

1 1355 NOT AMEND 4/15/91.3727

2 HB 1355 - S AMD
3 By Senator Barr

4 WITHDRAWN - 4/15/91

5 On page 3, after line 30, insert the following:

6 "NEW SECTION. **Sec. 2.** A new section is added to chapter
7 70.94 RCW to read as follows:

8 (1) The department and air pollution control authorities, in
9 carrying out their duties pursuant to RCW 70.94.331 and 70.94.141
10 to encourage voluntary cooperation by persons or affected groups to
11 achieve the purposes of this chapter, shall grant requests for
12 advice and consultation. The department and air pollution control
13 authorities shall visit the air pollution sites for the purpose of
14 affording the advice and consultation. The advice and consultation
15 shall be limited to the matters specified in the request and
16 affecting the interpretation and applicability of this chapter, and
17 the rules adopted under this chapter, to the operations being
18 conducted at the site. The department or authority in granting
19 requests for advisory or consultative service may provide for an
20 alternate means of affording advice and consultation other than on-
21 site consultation.

22 (2) The department or authority may make recommendations
23 regarding the elimination or modification of any practices not in
24 compliance with this chapter and the rules adopted under this
25 chapter. A visit to the site of air pollution under this section

1 shall not be regarded as an inspection or investigation under the
2 authority of this chapter; no notices or citations may be issued;
3 civil penalties may not be assessed upon such visit; and authorized
4 representatives of the director or authority designated to render
5 advice and consult with employers under the voluntary compliance
6 program shall not have enforcement authority. In the event an on-
7 site visit for the purpose of advice and consultation discloses a
8 violation creating a serious and immediate danger to public health,
9 the department or authority may take enforcement action under this
10 chapter.

11 (3) Nothing in this section shall be construed as providing
12 immunity from inspections or investigations conducted under this
13 chapter to any person who has made application for advisory or
14 consultative services during the pendency of the granting of the
15 application. This section shall not be construed as requiring an
16 inspection under this chapter of a site that has been visited for
17 advisory or consultative purposes. However, in the event of a
18 subsequent inspection, the director or the authority, or the
19 authorized representative of either the director or the authority,
20 may in their discretion take into consideration any information
21 obtained during the advisory or consultative visit of that site in
22 determining the nature of an alleged violation and the amount of
23 penalties to be assessed, if any. Persons requesting advisory or
24 consultative services shall be advised of the provisions of this
25 section and the rules adopted by the department relating to the
26 voluntary compliance program. The department may provide by rule

1 for the frequency, manner, and method of the rendering of advisory
2 or consultative services under this section, and for the scheduling
3 and priorities in granting applications consistent with the
4 availability of personnel, and in such a manner as not to
5 jeopardize the enforcement requirements of this chapter.

6 (4) For the purposes of this section, "director" means the
7 director of the state department of ecology; and "serious and
8 immediate danger to public health" means a person is in immediate
9 danger of death or serious bodily injury."

10 "Sec. 3. RCW 70.94.211 and 1974 ex.s. c 69 s 4 are each
11 amended to read as follows:

12 Whenever the board or the control officer has reason to
13 believe that any provision of this chapter or any ordinance,
14 resolution, rule or regulation relating to the control or
15 prevention of air pollution has been violated, such board or
16 control officer may cause written notice to be served upon the
17 alleged violator or violators. The notice shall specify the
18 provision of this chapter or the ordinance, resolution, rule or
19 regulation alleged to be violated, and the facts alleged to
20 constitute a violation thereof, and may include an order that
21 necessary corrective action be taken within a reasonable time. In
22 lieu of an order, the board or the control officer may require that
23 the alleged violator or violators appear before the board for a
24 hearing, or in addition to or in place of an order or hearing, the
25 board may initiate action pursuant to RCW 70.94.425, 70.94.430, and

1 70.94.435. Upon application by a person showing that a good faith
2 effort to comply with the requirements of an order has been made
3 and that the requirements have not been completed because of
4 factors beyond the person's control, the board or the control
5 officer may affirm or modify the requirements in such order."

6 "Sec. 4. RCW 70.105.010 and 1989 c 376 s 1 are each amended
7 to read as follows:

8 The words and phrases defined in this section shall have the
9 meanings indicated when used in this chapter unless the context
10 clearly requires otherwise.

11 (1) "Department" means the department of ecology.

12 (2) "Director" means the director of the department of ecology
13 or the director's designee.

14 (3) "Disposal site" means a geographical site in or upon which
15 hazardous wastes are disposed of in accordance with the provisions
16 of this chapter.

17 (4) "Dispose or disposal" means the discarding or abandoning
18 of hazardous wastes or the treatment, decontamination, or recycling
19 of such wastes once they have been discarded or abandoned.

20 (5) "Dangerous wastes" means any discarded, useless, unwanted,
21 or abandoned substances, including but not limited to certain
22 pesticides, or any residues or containers of such substances which
23 are disposed of in such quantity or concentration as to pose a
24 substantial present or potential hazard to human health, wildlife,
25 or the environment because such wastes or constituents or

1 combinations of such wastes:

2 (a) Have short-lived, toxic properties that may cause death,
3 injury, or illness or have mutagenic, teratogenic, or carcinogenic
4 properties; or

5 (b) Are corrosive, explosive, flammable, or may generate
6 pressure through decomposition or other means.

7 (6) "Extremely hazardous waste" means any dangerous waste
8 which

9 (a) will persist in a hazardous form for several years or more
10 at a disposal site and which in its persistent form

11 (i) presents a significant environmental hazard and may be
12 concentrated by living organisms through a food chain or may affect
13 the genetic make-up of man or wildlife, and

14 (ii) is highly toxic to man or wildlife

15 (b) if disposed of at a disposal site in such quantities as
16 would present an extreme hazard to man or the environment.

17 (7) "Person" means any person, firm, association, county,
18 public or municipal or private corporation, agency, or other entity
19 whatsoever.

20 (8) "Pesticide" shall have the meaning of the term as defined
21 in RCW 15.58.030 as now or hereafter amended.

22 (9) "Solid waste advisory committee" means the same advisory
23 committee as per RCW 70.95.040 through 70.95.070.

24 (10) "Designated zone facility" means any facility that
25 requires an interim or final status permit under rules adopted
26 under this chapter and that is not a preempted facility as defined

1 in this section.

2 (11) "Facility" means all contiguous land and structures,
3 other appurtenances, and improvements on the land used for
4 recycling, storing, treating, incinerating, or disposing of
5 hazardous waste.

6 (12) "Preempted facility" means any facility that includes as
7 a significant part of its activities any of the following
8 operations: (a) Landfill, (b) incineration, (c) land treatment,
9 (d) surface impoundment to be closed as a landfill, or (e) waste
10 pile to be closed as a landfill.

11 (13) "Hazardous household substances" means those substances
12 identified by the department as hazardous household substances in
13 the guidelines developed under RCW 70.105.220.

14 (14) "Hazardous substances" means any liquid, solid, gas, or
15 sludge, including any material, substance, product, commodity, or
16 waste, regardless of quantity, that exhibits any of the
17 characteristics or criteria of hazardous waste as described in
18 rules adopted under this chapter.

19 (15) "Hazardous waste" means and includes all dangerous and
20 extremely hazardous waste, including substances composed of both
21 radioactive and hazardous components.

22 (16) "Local government" means a city, town, or county.

23 (17) "Moderate-risk waste" means (a) any waste that exhibits
24 any of the properties of hazardous waste but is exempt from
25 regulation under this chapter solely because the waste is generated
26 in quantities below the threshold for regulation, and (b) any

1 household wastes which are generated from the disposal of
2 substances identified by the department as hazardous household
3 substances.

4 (18) "Service charge" means an assessment imposed under RCW
5 70.105.280 against those facilities that store, treat, incinerate,
6 or dispose of dangerous or extremely hazardous waste that contains
7 both a nonradioactive hazardous component and a radioactive
8 component. Service charges shall also apply to facilities
9 undergoing closure under this chapter in those instances where
10 closure entails the physical characterization of remaining wastes
11 which contain both a nonradioactive hazardous component and a
12 radioactive component or the management of such wastes through
13 treatment or removal, except any commercial low-level radioactive
14 waste facility.

15 (19) "Serious and immediate danger to public health or the
16 environment" means that humans, wildlife, or the environment are in
17 immediate danger of exposure to hazardous wastes."

18 "Sec. 5. RCW 70.105.080 and 1987 c 109 s 12 are each amended
19 to read as follows:

20 (1) Except as provided in subsection (2) of this section,
21 every person who fails to comply with any provision of this chapter
22 or of the rules adopted thereunder shall be subjected to a penalty
23 in an amount of not more than ten thousand dollars per day for
24 every such violation. Each and every such violation shall be a
25 separate and distinct offense. In case of continuing violation,

1 every day's continuance shall be a separate and distinct violation.
2 Every person who, through an act of commission or omission,
3 procures, aids, or abets in the violation shall be considered to
4 have violated the provisions of this section and shall be subject
5 to the penalty herein provided.

6 (2) If the noncompliance does not create a serious and
7 immediate danger to public health or the environment, the
8 department shall issue a written order requiring compliance under
9 the procedures of RCW 70.105.095, and shall specify a reasonable
10 period of time in which compliance is required. An order shall
11 describe with particularity the nature of the violation or
12 violations, including a reference to the provisions of the statute,
13 standard, rule, regulation, or order alleged to have been violated.
14 If the person does not comply with the order, the department may
15 proceed under subsection (1) of this section or take other
16 enforcement action authorized by this chapter.

17 (3) The penalty provided for in this section shall be imposed
18 pursuant to the procedures in RCW 43.21B.300."

19 "Sec. 6. RCW 70.105.095 and 1987 c 109 s 16 are each amended
20 to read as follows:

21 (1) Whenever on the basis on any reliable information the
22 department determines that a person has violated or is clearly
23 about to violate any provision of this chapter, the department may
24 issue an order requiring compliance (~~((either immediately or))~~)
25 within a specified reasonable period of time. The department may

1 order immediate compliance if the violation creates a serious and
2 immediate danger to the public health or the environment. The
3 order shall be delivered by registered mail or personally to the
4 person against whom the order is directed.

5 (2) Any person who fails to take corrective action as
6 specified in a compliance order shall be liable for a civil penalty
7 of not more than ten thousand dollars for each day of continued
8 noncompliance. In addition, the department may suspend or revoke
9 any permits and/or certificates issued under the provisions of this
10 chapter to a person who fails to comply with an order directed
11 against ((him)) the person.

12 (3) Upon application by a person showing that a good faith
13 effort to comply with the requirements of a compliance order has
14 been made and that the requirements have not been completed because
15 of factors beyond the person's control, the director, after
16 affording an opportunity for a hearing, shall issue an order
17 affirming or modifying the requirements in the compliance order.

18 (4) Any order may be appealed pursuant to RCW 43.21B.310."

19 "NEW SECTION. Sec. 7. A new section is added to chapter
20 70.105 RCW to read as follows:

21 (1) In carrying out the department's responsibilities to
22 provide consultative services under RCW 70.105.170, the department
23 shall grant a request for advice and consultation, and for the
24 purpose of affording the advice and consultation, visit the site of
25 hazardous waste generation or disposal. The advice and

1 consultation shall be limited to the matters specified in the
2 request and affecting the interpretation and applicability of this
3 chapter, and the rules adopted under this chapter, to the
4 operations being conducted at the site. The department in granting
5 requests for advisory or consultative service may provide for an
6 alternate means of affording advice and consultation other than on-
7 site consultation.

8 (2) The department may make recommendations regarding the
9 elimination or modification of any practices not in compliance with
10 this chapter and the rules adopted under this chapter. A visit to
11 the site of hazardous waste generation or disposal under this
12 section shall not be regarded as an inspection or investigation
13 under the authority of this chapter; no notices or citations may be
14 issued; civil penalties may not be assessed upon the visit; and
15 authorized representatives of the director designated to render
16 advice and consult with employers under the voluntary compliance
17 program shall not have enforcement authority. In the event an on-
18 site visit for the purpose of advice and consultation discloses a
19 violation creating a serious and immediate danger to public health
20 or the environment, the department may issue an order requiring
21 compliance pursuant to RCW 70.105.095, or take other enforcement
22 action authorized by this chapter.

23 (3) Nothing in this section shall be construed as providing
24 immunity from inspections or investigations conducted under this
25 chapter, or an inspection conducted as a result of a complaint, to
26 a person who has made application for advisory or consultative

1 services during the pendency of the granting of the application nor
2 immunity from inspections by the department or resulting from a
3 complaint subsequent to the conclusion of the consultative period.
4 This section shall not be construed as requiring an inspection
5 under this chapter of any site that has been visited for advisory
6 or consultative purposes. However, in the event of a subsequent
7 inspection, the director, or the director's authorized
8 representative, may in the director's discretion take into
9 consideration any information obtained during the advisory or
10 consultative visit of that site in determining the nature of an
11 alleged violation and the amount of penalties to be assessed, if
12 any. Persons requesting advisory or consultative services shall be
13 advised of the provisions of this section and the rules adopted by
14 the department relating to the voluntary compliance program. The
15 department may provide by rule for the frequency, manner, and
16 method of the rendering of advisory or consultative services under
17 this section, and for the scheduling and priorities in granting
18 applications consistent with the availability of personnel, and in
19 such a manner as not to jeopardize the enforcement requirements of
20 this chapter."

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22 By Senator Barr

23 WITHDRAWN - 4/15/91

24 On page 1, line 2 of the title, after "49.17.180" insert "
25 70.94.211, 70.105.010, 70.105.080, and 70.105.095; adding a new
26 section to chapter 70.94 RCW; adding a new section to chapter

1 70.105 RCW"