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SENATE BILL 5751

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Roach and Rasmussen.

Read first time February 19, 1991.      Referred to Committee on  
Environment & Natural Resources.

1            AN ACT Relating to sludge; amending RCW 4.22.070 and 70.95.255;  
2 adding a new section to chapter 4.16 RCW; adding a new section to  
3 chapter 9A.48 RCW; adding a new section to chapter 90.48 RCW; adding a  
4 new section to chapter 43.21C RCW; adding a new chapter to Title 70  
5 RCW; creating a new section; and prescribing penalties.

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

7            NEW SECTION.    **Sec. 1.**            The definitions set forth in this  
8 section apply throughout this chapter.

9            (1) "Person" means an individual, firm, association, copartnership,  
10 political subdivision, government agency, municipality, industry,  
11 public or private corporation, or any other entity.

12            (2) "Sludge" means a semisolid substance consisting of settled  
13 sewage solids combined with varying amounts of water and dissolved  
14 materials that is generated from a municipal wastewater treatment  
15 plant.

1 (3) "Damages," in addition to its ordinary meaning, includes, but  
2 is not limited to, decreases in property value, harm to wildlife and  
3 fisheries resources, sickness from noxious odors, loss of esthetic  
4 value and beauty, toxicity to land and water, and emotional distress.

5 NEW SECTION. **Sec. 2.** A person who discharges, deposits,  
6 sprays, or otherwise places sludge on land or vegetation, or who  
7 contracts with another to perform such services, is strictly liable for  
8 all economic and noneconomic damages caused to another person by the  
9 activity.

10 Liability is imposed under this section regardless of whether the  
11 person who engaged in the discharge, deposit, spraying, or placing of  
12 the sludge was negligent or otherwise complied with all applicable  
13 federal or state laws or rules. The liability of each defendant is  
14 joint and several.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.16 RCW  
16 to read as follows:

17 (1) All claims or causes of action brought by a person for recovery  
18 of damages based on the discharge, deposit, spraying, or otherwise  
19 placing of sludge on land or vegetation must be commenced within twenty  
20 years of the act alleged to have caused the injury or condition, or  
21 three years from the time the injured person discovered or reasonably  
22 should have discovered that the injury or condition was caused by the  
23 act, whichever period expires later.

24 (2) The injured person need not establish which act in a series of  
25 acts caused the injury complained of, but may compute the date of  
26 discovery from the date of discovery of the last act by the same person  
27 who discharged, deposited, sprayed, or otherwise placed the sludge that  
28 allegedly caused the injury.

1 (3) The knowledge of a custodial parent or guardian shall not be  
2 imputed to a person under the age of eighteen years.

3 **Sec. 4.** RCW 4.22.070 and 1986 c 305 s 401 are each amended to read  
4 as follows:

5 (1) In all actions involving fault of more than one entity, the  
6 trier of fact shall determine the percentage of the total fault which  
7 is attributable to every entity which caused the claimant's damages,  
8 including the claimant or person suffering personal injury or incurring  
9 property damage, defendants, third-party defendants, entities released  
10 by the claimant, entities immune from liability to the claimant and  
11 entities with any other individual defense against the claimant.  
12 Judgment shall be entered against each defendant except those who have  
13 been released by the claimant or are immune from liability to the  
14 claimant or have prevailed on any other individual defense against the  
15 claimant in an amount which represents that party's proportionate share  
16 of the claimant's total damages. The liability of each defendant shall  
17 be several only and shall not be joint except:

18 (a) A party shall be responsible for the fault of another person or  
19 for payment of the proportionate share of another party where both were  
20 acting in concert or when a person was acting as an agent or servant of  
21 the party.

22 (b) If the trier of fact determines that the claimant or party  
23 suffering bodily injury or incurring property damages was not at fault,  
24 the defendants against whom judgment is entered shall be jointly and  
25 severally liable for the sum of their proportionate shares of the  
26 claimants total damages.

27 (2) If a defendant is jointly and severally liable under one of the  
28 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
29 defendant's rights to contribution against another jointly and

1 severally liable defendant, and the effect of settlement by either such  
2 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
3 4.22.060.

4 (3)(a) Nothing in this section affects any cause of action relating  
5 to hazardous wastes or substances or solid waste disposal sites.

6 (b) Nothing in this section shall affect a cause of action arising  
7 from the tortious interference with contracts or business relations.

8 (c) Nothing in this section shall affect any cause of action  
9 arising from the manufacture or marketing of a fungible product in a  
10 generic form which contains no clearly identifiable shape, color, or  
11 marking.

12 (d) Nothing in this section affects a cause of action relating to  
13 the discharge, deposit, or spraying of sludge under section 2 of this  
14 act.

15 NEW SECTION. Sec. 5. A new section is added to chapter 9A.48 RCW  
16 to read as follows:

17 (1) A person is guilty of unlawful sludge dispersal if he or she:

18 (a) Discharges, deposits, sprays, or otherwise places sludge on  
19 land or vegetation without a valid permit, or in violation of the  
20 permit, issued by the department of ecology under section 7 of this  
21 act;

22 (b) Conceals or falsifies information or records that sludge has  
23 been discharged, deposited, sprayed, or placed on land or vegetation in  
24 violation of (a) of this subsection;

25 (c) Obtains, or allows another person to obtain, a permit from the  
26 department of ecology to discharge, deposit, spray, or place sludge on  
27 land or vegetation by concealing or falsifying information or records  
28 that the dispersal of sludge will result in damages to another person.

29 (2) The definitions of section 1 of this act apply to this section.

1 (3) Unlawful sludge dispersal is a class C felony.

2 **Sec. 6.** RCW 70.95.255 and 1986 c 297 s 1 are each amended to read  
3 as follows:

4 After January 1, 1988, the department of ecology may prohibit  
5 disposal of municipal sewage sludge or septic tank sludge (septage) in  
6 landfills for final disposal, except on a temporary, emergency basis,  
7 if the jurisdictional health department determines that a potentially  
8 unhealthful circumstance exists. Beneficial uses of sludge in landfill  
9 reclamation (~~(is)~~) and land application are acceptable utilization and  
10 not considered disposal.

11 The department of ecology shall adopt rules that provide exemptions  
12 from this section on a case-by-case basis. Exemptions shall be based  
13 on the economic infeasibility of using or disposing of the sludge  
14 material other than in a landfill.

15 The department of ecology, after consulting with representatives  
16 from cities, counties, special purpose districts, and operators of  
17 septic tank pump-out services, shall adopt rules for the  
18 environmentally safe use of municipal sewage sludge and septage in this  
19 state.

20 The department of ecology, after consulting with representatives  
21 from the pulp and paper industry and the food processing industry, may  
22 adopt rules for the environmentally safe use of appropriate industrial  
23 sludges, such as pulp and paper sludges or food processing wastes, used  
24 to improve the texture or nutrient content of soils.

25 The department of ecology, in conjunction with the department of  
26 social and health services and the department of agriculture, shall  
27 adopt rules establishing labeling and notification requirements for  
28 sludge material sold commercially or given away to the public. The

1 department shall specify mandatory wording for labels and notification  
2 to warn the public against improper use of the material.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.48 RCW  
4 to read as follows:

5 (1) The department of ecology, in conjunction with the department  
6 of health, shall establish a permit system for land application of  
7 sludge material to improve the texture or nutrient content of soils.  
8 All permits shall meet state surface and ground water quality standards  
9 adopted under this chapter and state solid waste management rules under  
10 chapter 70.95 RCW.

11 (2) No person may discharge, deposit, spray, or otherwise place  
12 sludge on land or vegetation, or contract with another to perform such  
13 services, without a permit.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.21C RCW  
15 to read as follows:

16 Before making a land application of sludge, a permittee shall  
17 prepare and file with the county health jurisdiction where the activity  
18 is scheduled a site-specific environmental impact statement. Failure to  
19 prepare and file an environmental impact statement on sludge is  
20 negligence per se.

21 NEW SECTION. **Sec. 9.** The department of ecology shall conduct  
22 or contract for a five-year study of the epidemiological effects of  
23 discharging, depositing, spraying, or otherwise placing sludge on land  
24 and vegetation. The study shall be conducted with the assistance of  
25 the department of social and health services, which shall provide  
26 technical and research services as required.

1       The department of ecology shall submit an interim report by  
2 September 1, 1994, and a final report by September 1, 1995, to the  
3 governor, the president of the senate, the speaker of the house of  
4 representatives, and the chairs of appropriate standing committees of  
5 the legislature.       The reports shall contain the findings and  
6 recommendations of the study, together with any proposed legislation  
7 for improvements in the regulation of the land application of sludge.

8       NEW SECTION.   **Sec. 10.**       Sections 1 and 2 of this act shall  
9 constitute a new chapter in Title 70 RCW.