
SUBSTITUTE SENATE BILL 6011

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Winsley and Franklin)

Read first time 01/31/94.

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 up
12 to double its damages for certain remedial action costs under the
13 limitations of subsection (2) of this section. Remedial action costs
14 shall include reasonable attorneys' fees and expenses. Recovery of
15 remedial action costs shall be limited to those remedial actions that,
16 when evaluated as a whole, are the substantial equivalent of a
17 department-conducted or department-supervised remedial action.
18 Substantial equivalence shall be determined by the court with reference
19 to the rules adopted by the department under this chapter. An action
20 under this section may be brought after remedial action costs are
21 incurred but must be brought within three years from the date remedial
22 action confirms cleanup standards are met or within one year of May 12,
23 1993, whichever is later. The prevailing party in such an action shall
24 recover its reasonable attorneys' fees and costs. This section applies
25 to all 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 double 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, the person must establish
2 the following:

3 (i) That prior to incurring the costs, the person provided notice
4 to the defendant proposing a convenient method of negotiating the
5 responsibilities for conducting and funding the remedial actions at the
6 facility; and

7 (ii) The defendant without good cause refused to participate in
8 such negotiations. In determining good cause under this subsection,
9 the court shall consider the reasonableness of the method of
10 negotiation proposed by the person seeking recovery, information
11 available to the defendant at the time of the notice regarding whether
12 the defendant was a liable person under RCW 70.105D.040, and the
13 financial and personnel resources available to the defendant for
14 participating in such negotiations.

15 (c) This subsection shall not apply to costs incurred by a person
16 subsequent to the defendant's agreement to participate in conducting or
17 funding remedial actions.

18 NEW SECTION. Sec. 4. By December 1, 1994, the department of
19 ecology shall submit a report to the appropriate standing committees of
20 the legislature on the means by which the state may exercise greater
21 oversight of the competence of remedial action contractors. In
22 conducting the report, the department shall review the practices and
23 professional standards of individuals and firms providing services in
24 all aspects of remedial action of hazardous substances, including sites
25 listed on the hazardous waste site list established under chapter
26 70.105D RCW, the cleanup, removal, and replacement of underground
27 storage tanks and home heating oil tanks, and other remedial actions.
28 The report shall advise whether a state certification system may assist
29 in ensuring that industry standards are observed in a greater
30 proportion of cases, and, if so, what the elements of a certification
31 system may include. The report shall also review existing industry
32 standards and mechanisms by which such standards may be enforced upon
33 individuals and firms doing business in this state.

34 In preparing the report, the department shall obtain the assistance
35 and views of the department of labor and industries, as well as the

1 views of business organizations, citizen groups, and such professional
2 organizations in the state who represent remedial action contractors.

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