
SENATE BILL 5590

State of Washington

58th Legislature

2003 Regular Session

By Senators Morton, Fraser, Honeyford, Hewitt, Doumit and Regala; by request of Environmental Hearings Office

Read first time 01/31/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to determining the appeals period for certain
2 environmental appeals; amending RCW 43.21B.001, 43.21B.190, 43.21B.230,
3 and 43.21B.300; reenacting and amending RCW 43.21B.310; and adding a
4 new section to chapter 43.21B RCW.

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

6 **Sec. 1.** RCW 43.21B.001 and 1987 c 109 s 4 are each amended to read
7 as follows:

8 ((As used in)) The definitions in this section apply throughout
9 this chapter((,)) unless the context clearly requires otherwise.

10 (1) "Aggrieved party" means a party with standing to appeal,
11 including all parties of record.

12 (2) "Date of receipt" means:

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

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

17 (3) "Department" means the department of ecology((, and)).

18 (4) "Director" means the director of ecology.

1 (5) "Parties of record" means parties to the agency proceeding as
2 defined in RCW 34.05.010(12), and also includes any person who
3 participated in the agency administrative review process by providing
4 oral or written comment to the agency.

5 **Sec. 2.** RCW 43.21B.190 and 1995 c 382 s 4 are each amended to read
6 as follows:

7 (~~Within thirty days~~) After the final decision and order of the
8 hearings board (~~upon such an appeal~~) has been (~~communicated to~~)
9 received by the (~~interested~~) parties, (~~such interested~~) any party
10 aggrieved by the decision and order of the hearings board may appeal to
11 the superior court within thirty days from the date of receipt of the
12 final decision and order.

13 **Sec. 3.** RCW 43.21B.230 and 1997 c 125 s 2 are each amended to read
14 as follows:

15 Consistent with RCW 43.21B.110, any person having received notice
16 of (~~a~~) denial of a petition, a notice of determination, or notice of
17 (~~or~~) an order made by the department may appeal to the hearings
18 board, within thirty days from the date of receipt of the notice of
19 such denial, order, or determination (~~is posted in the United States~~
20 mail, ~~properly addressed, postage prepaid, to~~) by the appealing party.
21 Aggrieved parties who do not qualify as parties of record as defined in
22 RCW 43.21B.001 are not entitled to notice under this section. The
23 appeal shall be perfected by serving a copy of the notice of appeal
24 upon the department or air pollution authority established pursuant to
25 chapter 70.94 RCW, as the case may be, within the time specified herein
26 and by filing the original thereof with proof of service with the clerk
27 of the hearings board.

28 **Sec. 4.** RCW 43.21B.300 and 2001 c 36 s 2 are each amended to read
29 as follows:

30 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
31 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
32 90.56.330 shall be imposed by a notice in writing, either by certified
33 mail with return receipt requested or by personal service, to the
34 person incurring the penalty from the department or the local air
35 authority, describing the violation with reasonable particularity.

1 Within (~~fifteen~~) thirty days after the notice is received, the person
2 incurring the penalty may apply in writing to the department or the
3 authority for the remission or mitigation of the penalty. Upon receipt
4 of the application, the department or authority may remit or mitigate
5 the penalty upon whatever terms the department or the authority in its
6 discretion deems proper. The department or the authority may ascertain
7 the facts regarding all such applications in such reasonable manner and
8 under such rules as it may deem proper and shall remit or mitigate the
9 penalty only upon a demonstration of extraordinary circumstances such
10 as the presence of information or factors not considered in setting the
11 original penalty.

12 (2) Any penalty imposed under this section may be appealed to the
13 pollution control hearings board in accordance with this chapter if the
14 appeal is filed with the hearings board and served on the department or
15 authority thirty days after the date of receipt by the person penalized
16 of the notice imposing the penalty or thirty days after the date of
17 receipt of the notice of disposition of the application for relief from
18 penalty.

19 (3) A penalty shall become due and payable on the later of:

20 (a) Thirty days after receipt of the notice imposing the penalty;

21 (b) Thirty days after receipt of the notice of disposition on
22 application for relief from penalty, if such an application is made; or

23 (c) Thirty days after receipt of the notice of decision of the
24 hearings board if the penalty is appealed.

25 (4) If the amount of any penalty is not paid to the department
26 within thirty days after it becomes due and payable, the attorney
27 general, upon request of the department, shall bring an action in the
28 name of the state of Washington in the superior court of Thurston
29 county, or of any county in which the violator does business, to
30 recover the penalty. If the amount of the penalty is not paid to the
31 authority within thirty days after it becomes due and payable, the
32 authority may bring an action to recover the penalty in the superior
33 court of the county of the authority's main office or of any county in
34 which the violator does business. In these actions, the procedures and
35 rules of evidence shall be the same as in an ordinary civil action.

36 (5) All penalties recovered shall be paid into the state treasury
37 and credited to the general fund except those penalties imposed
38 pursuant to RCW 18.104.155, which shall be credited to the reclamation

1 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
2 disposition of which shall be governed by that provision, RCW
3 70.105.080, which shall be credited to the hazardous waste control and
4 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
5 which shall be credited to the coastal protection fund created by RCW
6 90.48.390.

7 **Sec. 5.** RCW 43.21B.310 and 2001 c 220 s 4 and 2001 c 36 s 3 are
8 each reenacted and amended to read as follows:

9 (1) Except as provided in RCW 90.03.210(2), any order issued by the
10 department or local air authority pursuant to RCW 70.94.211, 70.94.332,
11 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any
12 provision enacted after July 26, 1987, or any permit, certificate, or
13 license issued by the department may be appealed to the pollution
14 control hearings board if the appeal is filed with the board and served
15 on the department or authority within thirty days after the date of
16 receipt of the order. Except as provided under chapter 70.105D RCW and
17 RCW 90.03.210(2), this is the exclusive means of appeal of such an
18 order. Aggrieved parties who do not qualify as parties of record as
19 defined in RCW 43.21B.001 are not entitled to notice under this
20 section.

21 (2) The department or the authority in its discretion may stay the
22 effectiveness of an order during the pendency of such an appeal.

23 (3) At any time during the pendency of an appeal of such an order
24 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
25 hearings board for a stay of the order or for the removal thereof.

26 (4) Any appeal must contain the following in accordance with the
27 rules of the hearings board:

28 (a) The appellant's name and address;

29 (b) The date and docket number of the order, permit, or license
30 appealed;

31 (c) A description of the substance of the order, permit, or license
32 that is the subject of the appeal;

33 (d) A clear, separate, and concise statement of every error alleged
34 to have been committed;

35 (e) A clear and concise statement of facts upon which the requester
36 relies to sustain his or her statements of error; and

37 (f) A statement setting forth the relief sought.

1 (5) Upon failure to comply with any final order of the department,
2 the attorney general, on request of the department, may bring an action
3 in the superior court of the county where the violation occurred or the
4 potential violation is about to occur to obtain such relief as
5 necessary, including injunctive relief, to insure compliance with the
6 order. The air authorities may bring similar actions to enforce their
7 orders.

8 (6) An appealable decision or order shall be identified as such and
9 shall contain a conspicuous notice to the recipient that it may be
10 appealed only by filing an appeal with the hearings board and serving
11 it on the department within thirty days of the date of receipt.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21B RCW
13 to read as follows:

14 (1) Any aggrieved party, not qualifying as a party of record, who
15 has not received notice of denial of a petition, a notice of
16 determination, a regulatory or nonregulatory order, a permit decision,
17 or a penalty issued by the department or air authority may appeal,
18 within thirty days of the date the notice of petition denial, notice of
19 determination, order, permit decision, or penalty is posted on the
20 department's or local air authority's internet site. Any appeal taken
21 shall be in compliance with RCW 43.21B.310(4).

22 (2) Any notice posted on the department's or local air authority's
23 internet site pursuant to subsection (1) of this section must include
24 the date the notice was posted on the site, and state that any appeal
25 by an aggrieved party who is not a party of record must be filed within
26 thirty days of the date the notice is posted on the internet site.

27 (3) This section does not require the department or local air
28 authority to post the notices listed in subsection (1) of this section
29 on their internet site.

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