
SENATE BILL 5746

State of Washington

52nd Legislature

1991 Regular Session

By Senators Barr, Hansen, Owen, Hayner, McMullen, Anderson, Newhouse, Oke, Patterson, Thorsness, Rasmussen and Vognild.

Read first time February 19, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to encouraging compliance with environmental
2 protection measures; amending RCW 70.94.211, 70.105.010, 70.105.080,
3 and 70.105.095; adding a new section to chapter 70.94 RCW; and adding
4 a new section to chapter 70.105 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.94 RCW
7 to read as follows:

8 (1) The department and air pollution control authorities, in
9 carrying out their duty to encourage voluntary cooperation by persons
10 or affected groups to achieve the purposes of this chapter pursuant to
11 RCW 70.94.331 and 70.94.141, shall grant requests for advice and
12 consultation, and for the purpose of affording such advice and
13 consultation visit the site of air pollution. Such advice and
14 consultation shall be limited to the matters specified in the request
15 affecting the interpretation and applicability of this chapter and the

1 rules adopted under this chapter to the operations being conducted at
2 the site. The department or authority in granting requests for
3 advisory or consultative service may provide for an alternate means of
4 affording advice and consultation other than on-site consultation.

5 (2) The department or authority may make recommendations regarding
6 the elimination or modification of any practices not in compliance with
7 this chapter and the rules adopted under this chapter. No visit to the
8 site of air pollution under this section shall be regarded as an
9 inspection or investigation under the authority of this chapter, and no
10 notices or citations shall be issued, nor shall any civil penalties be
11 assessed upon such visit, nor shall any authorized representative of
12 the director or authority designated to render advice and consult with
13 employers under the voluntary compliance program have any enforcement
14 authority. In the event an on-site visit for the purpose of advice and
15 consultation discloses a violation creating a serious and immediate
16 danger to public health, the department or authority may take any
17 enforcement action authorized by this chapter.

18 (3) Nothing in this section shall be construed as providing
19 immunity to any person who has made application for advisory or
20 consultative services during the pendency of the granting of such
21 application from inspections or investigations conducted under this
22 chapter. This section shall not be construed as requiring an
23 inspection under this chapter of any site that has been visited for
24 advisory or consultative purposes. However, in the event of a
25 subsequent inspection, the director or the authority, or the authorized
26 representative of either the director or the authority, may in their
27 discretion take into consideration any information obtained during the
28 advisory or consultative visit of that site in determining the nature
29 of an alleged violation and the amount of penalties to be assessed, if
30 any. All persons requesting advisory or consultative services shall be

1 advised of the provisions of this section and the rules adopted by the
2 department relating to the voluntary compliance program. The
3 department may provide by rule for the frequency, manner, and method of
4 the rendering of advisory or consultative services under this section,
5 and for the scheduling and priorities in granting applications
6 consistent with the availability of personnel, and in such a manner as
7 not to jeopardize the enforcement requirements of this chapter.

8 (4) For the purposes of this section, "director" shall mean the
9 director of the state department of ecology; and, "serious and
10 immediate danger to public health" shall mean a person is in immediate
11 danger of death or serious bodily injury.

12 **Sec. 2.** RCW 70.94.211 and 1974 ex.s. c 69 s 4 are each amended to
13 read as follows:

14 Whenever the board or the control officer has reason to believe
15 that any provision of this chapter or any ordinance, resolution, rule
16 or regulation relating to the control or prevention of air pollution
17 has been violated, such board or control officer may cause written
18 notice to be served upon the alleged violator or violators. The notice
19 shall specify the provision of this chapter or the ordinance,
20 resolution, rule or regulation alleged to be violated, and the facts
21 alleged to constitute a violation thereof, and may include an order
22 that necessary corrective action be taken within a reasonable time. In
23 lieu of an order, the board or the control officer may require that the
24 alleged violator or violators appear before the board for a hearing, or
25 in addition to or in place of an order or hearing, the board may
26 initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435.
27 Upon application by a person showing that a good faith effort to comply
28 with the requirements of an order has been made and that the
29 requirements have not been completed because of factors beyond the

1 person's control, the board or the control officer may affirm or modify
2 the requirements in such order.

3 **Sec. 3.** RCW 70.105.010 and 1989 c 376 s 1 are each amended to read
4 as follows:

5 The words and phrases defined in this section shall have the
6 meanings indicated when used in this chapter unless the context clearly
7 requires otherwise.

8 (1) "Department" means the department of ecology.

9 (2) "Director" means the director of the department of ecology or
10 the director's designee.

11 (3) "Disposal site" means a geographical site in or upon which
12 hazardous wastes are disposed of in accordance with the provisions of
13 this chapter.

14 (4) "Dispose or disposal" means the discarding or abandoning of
15 hazardous wastes or the treatment, decontamination, or recycling of
16 such wastes once they have been discarded or abandoned.

17 (5) "Dangerous wastes" means any discarded, useless, unwanted, or
18 abandoned substances, including but not limited to certain pesticides,
19 or any residues or containers of such substances which are disposed of
20 in such quantity or concentration as to pose a substantial present or
21 potential hazard to human health, wildlife, or the environment because
22 such wastes or constituents or combinations of such wastes:

23 (a) Have short-lived, toxic properties that may cause death,
24 injury, or illness or have mutagenic, teratogenic, or carcinogenic
25 properties; or

26 (b) Are corrosive, explosive, flammable, or may generate pressure
27 through decomposition or other means.

28 (6) "Extremely hazardous waste" means any dangerous waste which

1 (a) will persist in a hazardous form for several years or more at
2 a disposal site and which in its persistent form

3 (i) presents a significant environmental hazard and may be
4 concentrated by living organisms through a food chain or may affect the
5 genetic make-up of man or wildlife, and

6 (ii) is highly toxic to man or wildlife

7 (b) if disposed of at a disposal site in such quantities as would
8 present an extreme hazard to man or the environment.

9 (7) "Person" means any person, firm, association, county, public or
10 municipal or private corporation, agency, or other entity whatsoever.

11 (8) "Pesticide" shall have the meaning of the term as defined in
12 RCW 15.58.030 as now or hereafter amended.

13 (9) "Solid waste advisory committee" means the same advisory
14 committee as per RCW 70.95.040 through 70.95.070.

15 (10) "Designated zone facility" means any facility that requires an
16 interim or final status permit under rules adopted under this chapter
17 and that is not a preempted facility as defined in this section.

18 (11) "Facility" means all contiguous land and structures, other
19 appurtenances, and improvements on the land used for recycling,
20 storing, treating, incinerating, or disposing of hazardous waste.

21 (12) "Preempted facility" means any facility that includes as a
22 significant part of its activities any of the following operations:
23 (a) Landfill, (b) incineration, (c) land treatment, (d) surface
24 impoundment to be closed as a landfill, or (e) waste pile to be closed
25 as a landfill.

26 (13) "Hazardous household substances" means those substances
27 identified by the department as hazardous household substances in the
28 guidelines developed under RCW 70.105.220.

29 (14) "Hazardous substances" means any liquid, solid, gas, or
30 sludge, including any material, substance, product, commodity, or

1 waste, regardless of quantity, that exhibits any of the characteristics
2 or criteria of hazardous waste as described in rules adopted under this
3 chapter.

4 (15) "Hazardous waste" means and includes all dangerous and
5 extremely hazardous waste, including substances composed of both
6 radioactive and hazardous components.

7 (16) "Local government" means a city, town, or county.

8 (17) "Moderate-risk waste" means (a) any waste that exhibits any of
9 the properties of hazardous waste but is exempt from regulation under
10 this chapter solely because the waste is generated in quantities below
11 the threshold for regulation, and (b) any household wastes which are
12 generated from the disposal of substances identified by the department
13 as hazardous household substances.

14 (18) "Service charge" means an assessment imposed under RCW
15 70.105.280 against those facilities that store, treat, incinerate, or
16 dispose of dangerous or extremely hazardous waste that contains both a
17 nonradioactive hazardous component and a radioactive component.
18 Service charges shall also apply to facilities undergoing closure under
19 this chapter in those instances where closure entails the physical
20 characterization of remaining wastes which contain both a
21 nonradioactive hazardous component and a radioactive component or the
22 management of such wastes through treatment or removal, except any
23 commercial low-level radioactive waste facility.

24 (19) "Serious and immediate danger to public health or the
25 environment" means that humans, wildlife, or the environment are in
26 immediate danger of exposure to hazardous wastes.

27 **Sec. 4.** RCW 70.105.080 and 1987 c 109 s 12 are each amended to
28 read as follows:

1 (1) Except as provided in subsection (2) of this section, every
2 person who fails to comply with any provision of this chapter or of the
3 rules adopted thereunder shall be subjected to a penalty in an amount
4 of not more than ten thousand dollars per day for every such violation.
5 Each and every such violation shall be a separate and distinct offense.
6 In case of continuing violation, every day's continuance shall be a
7 separate and distinct violation. Every person who, through an act of
8 commission or omission, procures, aids, or abets in the violation shall
9 be considered to have violated the provisions of this section and shall
10 be subject to the penalty herein provided.

11 (2) Where the noncompliance does not create a serious and immediate
12 danger to public health or the environment, the department shall issue
13 a written order requiring compliance under the procedures of RCW
14 70.105.095, and shall specify a reasonable period of time in which
15 compliance is required. An order shall describe with particularity the
16 nature of the violation or violations, including a reference to the
17 provisions of the statute, standard, rule, regulation, or order alleged
18 to have been violated. If the person does not comply with the order,
19 the department may proceed under subsection (1) of this section or take
20 other enforcement action authorized by this chapter.

21 (3) The penalty provided for in this section shall be imposed
22 pursuant to the procedures in RCW 43.21B.300.

23 **Sec. 5.** RCW 70.105.095 and 1987 c 109 s 16 are each amended to
24 read as follows:

25 (1) Whenever on the basis on any reliable information the
26 department determines that a person has violated or is clearly about to
27 violate any provision of this chapter, the department may issue an
28 order requiring compliance (~~(either immediately or)~~) within a specified
29 reasonable period of time. The department may order immediate

1 compliance if the violation creates a serious and immediate danger to
2 the public health or the environment. The order shall be delivered by
3 registered mail or personally to the person against whom the order is
4 directed.

5 (2) Any person who fails to take corrective action as specified in
6 a compliance order shall be liable for a civil penalty of not more than
7 ten thousand dollars for each day of continued noncompliance. In
8 addition, the department may suspend or revoke any permits and/or
9 certificates issued under the provisions of this chapter to a person
10 who fails to comply with an order directed against ((him)) the person.

11 (3) Upon application by a person showing that a good faith effort
12 to comply with the requirements of a compliance order has been made and
13 that the requirements have not been completed because of factors beyond
14 the person's control, the director after affording an opportunity for
15 a hearing shall issue an order affirming or modifying the requirements
16 in such compliance order.

17 (4) Any order may be appealed pursuant to RCW 43.21B.310.

18 NEW SECTION. Sec. 6. A new section is added to chapter 70.105 RCW
19 to read as follows:

20 (1) In carrying out the department's responsibilities to provide
21 consultative services under RCW 70.105.170, the department shall grant
22 a request for advice and consultation, and for the purpose of affording
23 such advice and consultation visit the site of hazardous waste
24 generation or disposal. Such advice and consultation shall be limited
25 to the matters specified in the request affecting the interpretation
26 and applicability of this chapter and the rules adopted under this
27 chapter to the operations being conducted at the site. The department
28 in granting requests for advisory or consultative service may provide

1 for an alternate means of affording advice and consultation other than
2 on-site consultation.

3 (2) The department may make recommendations regarding the
4 elimination or modification of any practices not in compliance with
5 this chapter and the rules adopted under this chapter. No visit to the
6 site of hazardous waste generation or disposal under this section shall
7 be regarded as an inspection or investigation under the authority of
8 this chapter, and no notices or citations shall be issued, nor shall
9 any civil penalties be assessed upon such visit, nor shall any
10 authorized representative of the director designated to render advice
11 and consult with employers under the voluntary compliance program have
12 any enforcement authority. In the event an on-site visit for the
13 purpose of advice and consultation discloses a violation creating a
14 serious and immediate danger to public health or the environment, the
15 department may issue an order requiring compliance pursuant to RCW
16 70.105.095, or take other enforcement action authorized by this
17 chapter.

18 (3) Nothing in this section shall be construed as providing
19 immunity to any person who has made application for advisory or
20 consultative services during the pendency of the granting of such
21 application from inspections or investigations conducted under this
22 chapter or any inspection conducted as a result of a complaint, nor
23 immunity from inspections by the department or resulting from a
24 complaint subsequent to the conclusion of the consultative period.
25 This section shall not be construed as requiring an inspection under
26 this chapter of any site that has been visited for advisory or
27 consultative purposes. However, in the event of a subsequent
28 inspection, the director, or the director's authorized representative,
29 may in the director's discretion take into consideration any
30 information obtained during the advisory or consultative visit of that

1 site in determining the nature of an alleged violation and the amount
2 of penalties to be assessed, if any. All persons requesting advisory
3 or consultative services shall be advised of the provisions of this
4 section and the rules adopted by the department relating to the
5 voluntary compliance program. The department may provide by rule for
6 the frequency, manner, and method of the rendering of advisory or
7 consultative services under this section, and for the scheduling and
8 priorities in granting applications consistent with the availability of
9 personnel, and in such a manner as not to jeopardize the enforcement
10 requirements of this chapter.