
SENATE BILL 5619

State of Washington

53rd Legislature

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By Senators Bauer, Haugen, Barr, Moore, Fraser, M. Rasmussen and Winsley

Read first time 02/05/93. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to public agency appeals of decisions by the
2 department of ecology regarding investigations, site rankings, or
3 remedial actions; and amending RCW 70.105D.030 and 70.105D.060;

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

5 **Sec. 1.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
6 as follows:

7 (1) The department may exercise the following powers in addition to
8 any other powers granted by law:

9 (a) Investigate, provide for investigating, or require potentially
10 liable persons to investigate any releases or threatened releases of
11 hazardous substances, including but not limited to inspecting,
12 sampling, or testing to determine the nature or extent of any release
13 or threatened release. If there is a reasonable basis to believe that
14 a release or threatened release of a hazardous substance may exist, the
15 department's authorized employees, agents, or contractors may enter
16 upon any property and conduct investigations. The department shall
17 give reasonable notice before entering property unless an emergency
18 prevents such notice. The department may by subpoena require the

1 attendance or testimony of witnesses and the production of documents or
2 other information that the department deems necessary;

3 (b) Conduct, provide for conducting, or require potentially liable
4 persons to conduct remedial actions (including investigations under (a)
5 of this subsection) to remedy releases or threatened releases of
6 hazardous substances. In carrying out such powers, the department's
7 authorized employees, agents, or contractors may enter upon property.
8 The department shall give reasonable notice before entering property
9 unless an emergency prevents such notice. In conducting, providing for,
10 or requiring remedial action, the department shall give preference to
11 permanent solutions to the maximum extent practicable and shall provide
12 for or require adequate monitoring to ensure the effectiveness of the
13 remedial action;

14 (c) Indemnify contractors retained by the department for carrying
15 out investigations and remedial actions, but not for any contractor's
16 reckless or wilful misconduct;

17 (d) Carry out all state programs authorized under the federal
18 cleanup law and the federal resource, conservation, and recovery act,
19 42 U.S.C. Sec. 6901 et seq., as amended;

20 (e) Classify substances as hazardous substances for purposes of RCW
21 70.105D.020(5) and classify substances and products as hazardous
22 substances for purposes of RCW 82.21.020(1); and

23 (f) Take any other actions necessary to carry out the provisions of
24 this chapter, including the power to adopt rules under chapter 34.05
25 RCW.

26 (2) The department shall immediately implement all provisions of
27 this chapter to the maximum extent practicable, including investigative
28 and remedial actions where appropriate. The department, within nine
29 months after March 1, 1989, shall adopt, and thereafter enforce, rules
30 under chapter 34.05 RCW to:

31 (a) Provide for public participation, including at least (i) the
32 establishment of regional citizen's advisory committees, (ii) public
33 notice of the development of investigative plans or remedial plans for
34 releases or threatened releases, and (iii) concurrent public notice of
35 all compliance orders, enforcement orders, or notices of violation;

36 (b) Establish a hazard ranking system for hazardous waste sites;

37 (c) Establish reasonable deadlines not to exceed ninety days for
38 initiating an investigation of a hazardous waste site after the
39 department receives information that the site may pose a threat to

1 human health or the environment and other reasonable deadlines for
2 remedying releases or threatened releases at the site; and

3 (d) Publish and periodically update minimum cleanup standards for
4 remedial actions at least as stringent as the cleanup standards under
5 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
6 least as stringent as all applicable state and federal laws, including
7 health-based standards under state and federal law.

8 (3) Before November 1st of each even-numbered year, the department
9 shall develop, with public notice and hearing, and submit to the ways
10 and means and appropriate standing environmental committees of the
11 senate and house of representatives a ranked list of projects and
12 expenditures recommended for appropriation from both the state and
13 local toxics control accounts. The department shall also provide the
14 legislature and the public each year with an accounting of the
15 department's activities supported by appropriations from the state
16 toxics control account, including a list of known hazardous waste sites
17 and their hazard rankings, actions taken and planned at each site, how
18 the department is meeting its top two management priorities under RCW
19 70.105.150, and all funds expended under this chapter.

20 (4) The department shall establish a scientific advisory board to
21 render advice to the department with respect to the hazard ranking
22 system, cleanup standards, remedial actions, deadlines for remedial
23 actions, monitoring, the classification of substances as hazardous
24 substances for purposes of RCW 70.105D.020(5) and the classification of
25 substances or products as hazardous substances for purposes of RCW
26 82.21.020(1). The board shall consist of five independent members to
27 serve staggered three-year terms. No members may be employees of the
28 department. Members shall be reimbursed for travel expenses as
29 provided in RCW 43.03.050 and 43.03.060.

30 (5) The department shall establish a program to identify potential
31 hazardous waste sites and to encourage persons to provide information
32 about hazardous waste sites.

33 (6) By December 31, 1993, the department shall by rule establish
34 and implement a process for appeals by public agencies of the
35 department's decisions about investigations, site rankings, or remedial
36 actions. This process shall include administrative review of
37 information submitted by public agencies that may demonstrate that the
38 information used in the department's decisions pursuant to RCW
39 70.105D.030(1)(a) or (b) was inaccurate or incorrectly applied. The

1 appeals process shall also include a process for incorporation of
2 rebuttals, if any, by public agencies in information published by the
3 department about investigation or ranking of a facility.

4 **Sec. 2.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
5 as follows:

6 The department's final investigative and remedial decisions under
7 RCW 70.105D.030 and 70.105D.050 and its decisions regarding liable
8 persons under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
9 exclusively in superior court and only at the following times: (1) In
10 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
11 department to enforce an order or seek a civil penalty under this
12 chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4)
13 in a suit by the department to compel investigative or remedial action;
14 and (5) in a citizen's suit under RCW 70.105D.050(5). The court shall
15 uphold the department's actions unless they were arbitrary and
16 capricious.

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