

HOUSE BILL REPORT

ESHB 1411

As Amended by the Senate

Title: An act relating to public notification of releases of hazardous substances.

Brief Description: Providing public notice of releases of hazardous substances.

Sponsors: 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).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/8/02 [DPS].

Floor Activity:

Passed House: 2/18/02, 98-0.

Senate Amended.

Passed Senate: 3/7/02, 48-0.

Brief Summary of Engrossed Substitute Bill

- Requires facilities that are transitioning from federal to state oversight to issue a notice to the Department of Ecology, following the release of a hazardous substance, that describes the release and the remedial actions being taken.
- Requires the Department of Ecology to notify the facility's community of the release.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Linville, Chair; Hunt, Vice Chair; Cooper, Delvin, Dunshee, Grant, Kirby and Quall.

Minority Report: Do not pass. Signed by 5 members: Representatives Schoesler, Ranking Minority Member; Chandler, Holmquist, Roach and Sump.

Staff: Jason Callahan (786-7117).

Background:

The owners and operators of a facility, or a site where hazardous substances are located, are responsible for reporting spills or other releases of hazardous substances to federal and state authorities. The time limits set for reporting vary depending on the type of facility and the type of release.

In Washington, there are five acts that require the reporting of a release. They are the Oil and Hazardous Substance Spill Prevention and Response Act, Hazardous Waste Management Act, Water Pollution Control Act, Underground Storage Tank Act, and the Model Toxics Control Act (MTCA). These acts require reporting either immediately, within 24 hours, or within 90 days, depending on the circumstances of the release.

Owners and operators of a facility must report immediately to the Department of Ecology (DOE) any releases into the state's waters, wells, or drinking water supplies. Immediate notification is also required for new discharges of hazardous substances into the environment, and for spills or overfills of regulated substances from underground storage tanks (UST) that come in contact with soil, groundwater, or surface water in an amount which is more than de minimis.

An owner or operator of a facility must report a release within 24 hours if a UST leak is discovered. Notification within 24 hours is also required if a UST spills or is overfilled and the hazardous substance does not come in contact with soils or water.

The MTCA requires an owner or operator to report to the DOE a known release of a substance that may be a threat to human health within 90 days of discovery. This requirement includes the reporting of any newly discovered historic releases that occurred as a result of past business practices.

There are currently no federal or state regulations requiring direct notice of a release to landowners adjacent to or in close proximity to a facility.

Summary of Engrossed Substitute Bill:

Any owner or operator of a facility that is transitioning from federal oversight to oversight by the state, who knows or reasonably should have known of the release of a hazardous substance, is required to issue a notice to the Department Of Ecology (department). This notice must be issued within 90 days of the release's discovery and it must disclose that the release has occurred, and describe the remedial actions that are being taken or that are planned.

To adequately notify the public, the notice must be posted in a visible and publicly assessable location in the facility and the department must mail notice to: (1) each

residence and landowner within 300 feet of the facility or the area where the release occurred; (2) each business whose property is within 300 feet from the facility; (3) each residence landowner, and business within the area where the hazardous substance came to be located as a result of the release; (4) any neighborhood associations or community organizations recognized by the local city that represent an area within one mile of the facility; (5) the appropriate city, county, and local health district; and (6) The Department of Health.

The notice must include the common name and chemical abstract service registry number of the substance released, the date the release was discovered, the cause and date of the release, and the potential health and environmental effects of the release. The notice must also be translated if a significant segment of the effected community speaks a language other than English.

Certain releases are exempt from public notification. These include: (1) the application of pesticides in accordance with the label requirements; (2) the lawful and non-negligent use of a household product for domestic purposes; (3) the discharge of a hazardous substance in compliance with existing environmental laws and permits; (4) de minimus releases; (5) any releases originating from a residence, including discharge from a heating oil tank; (6) any spill on a public road or onto surface waters of the state that have been reported to the U.S. Coast Guard or the state Division of Emergency Management; (7) any release to the air; (8) releases that are part of a remedial action under the Model Toxics Control Act, (9) releases on agriculture land.

Costs incurred by the department for issuing the notice are to be reimbursed by the facility where the release occurred. Violations are enforceable by the Attorney General. The Attorney General may seek a civil penalty up to \$5,000 per day.

EFFECT OF SENATE AMENDMENT(S):

Clarifies that the act only applies to facilities transitioning from operations under a federal permit for treatment, storage, or disposal of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to operating under a state permit.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The more Washington's population grows and the more industry grows

to meet the demands of the population, it becomes important to find a way for communities and industry to live together with clean air, clear water, and a healthy environment. The bill is directed at finding a way for a peaceful coexistence, and is not aimed at a particular industry. Residents investigating past hazardous substances releases have been met with stonewalling by industry and incomplete information. Currently, citizens investigating a hazardous release must spend hours at various government offices, such as the DOE, clean air authorities, fire departments, and hazardous waste departments, just to get an idea of what is happening in their communities. Better relations and communications between industry and their neighbors would reduce suspicions and animosity. This bill creates a pathway of communication and greater community outreach by industry should be encouraged.

It is obvious that current notification laws are inadequate since residents are still not finding out about releases until a local newspaper conducts an investigation. Indeed, the DOE requires by rule that all releases be reported, but has no authority to enforce the rule. As a result, many releases go unreported for some time. Often the facility's neighbors are the last to find about a release, and they should be among the first.

Testimony Against: (With Concerns) This bill does nothing to provide further protection that federal and state law already provides. If there is a problem, the existing notification laws should be made stronger. Industry must already notify the state and local governments of any release of a hazardous substance, and it is better to allow the government entities to inform the public as needed. That reduces the likelihood of panic or animosity. Household wastes are more dangerous than industrial wastes given today's current regulations, but this bill does nothing to address that problem.

This bill places another burden on small businesses. It will be very difficult and expensive to notify all residents, especially those that are not landowners. The bill creates a high administrative burden without providing additional protection.

Testified: (In support) Cathy Hendrickson, Georgetown Crime Prevention and Community Council; Pete Kmet, Department of Ecology; Yalonda Sinde, Community Coalition for Environmental Justice; and Josh Baldi, Washington Environmental Council.

(With Concerns) Heather Hansen, Washington Friends of Farms and Forests; Jerry Smedes, Emerald Services; Grant Nelson, Association of Washington Businesses; Charlie Brown, Washington Oil Marketers Association; and Jim Boldt, Washington Auto Dealers.