
SUBSTITUTE HOUSE BILL 2377

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Chappell, Koster, Schoesler, Johnson, McMorris and Thompson)

Read first time 02/2/96.

1 AN ACT Relating to promoting compliance with environmental laws;
2 and adding a new chapter to Title 34 RCW.

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

4 NEW SECTION. **Sec. 1.** The purpose of this chapter is to enhance
5 protection of human health and the environment by encouraging regulated
6 entities to achieve and maintain compliance with environmental laws
7 through voluntary measures to review compliance, report and remedy any
8 violations that may be identified, and take measures to prevent future
9 violations.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Agency" means: The department of ecology; all independent air
13 pollution control authorities created pursuant to RCW 70.94.053; all
14 cities, counties, and municipal corporations granted authority to issue
15 permits pursuant to RCW 90.48.165; and jurisdictional health
16 departments granted authority to issue biosolids permits pursuant to
17 chapter 70.95J RCW.

1 (2) "Compliance assurance review" means an evaluation, review, or
2 assessment of compliance with, or of potential liability arising from,
3 environmental laws conducted by, or under the direction or with the
4 consent of, an owner or operator of all or some portion of a facility,
5 regulated activity, or site. The review may include, but is not
6 limited to, an environmental compliance audit, management system audit,
7 contamination or remedial action assessment, evaluation based on
8 private sector national or international management or operational
9 standards, or self-evaluation, or the day-to-day implementation of an
10 environmental compliance assurance program.

11 (3) "Compliance assurance program" means a systematic process or
12 program utilized at or with regard to a regulated facility or operation
13 achieving, maintaining, or determining the status of compliance with
14 environmental laws. Included are activities conducted under
15 environmental compliance policies or procedures established by or for
16 the regulated facility or operation and any established channels of
17 employee reporting or disclosure.

18 (4) "Court" refers to a court of the state of Washington and to an
19 administrative board or agency before which disputed matters may be
20 adjudicated, including an environmental hearings board established
21 under RCW 43.21B.010, 76.09.210, 90.58.170, and 75.20.130.

22 (5) "Data" means objective physical observations or measurements.

23 (6) "Environmental law" means a law relating to environmental
24 protection administered by the department of ecology including federal
25 and state statutes and regulations and municipal or other local
26 environmental ordinances related to their authority under RCW 70.94.053
27 and 90.48.165 and chapter 70.95J RCW regulation.

28 (7) "Document" means any form of record, to the full extent
29 described by superior court civil rule 34.

30 (8) "Penalty" means an administrative or civil sanction imposed to
31 punish a person for a violation of an environmental law, including an
32 agency action to restrict a person from providing or receiving goods,
33 materials, services, grants, or other benefits. "Penalty" does not
34 mean a technical or remedial provision ordered by an agency.

35 (9) "Regulated entity" means any form of legal entity regulated
36 under environmental law, including a trust, association, partnership,
37 or sole proprietorship.

1 NEW SECTION. **Sec. 3.** (1) All data and other factual findings
2 collected during the course of a voluntary compliance assurance review
3 or program, including data and factual findings related to a violation
4 of any environmental law, shall be admissible in any civil, criminal,
5 or administrative proceeding. However, any analysis, interpretation,
6 or recommendations regarding violations discovered during a voluntary
7 compliance assurance review or program shall not be admissible in any
8 civil or administrative proceeding. Further, any such analysis,
9 interpretation, or recommendations shall be admissible if the analysis
10 or recommendations are commingled with data and other factual findings
11 such that the two cannot reasonably be separated for purposes of
12 admissibility.

13 (2) The exclusion of evidence described in this section does not
14 apply to:

15 (a) Data or other information collected or prepared to comply with
16 a legally mandated monitoring or sampling requirement prescribed by
17 statute, regulation, permit, judicial, or administrative order or
18 consent decree; and

19 (b) Data or other information obtained by observation, sampling, or
20 monitoring by an agency.

21 (3) Notwithstanding subsection (1) of this section, any analysis,
22 interpretation, or recommendations regarding violations of
23 environmental laws during a voluntary compliance assurance review or
24 program may be admitted in a civil or administrative proceeding:

25 (a) To prove misuse by a regulated entity of the evidentiary
26 exclusion provided by this section;

27 (b) To prove an effort to obstruct a civil or criminal
28 investigation or enforcement action; or

29 (c) To prove that reasonable and timely steps to remedy a violation
30 have not been taken.

31 (4) Notwithstanding subsection (1) of this section, any analysis,
32 interpretation or recommendations regarding violations discovered
33 during the course of a voluntary compliance assurance review or
34 program, may be offered in evidence by or with the consent of the
35 regulated entity that is the owner or operator of a facility at which
36 a violation of an environmental law is alleged.

37 NEW SECTION. **Sec. 4.** (1) If a regulated entity meets the
38 conditions of section 5 of this act, with respect to a violation of an

1 environmental law, that regulated entity shall not be subject to
2 administrative or civil penalties issued by an agency for the violation
3 disclosed.

4 (2)(a) If a regulated entity meets the conditions of section 5 of
5 this act, with respect to a violation of an environmental law, an
6 agency may not recommend that a criminal charge be brought against the
7 regulated entity, unless the violation demonstrates or involves:

8 (i) A management policy or practice that concealed or condoned a
9 violation of environmental law; or

10 (ii) A high-level official's or manager's conscious involvement in
11 or willful indifference to the violation.

12 (b) Whether or not an agency recommends that criminal charges be
13 brought against a regulated entity, an agency may recommend criminal
14 prosecution with respect to the criminal acts of individual managers or
15 employees.

16 (3)(a) A regulated entity may qualify for additional incentives by
17 implementing a compliance assurance program that is consistent with
18 recognized national or international standards and includes provisions
19 for pollution prevention and reduction.

20 (b) If a regulated entity has implemented a compliance assurance
21 program under (a) of this subsection and achieved some measurable
22 pollution prevention or reduction, an agency may reduce monitoring or
23 reporting requirements to which the regulated entity is otherwise
24 subject.

25 NEW SECTION. **Sec. 5.** A regulated entity shall satisfy each of the
26 following conditions:

27 (1) The regulated entity shall disclose the violation in writing to
28 the responsible agency within a reasonable time after identifying the
29 violation;

30 (2) The disclosure must result from a voluntary compliance
31 assurance review or the operation of a compliance assurance program,
32 and not through a legally mandated monitoring or sampling requirement
33 prescribed by statute, regulation, permit, order, decree, or notice of
34 correction;

35 (3) The violation must be identified and disclosed before:

36 (a) The commencement of federal, state, or local agency inspection
37 or investigation or the issuance of a request for information that
38 would likely identify the violation;

- 1 (b) Notice of a citizen suit with respect to the violation;
- 2 (c) The filing of a complaint by a third party with respect to the
3 violation; and
- 4 (d) Disclosure of the violation by a person other than a
5 representative of the regulated entity;
- 6 (4) The regulated entity shall achieve compliance as soon as
7 possible, not to exceed sixty days after the violation is discovered.
8 If an agency and the regulated entity agree that more than sixty days
9 will be needed to come into compliance, the regulated entity and the
10 agency shall enter into an agreement including a schedule for
11 compliance;
- 12 (5) The regulated entity describes the steps taken, or to be taken,
13 to prevent reoccurrence of the violation disclosed;
- 14 (6) The regulated entity cooperates with the agency in connection
15 with an investigation of the issues identified in the disclosure;
- 16 (7) The violation is not one that:
- 17 (a) Resulted in serious actual harm to human health or the
18 environment, or presents a substantial endangerment to human health or
19 the environment; or
- 20 (b) Is a violation of the specific terms of a permit, settlement
21 agreement, notice of correction, order, or decree; and
- 22 (8) The violation is not part of a pattern of similar violations at
23 the facility, or among facilities owned or operated by the regulated
24 entity, that evidence disregard for environmental laws.

25 NEW SECTION. **Sec. 6.** Nothing in this chapter shall limit, waive,
26 or abrogate the scope or nature of a statutory or common law privilege,
27 including without limitation the attorney-client privilege and the work
28 product doctrine.

29 NEW SECTION. **Sec. 7.** Nothing in this chapter alters the
30 obligation of any regulated entity to report and correct releases,
31 violations, or other matters that are required to be reported by local,
32 state, or federal law, rule, permit, or enforcement action.

33 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
34 constitute a new chapter in Title 34 RCW.

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