
SENATE BILL 6085

State of Washington

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By Senators Fraser and Haugen

Read first time 01/12/94. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to the enforcement of the cleanup of hazardous
2 waste sites and exemptions from state and local permit requirements;
3 amending RCW 70.105D.020, 70.105D.030, 70.105D.050, 70.105D.060, and
4 70.105.050; adding a new section to chapter 70.105D RCW; adding a new
5 section to chapter 70.94 RCW; adding a new section to chapter 70.105
6 RCW; adding a new section to chapter 75.20 RCW; adding a new section to
7 chapter 90.48 RCW; adding a new section to chapter 90.58 RCW; and
8 adding a new section to chapter 43.21C RCW.

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

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

12 (1) "Agreed order" means an order issued by the department pursuant
13 to this chapter with which the potentially liable person receiving the
14 order agrees to comply. An agreed order may be used to require any
15 remedial actions but it is not a settlement under RCW 70.105D.040(4)
16 and shall not contain a covenant not to sue, or provide protection from
17 claims for contribution, or provide eligibility for public funding of
18 remedial actions under RCW 70.105D.070(2)(d)(xi).

19 (2) "Department" means the department of ecology.

1 (~~(2)~~) (3) "Director" means the director of ecology or the
2 director's designee.

3 (~~(3)~~) (4) "Facility" means (a) any building, structure,
4 installation, equipment, pipe or pipeline (including any pipe into a
5 sewer or publicly owned treatment works), well, pit, pond, lagoon,
6 impoundment, ditch, landfill, storage container, motor vehicle, rolling
7 stock, vessel, or aircraft, or (b) any site or area where a hazardous
8 substance, other than a consumer product in consumer use, has been
9 deposited, stored, disposed of, or placed, or otherwise come to be
10 located.

11 (~~(4)~~) (5) "Federal cleanup law" means the federal comprehensive
12 environmental response, compensation, and liability act of 1980, 42
13 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

14 (~~(5)~~) (6) "Hazardous substance" means:

15 (a) Any dangerous or extremely hazardous waste as defined in RCW
16 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
17 designated by rule pursuant to chapter 70.105 RCW;

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

20 (c) Any substance that, on March 1, 1989, is a hazardous substance
21 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
22 9601(14);

23 (d) Petroleum or petroleum products; and

24 (e) Any substance or category of substances, including solid waste
25 decomposition products, determined by the director by rule to present
26 a threat to human health or the environment if released into the
27 environment.

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

32 (~~(6)~~) (7) "Owner or operator" means:

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

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

38 The term does not include:

1 (i) An agency of the state or unit of local government which
2 acquired ownership or control involuntarily through bankruptcy, tax
3 delinquency, abandonment, or circumstances in which the government
4 involuntarily acquires title. This exclusion does not apply to an
5 agency of the state or unit of local government which has caused or
6 contributed to the release or threatened release of a hazardous
7 substance from the facility; or

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

11 (~~(7)~~) (8) "Person" means an individual, firm, corporation,
12 association, partnership, consortium, joint venture, commercial entity,
13 state government agency, unit of local government, federal government
14 agency, or Indian tribe.

15 (~~(8)~~) (9) "Potentially liable person" means any person whom the
16 department finds, based on credible evidence, to be liable under RCW
17 70.105D.040. The department shall give notice to any such person and
18 allow an opportunity for comment before making the finding, unless an
19 emergency requires otherwise.

20 (~~(9)~~) (10) "Public notice" means, at a minimum, adequate notice
21 mailed to all persons who have made timely request of the department
22 and to persons residing in the potentially affected vicinity of the
23 proposed action; mailed to appropriate news media; published in the
24 newspaper of largest circulation in the city or county of the proposed
25 action; and opportunity for interested persons to comment.

26 (~~(10)~~) (11) "Release" means any intentional or unintentional
27 entry of any hazardous substance into the environment, including but
28 not limited to the abandonment or disposal of containers of hazardous
29 substances.

30 (~~(11)~~) (12) "Remedy" or "remedial action" means any action or
31 expenditure consistent with the purposes of this chapter to identify,
32 eliminate, or minimize any threat or potential threat posed by
33 hazardous substances to human health or the environment including any
34 investigative and monitoring activities with respect to any release or
35 threatened release of a hazardous substance and any health assessments
36 or health effects studies conducted in order to determine the risk or
37 potential risk to human health.

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

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

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

17 (b) Conduct, provide for conducting, or require potentially liable
18 persons to conduct remedial actions (including investigations under (a)
19 of this subsection) to remedy releases or threatened releases of
20 hazardous substances. In carrying out such powers, the department's
21 authorized employees, agents, or contractors may enter upon property.
22 The department shall give reasonable notice before entering property
23 unless an emergency prevents such notice. In conducting, providing for,
24 or requiring remedial action, the department shall give preference to
25 permanent solutions to the maximum extent practicable and shall provide
26 for or require adequate monitoring to ensure the effectiveness of the
27 remedial action;

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

31 (d) Carry out all state programs authorized under the federal
32 cleanup law and the federal resource, conservation, and recovery act,
33 42 U.S.C. Sec. 6901 et seq., as amended;

34 (e) Classify substances as hazardous substances for purposes of RCW
35 70.105D.020(5) and classify substances and products as hazardous
36 substances for purposes of RCW 82.21.020(1); and

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

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

6 (a) Provide for public participation, including at least (i) the
7 establishment of regional citizen's advisory committees, (ii) public
8 notice of the development of investigative plans or remedial plans for
9 releases or threatened releases, and (iii) concurrent public notice of
10 all compliance orders, agreed orders, enforcement orders, or notices of
11 violation;

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

13 (c) Establish reasonable deadlines not to exceed ninety days for
14 initiating an investigation of a hazardous waste site after the
15 department receives information that the site may pose a threat to
16 human health or the environment and other reasonable deadlines for
17 remedying releases or threatened releases at the site; and

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

23 (3) Before November 1st of each even-numbered year, the department
24 shall develop, with public notice and hearing, and submit to the ways
25 and means and appropriate standing environmental committees of the
26 senate and house of representatives a ranked list of projects and
27 expenditures recommended for appropriation from both the state and
28 local toxics control accounts. The department shall also provide the
29 legislature and the public each year with an accounting of the
30 department's activities supported by appropriations from the state
31 toxics control account, including a list of known hazardous waste sites
32 and their hazard rankings, actions taken and planned at each site, how
33 the department is meeting its top two management priorities under RCW
34 70.105.150, and all funds expended under this chapter.

35 (4) The department shall establish a scientific advisory board to
36 render advice to the department with respect to the hazard ranking
37 system, cleanup standards, remedial actions, deadlines for remedial
38 actions, monitoring, the classification of substances as hazardous
39 substances for purposes of RCW 70.105D.020(5) and the classification of

1 substances or products as hazardous substances for purposes of RCW
2 82.21.020(1). The board shall consist of five independent members to
3 serve staggered three-year terms. No members may be employees of the
4 department. Members shall be reimbursed for travel expenses as
5 provided in RCW 43.03.050 and 43.03.060.

6 (5) The department shall establish a program to identify potential
7 hazardous waste sites and to encourage persons to provide information
8 about hazardous waste sites.

9 **Sec. 3.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
10 as follows:

11 (1) With respect to any release, or threatened release, for which
12 the department does not conduct or contract for conducting remedial
13 action and for which the department believes remedial action is in the
14 public interest, the director shall issue orders or agreed orders
15 requiring potentially liable persons to provide the remedial action.
16 Any liable person who refuses, without sufficient cause, to comply with
17 an order or agreed order of the director is liable in an action brought
18 by the attorney general for:

19 (a) Up to three times the amount of any costs incurred by the state
20 as a result of the party's refusal to comply; and

21 (b) A civil penalty of up to twenty-five thousand dollars for each
22 day the party refuses to comply.

23 The treble damages and civil penalty under this subsection apply to all
24 recovery actions filed on or after March 1, 1989.

25 (2) Any person who incurs costs complying with an order issued
26 under subsection (1) of this section may petition the department for
27 reimbursement of those costs. If the department refuses to grant
28 reimbursement, the person may within thirty days thereafter file suit
29 and recover costs by proving that he or she was not a liable person
30 under RCW 70.105D.040 and that the costs incurred were reasonable.

31 (3) The attorney general shall seek, by filing an action if
32 necessary, to recover the amounts spent by the department for
33 investigative and remedial actions (~~and~~), orders, and agreed orders
34 including amounts spent prior to March 1, 1989.

35 (4) The attorney general may bring an action to secure such relief
36 as is necessary to protect human health and the environment under this
37 chapter.

1 (5)(a) Any person may commence a civil action to compel the
2 department to perform any nondiscretionary duty under this chapter. At
3 least thirty days before commencing the action, the person must give
4 notice of intent to sue, unless a substantial endangerment exists. The
5 court may award attorneys' fees and other costs to the prevailing party
6 in the action.

7 (b) Civil actions under this section and RCW 70.105D.060 may be
8 brought in the superior court of Thurston county or of the county in
9 which the release or threatened release exists.

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

12 The department's investigative and remedial decisions under RCW
13 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
14 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
15 exclusively in superior court and only at the following times: (1) In
16 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
17 department to enforce an order or an agreed order or seek a civil
18 penalty under this chapter; (3) in a suit for reimbursement under RCW
19 70.105D.050(2); (4) in a suit by the department to compel investigative
20 or remedial action; and (5) in a citizen's suit under RCW
21 70.105D.050(5). The court shall uphold the department's actions unless
22 they were arbitrary and capricious.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.105D
24 RCW to read as follows:

25 A person conducting a remedial action at a facility under a consent
26 decree, order, or agreed order, and the department if it conducts a
27 remedial action, are exempt from the procedural requirements of
28 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
29 procedural requirements of any laws requiring or authorizing local
30 government permits or approvals for the remedial action. The
31 department shall ensure compliance with the substantive provisions of
32 chapters 70.94, 70.105, 75.20, 90.48, 90.58 RCW, and the substantive
33 provisions of laws requiring or authorizing local government permits or
34 approvals. The department shall establish procedures for ensuring that
35 such remedial actions comply with the substantive requirements adopted
36 pursuant to such laws, and shall consult with the state agencies and
37 local governments charged with implementing these laws. The procedures

1 shall provide an opportunity for comment by the public and by the state
2 agencies and local governments that would otherwise implement the laws
3 referenced in this section.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.94 RCW
5 to read as follows:

6 The procedural requirements of this chapter do not apply to a
7 person conducting a remedial action at a facility pursuant to a consent
8 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
9 or to the department if it conducts a remedial action under chapter
10 70.105D RCW. The department shall ensure compliance with the
11 substantive requirements of this chapter through the consent decree,
12 order, or agreed order issued pursuant to chapter 70.105D RCW, or
13 during the department-conducted remedial action, through the procedures
14 developed by the department pursuant to section 5 of this act.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.105 RCW
16 to read as follows:

17 The procedural requirements of this chapter do not apply to a
18 person conducting a remedial action at a facility pursuant to a consent
19 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
20 or to the department if it conducts a remedial action under chapter
21 70.105D RCW. The department shall ensure compliance with the
22 substantive requirements of this chapter through the consent decree,
23 order, or agreed order issued pursuant to chapter 70.105D RCW, or
24 during the department-conducted remedial action, through the procedures
25 developed by the department pursuant to section 5 of this act.

26 **Sec. 8.** RCW 70.105.050 and 1987 c 488 s 4 are each amended to read
27 as follows:

28 (1) No person shall dispose of designated extremely hazardous
29 wastes at any disposal site in the state other than the disposal site
30 established and approved for such purpose under provisions of this
31 chapter, except:

32 (a) When such wastes are going to a processing facility which will
33 result in the waste being reclaimed, treated, detoxified, neutralized,
34 or otherwise processed to remove its harmful properties or
35 characteristics; or

1 (b) When such wastes are the subject of a remedial action conducted
2 by the department or by potentially liable persons under a settlement,
3 consent decree, or agreed order issued by the department.

4 (2) Extremely hazardous wastes that contain radioactive components
5 may be disposed at a radioactive waste disposal site that is (a) owned
6 by the United States department of energy or a licensee of the nuclear
7 regulatory commission and (b) permitted by the department and operated
8 in compliance with the provisions of this chapter. However, prior to
9 disposal, or as a part of disposal, all reasonable methods of
10 treatment, detoxification, neutralization, or other waste management
11 methodologies designed to mitigate hazards associated with these wastes
12 shall be employed, as required by applicable federal and state laws and
13 regulations.

14 NEW SECTION. Sec. 9. A new section is added to chapter 75.20 RCW
15 to read as follows:

16 The procedural requirements of this chapter do not apply to a
17 person conducting a remedial action at a facility pursuant to a consent
18 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
19 or to the department of ecology if it conducts a remedial action under
20 chapter 70.105D RCW. The department of ecology shall ensure compliance
21 with the substantive requirements of this chapter through the consent
22 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
23 or during the department-conducted remedial action, through the
24 procedures developed by the department pursuant to section 5 of this
25 act.

26 NEW SECTION. Sec. 10. A new section is added to chapter 90.48 RCW
27 to read as follows:

28 The procedural requirements of this chapter do not apply to a
29 person conducting a remedial action at a facility pursuant to a consent
30 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
31 or to the department if it conducts a remedial action under chapter
32 70.105D RCW. The department shall ensure compliance with the
33 substantive requirements of this chapter through the consent decree,
34 order, or agreed order issued pursuant to chapter 70.105D RCW, or
35 during the department-conducted remedial action, through the procedures
36 developed by the department pursuant to section 5 of this act.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.58 RCW
2 to read as follows:

3 The procedural requirements of this chapter do not apply to a
4 person conducting a remedial action at a facility pursuant to a consent
5 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
6 or to the department if it conducts a remedial action under chapter
7 70.105D RCW. The department shall ensure compliance with the
8 substantive requirements of this chapter through the consent decree,
9 order, or agreed order issued pursuant to chapter 70.105D RCW, or
10 during the department-conducted remedial action, through the procedures
11 developed by the department pursuant to section 5 of this act.

12 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.21C
13 RCW to read as follows:

14 In conducting a remedial action at a facility pursuant to a consent
15 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
16 or if conducted by the department of ecology, the department to the
17 maximum extent practicable shall integrate the procedural requirements
18 of this chapter with the procedures under chapter 70.105D RCW. Such
19 integration shall include the public participation procedures of
20 chapter 70.105D RCW and the public notice and review requirements of
21 this chapter.

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