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SENATE BILL 6657

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State of Washington 57th Legislature

2002 Regular Session

By Senators Fraser, Hale, Regala, Jacobsen and Keiser

Read first time 01/24/2002. Referred to Committee on Environment,  
Energy & Water.

1 AN ACT Relating to determining the appeals period for certain  
2 environmental appeals; amending RCW 43.21B.190, 43.21B.230, and  
3 43.21B.300; and reenacting and amending RCW 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))  
9 simultaneously posted in the United States mail to the interested  
10 parties and on the hearings board's internet site, such interested  
11 party aggrieved by the decision and order of the hearings board may  
12 appeal to the superior court.

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

15 Any person having received notice of a denial of a petition, a  
16 notice of determination, or a notice of or an order made by the  
17 department may appeal to the hearings board, within thirty days from  
18 the date the notice of ((such)) that denial, order, or determination is

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

12 **Sec. 3.** RCW 43.21B.300 and 2001 c 36 s 2 are each amended to read  
13 as follows:

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

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

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

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

29 **Sec. 4.** RCW 43.21B.310 and 2001 c 220 s 4 and 2001 c 36 s 3 are  
30 each reenacted and amended to read as follows:

31 (1) Except as provided in RCW 90.03.210(2), any order issued by the  
32 department or local air authority pursuant to RCW 70.94.211, 70.94.332,  
33 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any  
34 provision enacted after July 26, 1987, or any permit, certificate, or  
35 license issued by the department may be appealed to the pollution  
36 control hearings board if the appeal is filed with the board and served  
37 on the department or authority within thirty days after ~~((receipt))~~  
38 simultaneous posting of the order in the United States mail and on the

1 department's or local air authority's internet site. Except as  
2 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the  
3 exclusive means of appeal of such an order.

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

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

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

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

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

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

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

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

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

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

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

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