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SENATE BILL 6011

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State of Washington                      53rd Legislature                      1994 Regular Session

By Senators Fraser, Winsley and Franklin

Read first time 01/10/94. Referred to Committee on Ecology & Parks.

1            AN ACT Relating to the cleanup of hazardous waste sites; amending  
2 RCW 70.105D.020 and 70.105D.080; adding a new section to chapter  
3 70.105D RCW; and creating a new section.

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

5            **Sec. 1.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read  
6 as follows:

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

8            (2) "Director" means the director of ecology or the director's  
9 designee.

10           (3) "Facility" means (a) any building, structure, installation,  
11 equipment, pipe or pipeline (including any pipe into a sewer or  
12 publicly owned treatment works), well, pit, pond, lagoon, impoundment,  
13 ditch, landfill, storage container, motor vehicle, rolling stock,  
14 vessel, or aircraft, or (b) any site or area where a hazardous  
15 substance, other than a consumer product in consumer use, has been  
16 deposited, stored, disposed of, or placed, or otherwise come to be  
17 located.

1 (4) "Federal cleanup law" means the federal comprehensive  
2 environmental response, compensation, and liability act of 1980, 42  
3 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

4 (5) "Hazardous substance" means:

5 (a) Any dangerous or extremely hazardous waste as defined in RCW  
6 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste  
7 designated by rule pursuant to chapter 70.105 RCW;

8 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any  
9 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

10 (c) Any substance that, on March 1, 1989, is a hazardous substance  
11 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.  
12 9601(14);

13 (d) Petroleum or petroleum products; and

14 (e) Any substance or category of substances, including solid waste  
15 decomposition products, determined by the director by rule to present  
16 a threat to human health or the environment if released into the  
17 environment.

18 The term hazardous substance does not include any of the following  
19 when contained in an underground storage tank from which there is not  
20 a release: Crude oil or any fraction thereof or petroleum, if the tank  
21 is in compliance with all applicable federal, state, and local law.

22 (6) "Owner or operator" means:

23 (a) Any person with any ownership interest in the facility or who  
24 exercises any control over the facility; or

25 (b) In the case of an abandoned facility, any person who had owned,  
26 or operated, or exercised control over the facility any time before its  
27 abandonment;

28 The term does not include:

29 (i) An agency of the state or unit of local government which  
30 acquired ownership or control involuntarily through bankruptcy, tax  
31 delinquency, abandonment, or circumstances in which the government  
32 involuntarily acquires title. This exclusion does not apply to an  
33 agency of the state or unit of local government which has caused or  
34 contributed to the release or threatened release of a hazardous  
35 substance from the facility; or

36 (ii) A person who, without participating in the management of a  
37 facility, holds indicia of ownership primarily to protect the person's  
38 security interest in the facility.

1 (7) "Person" means an individual, firm, corporation, association,  
2 partnership, consortium, joint venture, commercial entity, state  
3 government agency, unit of local government, federal government agency,  
4 or Indian tribe.

5 (8) "Potentially liable person" means any person whom the  
6 department finds, based on credible evidence, to be liable under RCW  
7 70.105D.040. The department shall give notice to any such person and  
8 allow an opportunity for comment before making the finding, unless an  
9 emergency requires otherwise.

10 (9) "Public notice" means, at a minimum, adequate notice mailed to  
11 all persons who have made timely request of the department and to  
12 persons residing in the potentially affected vicinity of the proposed  
13 action; mailed to appropriate news media; published in the newspaper of  
14 largest circulation in the city or county of the proposed action; and  
15 opportunity for interested persons to comment.

16 (10) "Release" means any intentional or unintentional entry of any  
17 hazardous substance into the environment, including but not limited to  
18 the abandonment or disposal of containers of hazardous substances.

19 (11) "Remedy" or "remedial action" means any action or expenditure  
20 consistent with the purposes of this chapter to identify, eliminate, or  
21 minimize any threat or potential threat posed by hazardous substances  
22 to human health or the environment including any investigative and  
23 monitoring activities with respect to any release or threatened release  
24 of a hazardous substance and any health assessments or health effects  
25 studies conducted in order to determine the risk or potential risk to  
26 human health. These terms also include the provision of drinking  
27 water, including the construction of necessary delivery systems, when  
28 undertaken to minimize any threat or potential threat to human health  
29 posed by a facility at which a release of a hazardous substance has  
30 occurred.

31 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.105D  
32 RCW to read as follows:

33 For the purpose of conducting a remedial action or requiring  
34 potentially liable persons to take remedial action under this chapter,  
35 and for the purpose of making grants for remedial actions from the  
36 local toxics control account, the department shall give a high priority  
37 to facilities where the release of hazardous substances has resulted in  
38 the closing of drinking water wells or has contaminated a principal

1 drinking water supply, or a substantial threat exists that such a  
2 closure or contamination may occur.

3 **Sec. 3.** RCW 70.105D.080 and 1993 c 326 s 1 are each amended to  
4 read as follows:

5 (1) Except as provided in RCW 70.105D.040(4)(d), a person may bring  
6 a private right of action, including a claim for contribution or for  
7 declaratory relief, against any other person liable under RCW  
8 70.105D.040 for the recovery of remedial action costs. In the action,  
9 natural resource damages paid to the state under this chapter may also  
10 be recovered. Recovery shall be based on such equitable factors as the  
11 court determines are appropriate, except that the person may obtain  
12 treble damages for certain remedial action costs under the limitations  
13 of subsection (2) of this section. Remedial action costs shall include  
14 reasonable attorneys' fees and expenses. Recovery of remedial action  
15 costs shall be limited to those remedial actions that, when evaluated  
16 as a whole, are the substantial equivalent of a department-conducted or  
17 department-supervised remedial action. Substantial equivalence shall  
18 be determined by the court with reference to the rules adopted by the  
19 department under this chapter. An action under this section may be  
20 brought after remedial action costs are incurred but must be brought  
21 within three years from the date remedial action confirms cleanup  
22 standards are met or within one year of May 12, 1993, whichever is  
23 later. The prevailing party in such an action shall recover its  
24 reasonable attorneys' fees and costs. This section applies to all  
25 causes of action regardless of when the cause of action may have  
26 arisen. To the extent a cause of action has arisen prior to May 12,  
27 1993, this section applies retroactively, but in all other respects it  
28 applies prospectively.

29 (2)(a) In an action to recover remedial action costs under this  
30 section, a person may recover up to treble its costs of:

31 (i) Conducting studies to determine the nature and extent of the  
32 release at the facility;

33 (ii) Determining the identity of potentially liable persons with  
34 respect to the facility, and the relative contribution of such persons  
35 to the release at the facility; and

36 (iii) Taking interim remedial actions necessary to prevent imminent  
37 danger to public health or to the environment.

1       (b) To be eligible under this subsection, a person must have  
2 provided notice to the defendants prior to incurring such remedial  
3 action costs, and have afforded the defendants a good faith opportunity  
4 to participate in the funding of such remedial actions.

5       (c) The department shall adopt rules establishing the procedures  
6 and limitations of (b) of this subsection.

7       NEW SECTION.   **Sec. 4.**   By December 1, 1994, the department of  
8 ecology shall submit a report to the appropriate standing committees of  
9 the legislature on the means by which the state may exercise greater  
10 oversight of the competence of remedial action contractors.   In  
11 conducting the report, the department shall review the practices and  
12 professional standards of individuals and firms providing services in  
13 all aspects of remedial action of hazardous substances, including sites  
14 listed on the hazardous waste site list established under chapter  
15 70.105D RCW, the cleanup, removal, and replacement of underground  
16 storage tanks and home heating oil tanks, and other remedial actions.  
17 The report shall advise whether a state certification system may assist  
18 in ensuring that industry standards are observed in a greater  
19 proportion of cases, and, if so, what the elements of a certification  
20 system may include.   The report shall also review existing industry  
21 standards and mechanisms by which such standards may be enforced upon  
22 individuals and firms doing business in this state.

23       In preparing the report, the department shall obtain the assistance  
24 and views of the department of labor and industries, as well as the  
25 views of business organizations, citizen groups, and such professional  
26 organizations in the state who represent remedial action contractors.

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