
SUBSTITUTE HOUSE BILL 1810

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored by Representatives Pruitt, Appelwick and Valle)

Read first time 03/03/93.

1 AN ACT Relating to civil enforcement of forest practices
2 violations; amending RCW 76.09.140 and 76.09.170; prescribing
3 penalties; and providing an effective date.

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

5 **Sec. 1.** RCW 76.09.140 and 1975 1st ex.s. c 200 s 8 are each
6 amended to read as follows:

7 (1) The department of natural resources(~~(, through the attorney~~
8 ~~general,))~~) may take any necessary action to enforce any final order or
9 final decision, (~~(or to enjoin any forest practices by any person for~~
10 ~~a one year period after such person has failed to comply with a final~~
11 ~~order or a final decision))~~) and may disapprove for up to one year any
12 forest practices application or notification submitted by any person
13 who has failed to comply with a final order or final decision or has
14 failed to pay any civil penalties as provided in RCW 76.09.170. For
15 purposes of this act, the terms "final order" and "final decision"
16 shall mean the same as set forth in RCW 76.09.080, 76.09.090, and
17 76.09.110. The department shall provide written notice of its intent
18 to disapprove an application or notification under this subsection.
19 The department shall forward copies of its notice of intent to

1 disapprove to any affected landowner. The disapproval period shall run
2 from thirty days following the date of actual notice or when all
3 administrative and judicial appellate processes, if any, have been
4 exhausted. Any person provided the notice may seek review from the
5 appeals board by filing a request for review within thirty days of the
6 date of the notice of intent.

7 (2) On request of the department, the attorney general may take any
8 action necessary to enforce this chapter, including, but not limited to
9 seeking penalties, enforcing final orders or decisions, and seeking
10 civil injunctions, show cause orders, or contempt orders.

11 ~~((2))~~ (3) A county may bring injunctive, declaratory, or other
12 actions for enforcement for forest practice activities within its
13 jurisdiction in the superior court as provided by law against the
14 department, the forest land owner, timber owner or operator to enforce
15 the forest practice regulations or any final order of the department,
16 or the appeals board(~~:(—PROVIDED, That)).~~ No civil or criminal
17 penalties shall be imposed for past actions or omissions if such
18 actions or omissions were conducted pursuant to an approval or
19 directive of the department (~~(of natural resources:—AND PROVIDED~~
20 FURTHER, That such actions shall)). Injunctions, declaratory actions,
21 or other actions for enforcement under this subsection may not be
22 commenced unless the department fails to take appropriate action after
23 ten days written notice to the department by the county of a violation
24 of the forest practices (~~(regulations))~~ rules or final orders of the
25 department or the appeals board.

26 **Sec. 2.** RCW 76.09.170 and 1975 1st ex.s. c 200 s 9 are each
27 amended to read as follows:

28 (1) Every person who (~~(fails to comply with))~~ violates any
29 provision of RCW 76.09.010 through 76.09.280 (~~(as now or hereafter~~
30 amended)) or of the forest practices regulations, or who converts
31 forest land to a use other than commercial timber operation within
32 three years after completion of the forest practice without the consent
33 of the county, city, or town, shall be subject to a penalty in an
34 amount of not more than (~~(five hundred))~~ ten thousand dollars for every
35 such violation. Each and every such violation shall be a separate and
36 distinct offense. In case of a failure to comply with a (~~(notice~~
37 pursuant to RCW 76.09.090 as now or hereafter amended or a)) stop work
38 order, every day's continuance shall be a separate and distinct

1 violation. Every person who through an act of commission or omission
2 procures, aids or abets in the violation shall be considered to have
3 violated the provisions of this section and shall be subject to the
4 penalty (~~herein provided for: PROVIDED, That~~). No penalty shall be
5 imposed under this section upon any governmental official, an employee
6 of any governmental department, agency, or entity, or a member of any
7 board or advisory committee created by this chapter for any act or
8 omission in his or her duties in the administration of this chapter or
9 of any regulation promulgated (~~thereunder~~) under this chapter.

10 (2) The department shall develop and recommend to the board a
11 penalty schedule to determine the amount to be imposed pursuant to this
12 section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,
13 such penalty schedule to be effective no later than January 1, 1994.
14 The schedule shall be developed in consideration of the following:

15 (a) Previous violation history;

16 (b) Severity of the impact on public resources;

17 (c) Whether the violation of this chapter or its rules was
18 intentional;

19 (d) Cooperation with the department;

20 (e) Repairability of the adverse effect from the violation; and

21 (f) The extent to which a penalty to be imposed on a forest
22 landowner for a forest practice violation committed by another should
23 be reduced because the owner was unaware of the violation and has not
24 received substantial economic benefits from the violation.

25 (3) The penalty (~~herein~~) provided (~~for~~) in this section shall
26 be imposed by a notice in writing, either by certified mail with return
27 receipt requested or by personal service, to the person incurring the
28 same from the department (~~of natural resources~~) describing the
29 violation with reasonable particularity. Within fifteen days after the
30 notice is received, the person incurring the penalty may apply in
31 writing to the department for the remission or mitigation of such
32 penalty. Upon receipt of the application, that department may remit or
33 mitigate the penalty upon whatever terms that department in its
34 discretion deems proper, provided the department deems such remission
35 or mitigation to be in the best interests of carrying out the purposes
36 of this chapter. The department (~~of natural resources~~) shall have
37 authority to ascertain the facts regarding all such applications in
38 such reasonable manner and under such regulations as it may deem
39 proper.

1 (4) Any person incurring ~~((any))~~ a penalty ~~((hereunder))~~ pursuant
2 to this section may appeal the same to the forest practices appeals
3 board. Such appeals shall be filed within thirty days of receipt of
4 notice imposing any penalty unless an application for remission or
5 mitigation is made to the department. When such an application for
6 remission or mitigation is made, such appeals shall be filed within
7 thirty days of receipt of notice from the department setting forth the
8 disposition of the application for remission or mitigation.

9 ~~((Any))~~ (5) The penalty imposed ~~((hereunder))~~ pursuant to this
10 section shall become due and payable thirty days after receipt of a
11 notice imposing the same unless application for remission or mitigation
12 is made or an appeal is filed. When such an application for remission
13 or mitigation is made, any penalty incurred hereunder shall become due
14 and payable thirty days after receipt of notice setting forth the
15 disposition of such application unless an appeal is filed from such
16 disposition. Whenever an appeal of ~~((any))~~ the penalty incurred
17 ~~((hereunder))~~ is filed, the penalty shall become due and payable only
18 upon completion of all administrative and judicial review proceedings
19 and the issuance of a final decision confirming the penalty in whole or
20 in part.

21 (6) If the amount of any penalty is not paid to the department
22 within thirty days after it becomes due and payable, the attorney
23 general, upon the request of the department, shall bring an action in
24 the name of the state of Washington in the superior court of Thurston
25 county or of any county in which such violator may do business, to
26 recover such penalty. In all such actions the procedure and rules of
27 evidence shall be the same as an ordinary civil action except as
28 otherwise in this chapter provided. In addition to or as an
29 alternative to seeking enforcement of penalties in superior court, the
30 department may bring an action in district court as provided in Title
31 3 RCW, to collect penalties.

32 (7) Penalties imposed pursuant to this section for violations
33 associated with a conversion to a use other than commercial timber
34 operation shall be a lien upon the real property of the person assessed
35 the penalty and the department may collect such amount in the same
36 manner provided in chapter 60.04 RCW for mechanics' liens.

1 NEW SECTION. **Sec. 3.** The following portions of this act shall
2 take effect on January 1, 1994: Section 1 and subsections (1) and (3)
3 through (7) of section 2.

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