Z-0182.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5310**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Ericksen, McCoy, Sheldon, Honeyford, Ranker, and Cleveland; by request of Energy Facilities Siting and Evaluation Council

AN ACT Relating to enforcement actions at facilities sited by the energy facility site evaluation council; amending RCW 80.50.150 and 90.56.330; adding a new section to chapter 80.50 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature recognizes that the energy facility site evaluation council is responsible for enforcing compliance with this chapter, rules adopted pursuant to this chapter, and site certification agreements and any permits it issues to energy facilities under its jurisdiction. The statutes related to enforcement by the energy facility site evaluation council have not been amended to reflect the increased penalty amounts that both the department of ecology and local air pollution control authorities may impose for similar violations of environmental laws. In addition, it is not altogether clear whether the department of ecology has authority to issue additional penalties under RCW 90.56.330 for oil spills at facilities under the jurisdiction of the energy facility site evaluation council. Furthermore, the legislature recently eliminated the mitigation process from certain environmental appeals because it represented an unnecessary step in the penalty process. The legislature did not amend the enforcement statutes of the energy facility site evaluation council to eliminate the mitigation process for penalties issued by the council.

The legislature intends to amend the energy facility site evaluation council's enforcement statutes to make them more consistent with similar enforcement statutes of the department of ecology and local air pollution control authorities, and to clarify the appeal process. The legislature also intends to clarify that additional penalties under RCW 90.56.330 for oil spills may be imposed by the department of ecology at energy facilities under the jurisdiction of the energy facility site evaluation council. Nothing in RCW 80.50.150 and section 3 of this act limits the department of ecology's ability to impose natural resource damage assessments pursuant to RCW 90.56.370, regardless of whether or not the energy facility is under the jurisdiction of the energy facility site evaluation council.

**Sec.**  RCW 80.50.150 and 2013 c 23 s 283 are each amended to read as follows:

(1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter ((~~and/or with~~)), rules adopted under this chapter, a site certification agreement issued pursuant to this chapter ((~~or~~)), a national pollutant discharge elimination system (hereafter in this section, NPDES) permit or waste discharge permit issued by the council ((~~pursuant to~~))under chapter 90.48 RCW ((~~or~~)), any air permit issued ((~~pursuant to~~))under RCW 80.50.040((~~(14)~~))(12), or any other permit issued by the council.

(2) The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in violation of any rules adopted under this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit or waste discharge permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any air permit issued pursuant to RCW 80.50.040((~~(14)~~))(12), or in violation of any other permit issued by the council. ((~~The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: PROVIDED, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.~~

~~(2)~~))(3) Willful violation of any provision of this chapter ((~~shall be~~))is a gross misdemeanor.

((~~(3)~~))(4) Willful or criminally negligent, as defined in RCW 9A.08.010(1)(d), violation of any provision of ((~~an~~))a NPDES permit or waste discharge permit issued by the council pursuant to chapter 90.48 RCW, or any air permit issued by the council pursuant to RCW 80.50.040((~~(14)~~))(12) or any emission standards promulgated by the council in order to implement the federal clean air act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter ((~~shall be deemed~~)), or any other permit issued by the council, is a ((~~crime~~))gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to twenty-five thousand dollars per day and costs of prosecution. ((~~Any violation of this subsection shall be a gross misdemeanor.~~

~~(4)~~))(5) Any person knowingly making any false statement, representation, or certification in any document in any ((~~NPDES~~)) form, notice, or report required by ((~~an~~))a NPDES or waste discharge permit, or in any form, notice, or report required for or by any air permit issued pursuant to RCW ((~~80.50.090(14) shall be deemed~~))80.50.040(12), or any other permit issued by the council, is guilty of a ((~~crime~~))gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution.

((~~(5) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the council within thirty days after it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.~~))

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council.

(7) The remedies and penalties in this ((~~section~~))chapter, both civil and criminal, ((~~shall be~~))are cumulative and ((~~shall be~~))are in addition to any other penalties and remedies available at law, or in equity, to any person.

NEW SECTION. **Sec.**  A new section is added to chapter 80.50 RCW to read as follows:

(1) Every person who violates the provisions of site certification agreements or permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation is a separate and distinct offense, and in case of a continuing violation, every day's continuance is deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation is considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity.

(2) Any person incurring any penalty under this section must appeal the same to the council before the person may appeal the penalty to superior court. Such appeals with the council shall be filed within thirty days of the date of receipt of notice imposing any penalty. Any penalty imposed under this section shall become due and payable thirty days after the date of receipt of a notice imposing the same unless an appeal is filed with the council. Whenever an appeal of any penalty incurred hereunder is filed with the council, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Judicial review of any final decision of the council is governed by chapter 34.05 RCW. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(3) For purposes of this subsection, "date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

**Sec.**  RCW 90.56.330 and 2007 c 347 s 3 are each amended to read as follows:

(1) Except as otherwise provided in RCW 90.56.390, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to one hundred thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to five hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the size of the business of the violator, the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty provided for in this section shall be imposed pursuant to RCW 43.21B.300.

(2) The director may impose the penalty authorized under subsection (1) of this section, in addition to any other assessment for damages the director is authorized to impose pursuant to law, if the discharge of oil is at an energy facility regulated by the energy facility site evaluation council.

(3) Any penalty recovered pursuant to this section shall be credited to the coastal protection fund created in RCW 90.48.390.

**--- END ---**