

HOUSE BILL REPORT

HB 2377

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to promoting compliance with environmental laws.

Brief Description: Promoting compliance with environmental laws.

Sponsors: Representatives Chandler, Chappell, Koster, Schoesler, Johnson, McMorris and Thompson.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/25/96, 1/31/96 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Ogden; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives R. Fisher; Murray; Regala and Rust.

Staff: Bill Lynch (786-7092).

Background: Many entities that are subject to environmental laws conduct self-audits to determine whether their operations are in compliance with those laws. This allows these regulated entities to identify problems and implement solutions. The extent of the noncompliance is frequently summarized in an audit report. Management may be hesitant to release the results of an environmental audit because of concerns over enforcement actions and third-party lawsuits. Some states have adopted environmental audit legislation that provides some immunity from litigation under certain circumstances.

Summary of Substitute Bill:

I. Admissibility of Evidence

All data and factual findings collected in the course of a voluntary compliance review are admissible as evidence in a civil, criminal, or administrative proceeding. Any analysis, interpretation, or recommendations regarding violations discovered during the review are not admissible in a civil or administrative proceeding. The analysis, interpretation, or recommendations may be admitted in a civil or administrative proceeding to prove misuse of the evidentiary exclusion, to prove an effort to obstruct a civil or criminal investigation, and to prove that reasonable and timely steps to remedy the violation were not taken.

The exclusion of information developed in the course of or as a result of a voluntary compliance review does not apply to information collected or prepared to comply with a legally mandated monitoring or sampling requirement, or information obtained by observation, sampling, or monitoring by an agency.

Any analysis, interpretation, or recommendations regarding violations discovered in the course of a voluntary compliance review may also be admissible as evidence if the regulated entity that is the owner or operator of the facility at which the violation is alleged consents to its admission.

II. Immunity for Penalties

If a regulated entity follows the conditions set forth in the bill for disclosing a violation of an environmental law, it may not be subjected to administrative or civil penalties for the violation which was disclosed.

An agency may not recommend that a criminal charge be brought against a regulated entity that complies with the disclosure provisions of this legislation unless the violation demonstrates or involves: a management policy or practice that concealed or condoned a violation of environmental law; or a high level official's or manager's conscious involvement in or willful indifference to the violation. An agency may recommend criminal prosecution with respect to the criminal acts of individual managers or employees regardless of whether it recommends charges be brought against the entity.

III. Requirements for Regulated Entities to Receive Protections

A regulated entity must satisfy several conditions before it may receive the limited immunity protection provided by the bill. A regulated entity must disclose a violation in writing to the responsible agency within a reasonable time after its discovery. The disclosure must result from a voluntary compliance assurance review or the operation

of a compliance assurance program. The disclosure cannot result from a legally mandated monitoring or sampling requirement.

The violation must be identified and disclosed before the commencement of an agency inspection, investigation, or request for information that would identify the violation; notice of a citizen suit with respect to the violation; the filing of a complaint by a third party; and disclosure of the violation by a person other than a representative of the regulated entity.

The regulated entity must comply as soon as possible, not to exceed 60 days after identifying the violation. If more than 60 days are needed to achieve compliance, the regulated entity and the agency must enter into an agreement including a schedule of compliance. The regulated entity must also describe the steps taken, or will be taken, to prevent a recurrence of the violation. The regulated entity must also cooperate with the agency investigation of the issues identified in the disclosure.

The violation identified by the regulated entity cannot result in serious actual harm to human health or the environment; present substantial endangerment to human health or the environment; violate the specific terms of a permit, settlement agreement, notice of correction, order, or decree; or be part of a pattern of violations at the facility or other facilities owned or operated by the regulated entity that show disregard for environmental laws.

IV. Other

A regulated entity may qualify for additional incentives by implementing a compliance assurance program that meets the requirements of recognized standards and includes provisions for pollution prevention and reduction.

If a regulated entity has implemented a compliance assurance program and achieved some measurable pollution prevention or reduction, an agency may reduce monitoring or reporting requirements to which the regulated entity is otherwise subject.

Nothing limits, waives, or abrogates the scope or nature of a statutory or common law privilege, including the attorney-client privilege and the work product doctrine. Nothing alters the requirement to report and correct releases, violations, or other matters.

"Agency" is defined as the Department of Ecology, pollution control authorities, municipalities that grant waste disposal permits, and local health entities that issue bio-solid permits.

Substitute Bill Compared to Original Bill: The definition of agency is narrowed. The definition of regulated entity is narrowed to exclude government agencies. The

privilege against admitting evidence in a criminal proceeding is deleted. Data and factual findings are made admissible in all proceedings. The substitute bill adds the requirement that an entity cannot receive protection if the violation violates the specific terms of a permit, settlement agreement, or notice of correction.

Appropriation: None.

Fiscal Note: Requested on January 25, 1996.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Penalties and lawsuits are disincentives to voluntary compliance. Voluntary audits are effective at reducing the volume of hazardous waste. Farmers may change crops and have too much pesticide stored.

Testimony Against (Original Bill): Many businesses conduct self-audits now because of the threat of enforcement. Environmental groups were not part of the negotiations on this bill.

Testified: Ken Johnson, Association of Washington Businesses; Greg Tisdole; Jay Manning and Greg Sorbie, Department of Ecology (all in favor). Mike Ryherd, 1000 Friends of Washington; Bruce Wishart, Sierra Club; Scott Merriman, Washington Environmental Council; and Michael Kent (all against).