
SUBSTITUTE HOUSE BILL 1039

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Select Committee on Environmental Health
(originally sponsored by Representatives B. Sullivan, Kenney and Chase)

READ FIRST TIME 01/25/07.

1 AN ACT Relating to allowing the department of ecology to issue
2 written opinions for a portion of a facility under the model toxics
3 control act; and amending RCW 70.105D.030.

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

5 **Sec. 1.** RCW 70.105D.030 and 2002 c 288 s 3 are each amended to
6 read 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
10 for, or requiring remedial action, the department shall give preference
11 to permanent solutions to the maximum extent practicable and shall
12 provide for or require adequate monitoring to ensure the effectiveness
13 of the 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~~) willful 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(7) and classify substances and products as hazardous
22 substances for purposes of RCW 82.21.020(1);

23 (f) Issue orders or enter into consent decrees or agreed orders
24 that include, or issue written opinions under (i) of this subsection
25 that may be conditioned upon, deed restrictions where necessary to
26 protect human health and the environment from a release or threatened
27 release of a hazardous substance from a facility. Prior to
28 establishing a deed restriction under this subsection, the department
29 shall notify and seek comment from a city or county department with
30 land use planning authority for real property subject to a deed
31 restriction;

32 (g) Enforce the application of permanent and effective
33 institutional controls that are necessary for a remedial action to be
34 protective of human health and the environment and the notification
35 requirements established in RCW 70.105D.110, and impose penalties for
36 violations of that section consistent with RCW 70.105D.050;

37 (h) Require holders to conduct remedial actions necessary to abate

1 an imminent or substantial endangerment pursuant to RCW
2 70.105D.020(12)(b)(ii)(C);

3 (i) Provide informal advice and assistance to persons regarding the
4 administrative and technical requirements of this chapter. This may
5 include site-specific advice to persons who are conducting or otherwise
6 interested in independent remedial actions. Any such advice or
7 assistance shall be advisory only, and shall not be binding on the
8 department. As a part of providing this advice and assistance for
9 independent remedial actions, the department may prepare written
10 opinions regarding whether the independent remedial actions or
11 proposals for those actions meet the substantive requirements of this
12 chapter or whether the department believes further remedial action is
13 necessary at the facility. Nothing in this chapter may be construed to
14 preclude the department from issuing a written opinion on whether
15 further remedial action is necessary at any portion of the real
16 property located within a facility, even if further remedial action is
17 still necessary elsewhere at the same facility. Such a written opinion
18 on a portion of a facility must also provide an opinion on the status
19 of the facility as a whole. The department may collect, from persons
20 requesting advice and assistance, the costs incurred by the department
21 in providing such advice and assistance; however, the department shall,
22 where appropriate, waive collection of costs in order to provide an
23 appropriate level of technical assistance in support of public
24 participation. The state, the department, and officers and employees
25 of the state are immune from all liability, and no cause of action of
26 any nature may arise from any act or omission in providing, or failing
27 to provide, informal advice and assistance; and

28 (j) Take any other actions necessary to carry out the provisions of
29 this chapter, including the power to adopt rules under chapter 34.05
30 RCW.

31 (2) The department shall immediately implement all provisions of
32 this chapter to the maximum extent practicable, including investigative
33 and remedial actions where appropriate. The department shall adopt,
34 and thereafter enforce, rules under chapter 34.05 RCW to:

35 (a) Provide for public participation, including at least (i) public
36 notice of the development of investigative plans or remedial plans for
37 releases or threatened releases and (ii) concurrent public notice of

1 all compliance orders, agreed orders, enforcement orders, or notices of
2 violation;

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

4 (c) Provide for requiring the reporting by an owner or operator of
5 releases of hazardous substances to the environment that may be a
6 threat to human health or the environment within ninety days of
7 discovery, including such exemptions from reporting as the department
8 deems appropriate, however this requirement shall not modify any
9 existing requirements provided for under other laws;

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

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

21 (f) Apply industrial clean-up standards at industrial properties.
22 Rules adopted under this subsection shall ensure that industrial
23 properties cleaned up to industrial standards cannot be converted to
24 nonindustrial uses without approval from the department. The
25 department may require that a property cleaned up to industrial
26 standards is cleaned up to a more stringent applicable standard as a
27 condition of conversion to a nonindustrial use. Industrial clean-up
28 standards may not be applied to industrial properties where hazardous
29 substances remaining at the property after remedial action pose a
30 threat to human health or the environment in adjacent nonindustrial
31 areas.

32 (3) Before November 1st of each even-numbered year, the department
33 shall develop, with public notice and hearing, and submit to the ways
34 and means and appropriate standing environmental committees of the
35 senate and house of representatives a ranked list of projects and
36 expenditures recommended for appropriation from both the state and
37 local toxics control accounts. The department shall also provide the
38 legislature and the public each year with an accounting of the

1 department's activities supported by appropriations from the state
2 toxics control account, including a list of known hazardous waste sites
3 and their hazard rankings, actions taken and planned at each site, how
4 the department is meeting its top two management priorities under RCW
5 70.105.150, and all funds expended under this chapter.

6 (4) The department shall establish a scientific advisory board to
7 render advice to the department with respect to the hazard ranking
8 system, cleanup standards, remedial actions, deadlines for remedial
9 actions, monitoring, the classification of substances as hazardous
10 substances for purposes of RCW 70.105D.020(7) and the classification of
11 substances or products as hazardous substances for purposes of RCW
12 82.21.020(1). The board shall consist of five independent members to
13 serve staggered three-year terms. No members may be employees of the
14 department. Members shall be reimbursed for travel expenses as
15 provided in RCW 43.03.050 and 43.03.060.

16 (5) The department shall establish a program to identify potential
17 hazardous waste sites and to encourage persons to provide information
18 about hazardous waste sites.

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