbursing the department within thirty days for the actual costs

1 associated with the production and mailing of the notices under this
2 section.

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

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

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

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

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

33 (d) Carry out all state programs authorized under the federal
34 cleanup law and the federal resource, conservation, and recovery act,
35 42 U.S.C. Sec. 6901 et seq., as amended;

36 (e) Classify substances as hazardous substances for purposes of RCW
37 70.105D.020(7) and classify substances and products as hazardous
38 substances for purposes of RCW 82.21.020(1);

1 (f) Issue orders or enter into consent decrees or agreed orders
2 that include, or issue written opinions under ~~((i))~~ (j) of this
3 subsection that may be conditioned upon, deed restrictions where
4 necessary to protect human health and the environment from a release or
5 threatened release of a hazardous substance from a facility. Prior to
6 establishing a deed restriction under this subsection, the department
7 shall notify and seek comment from a city or county department with
8 land use planning authority for real property subject to a deed
9 restriction;

10 (g) Enforce the application of permanent and effective
11 institutional controls that are necessary for a remedial action to be
12 protective of human health and the environment;

13 (h) Enforce the notification requirements established in this
14 section and impose penalties for violations of that subsection
15 consistent with RCW 70.105D.050;

16 (i) Require holders to conduct remedial actions necessary to abate
17 an imminent or substantial endangerment pursuant to RCW
18 70.105D.020(12)(b)(ii)(C);

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

1 (~~(j)~~) (k) Take any other actions necessary to carry out the
2 provisions of this chapter, including the power to adopt rules under
3 chapter 34.05 RCW.

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

8 (a) Provide for public participation, including at least (i) public
9 notice of the development of investigative plans or remedial plans for
10 releases or threatened releases and (ii) concurrent public notice of
11 all compliance orders, agreed orders, enforcement orders, or notices of
12 violation;

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

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

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

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

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

1 threat to human health or the environment in adjacent nonindustrial
2 areas.

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

15 (4) The department shall establish a scientific advisory board to
16 render advice to the department with respect to the hazard ranking
17 system, cleanup standards, remedial actions, deadlines for remedial
18 actions, monitoring, the classification of substances as hazardous
19 substances for purposes of RCW 70.105D.020(7) and the classification of
20 substances or products as hazardous substances for purposes of RCW
21 82.21.020(1). The board shall consist of five independent members to
22 serve staggered three-year terms. No members may be employees of the
23 department. Members shall be reimbursed for travel expenses as
24 provided in RCW 43.03.050 and 43.03.060.

25 (5) The department shall establish a program to identify potential
26 hazardous waste sites and to encourage persons to provide information
27 about hazardous waste sites.

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

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

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

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

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

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

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

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

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

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

29 (6) Any person who fails to provide notification of releases
30 consistent with this chapter or who submits false information is liable
31 in an action brought by the attorney general for a civil penalty of up
32 to five thousand dollars per day for each day the party refuses to
33 comply.

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

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

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