
SUBSTITUTE SENATE BILL 5208

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Loveland, Newhouse, Rasmussen, Swecker, Hochstatter and Hale)

Read first time 02/28/97.

1 AN ACT Relating to environmental complaint handling; amending RCW
2 70.94.200, 70.94.211, 70.94.332, 90.48.090, and 90.48.120; adding a new
3 section to chapter 90.48 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 70.94.200 and 1987 c 109 s 38 are each amended to read
6 as follows:

7 For the purpose of investigating substantive allegations contained
8 in a signed complaint or personal observation of conditions specific to
9 the control, recovery, or release of air contaminants into the
10 atmosphere in violation of this chapter, rules adopted under this
11 chapter, the federal clean air act, a permit issued under the authority
12 of this chapter, or any determination or order issued under the
13 authority of this chapter, a control officer, the department, or their
14 duly authorized representatives, (~~shall have the power to~~) upon
15 presentation of credentials, may enter at reasonable times upon any
16 private or public property, excepting nonmultiple unit private
17 dwelling housing two families or less. (~~No person shall refuse~~) If
18 a control officer, the department, or their duly authorized
19 representative is refused entry or access (~~to any control officer, the~~

1 ~~department, or their duly authorized representatives, who requests~~
2 ~~entry for the purpose of inspection, and who presents appropriate~~
3 ~~credentials; nor shall)), after requesting entry for the purpose of~~
4 inspection and presenting appropriate credentials, or if any person
5 shall obstruct, hamper, or interfere with any such inspection the
6 attorney general, on behalf of the state, may either petition the
7 superior court of the county in which the property is located for a
8 warrant authorizing entry or commence a civil action to compel
9 compliance with a request for entry, to authorize entry, and to enjoin
10 interference with the lawful performance of inspection duties under
11 this chapter. Refusal of entry or access is not a violation of the
12 provisions of this chapter subject to criminal and civil penalties
13 under RCW 70.94.430 and 70.94.431.

14 A person who in good faith files a complaint under this section
15 shall be entitled to protection from civil liability under RCW 4.24.500
16 and 4.24.510. Any person who knowingly or maliciously files a
17 complaint under this section containing any false information or
18 allegations is guilty of a gross misdemeanor punishable as provided
19 under RCW 9A.20.021. To the extent that complaints filed with the
20 department under this section are made a part of the record in support
21 of a notice of violation under RCW 70.94.211 or 70.94.332, they shall
22 be eligible for exemption from public disclosure under RCW 42.17.310.

23 **Sec. 2.** RCW 70.94.211 and 1991 c 199 s 309 are each amended to
24 read as follows:

25 At least thirty days prior to the commencement of any formal
26 enforcement action under RCW 70.94.430 or 70.94.431 a local air
27 authority shall cause written notice to be served upon the alleged
28 violator or violators. The notice shall specify the provision of this
29 chapter or the rule or regulation alleged to be violated, and the facts
30 established by cogent site-specific scientific evidence alleged to
31 constitute a violation thereof, and may include an order directing that
32 necessary corrective action be taken within a reasonable time. In lieu
33 of an order, the board or the control officer may require that the
34 alleged violator or violators appear before the board for a hearing.
35 Every notice of violation shall offer to the alleged violator an
36 opportunity to meet with the local air authority prior to the
37 commencement of enforcement action.

1 **Sec. 3.** RCW 70.94.332 and 1991 c 199 s 711 are each amended to
2 read as follows:

3 At least thirty days prior to the commencement of any formal
4 enforcement action under RCW 70.94.430 and 70.94.431, the department of
5 ecology shall cause written notice to be served upon the alleged
6 violator or violators. The notice shall specify the provision of this
7 chapter or the rule or regulation alleged to be violated, and the facts
8 established by cogent site-specific scientific evidence alleged to
9 constitute a violation thereof, and may include an order that necessary
10 corrective action be taken within a reasonable time. In lieu of an
11 order, the department may require that the alleged violator or
12 violators appear before it for the purpose of providing the department
13 information pertaining to the violation or the charges complained of.
14 Every notice of violation shall offer to the alleged violator an
15 opportunity to meet with the department prior to the commencement of
16 enforcement action.

17 **Sec. 4.** RCW 90.48.090 and 1994 c 232 s 21 are each amended to read
18 as follows:

19 The department or its duly appointed agent (~~(shall have the right~~
20 ~~to)~~), upon presentation of identifying credentials, may enter at all
21 reasonable times in or upon any property, public or private, in which
22 an effluent source is located, for the purpose of inspecting and
23 investigating conditions relating to the pollution of or the possible
24 pollution of any of the waters of this state.

25 The department shall have special inspection requirements for
26 metals mining and milling operations regulated under chapter 232, Laws
27 of 1994. The department shall inspect these mining and milling
28 operations at least quarterly in order to ensure compliance with the
29 intent and any permit issued pursuant to this chapter. The department
30 shall conduct additional inspections as needed during the construction
31 phase of these mining operations in order to ensure compliance with
32 this chapter.

33 **Sec. 5.** RCW 90.48.120 and 1992 c 73 s 25 are each amended to read
34 as follows:

35 (~~(1)~~) Whenever(~~(, in the opinion of)~~) the department determines,
36 (any) based upon substantive allegations contained in a signed
37 complaint or upon its own observation, that there is probable cause to

1 believe that a person ((shall-violate)) has violated or ((creates))
2 created a substantial potential to violate the provisions of this
3 chapter or chapter 90.56 RCW, or ((fails)) has failed to control the
4 polluting content of waste discharged or to be discharged into any
5 waters of the state, the department shall conduct an investigation. If
6 cogent site-specific scientific evidence supports a determination by
7 the department that a violation has occurred or will occur in the
8 absence of preventive action, it shall further determine whether
9 immediate action is necessary to accomplish the purposes of this
10 chapter or chapter 90.56 RCW. If immediate action is not necessary,
11 the department shall notify such person of its determination by
12 registered mail. Such determination shall not constitute an order or
13 directive under RCW 43.21B.310. Within thirty days from the receipt of
14 notice of such determination, such person shall file with the
15 department a full report stating what steps have been and are being
16 taken to control such waste or pollution or to otherwise comply with
17 the determination of the department. Whereupon the department shall
18 issue such order or directive as it deems appropriate under the
19 circumstances, and shall notify such person thereof by registered mail.

20 ~~((+2)) Whenever the department ((deems)) determines that immediate~~
21 ~~action is necessary to accomplish the purposes of this chapter or~~
22 ~~chapter 90.56 RCW, it may issue such order or directive, as appropriate~~
23 ~~under the circumstances, and serve it by registered mail or personally~~
24 ~~upon any person to whom it is directed without first issuing a notice~~
25 ~~or determination ((pursuant to subsection (1) of this section. An~~
26 ~~order or directive issued pursuant to this subsection shall be served~~
27 ~~by registered mail or personally upon any person to whom it is~~
28 ~~directed)).~~

29 A person who in good faith files a complaint with the department
30 under this section shall be entitled to protection from civil liability
31 under RCW 4.24.500 and 4.24.510. A person who knowingly or maliciously
32 files a complaint with the department under this section containing any
33 false information or allegations is guilty of a gross misdemeanor
34 punishable as provided under RCW 9A.20.021. To the extent that
35 complaints filed with the department under this section are made a part
36 of the record of a determination that a violation has or is about to
37 occur, they shall be eligible for exemption from public disclosure
38 under RCW 42.17.310.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48 RCW
2 to read as follows:

3 Nothing in chapter . . ., Laws of 1997 (this act) shall be
4 interpreted as diminishing the department's authority under RCW
5 90.48.260 to adopt a comprehensive state point source waste discharge
6 or pollution discharge elimination permit program meeting the minimum
7 requirements established by the federal government for qualifying for
8 full responsibility for the administration of the federal clean water
9 act.

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