
SENATE BILL 5725

State of Washington

55th Legislature

1997 Regular Session

By Senators Swecker and McDonald

Read first time 02/10/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to reclaimed water; amending RCW 70.105D.040;
2 adding new sections to chapter 90.46 RCW; and adding a new section to
3 chapter 90.48 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.46 RCW
6 to read as follows:

7 The owner of a wastewater treatment plant operated for the purpose
8 of treating wastes from a sanitary system that, without a permit issued
9 under this chapter, discharges the wastes to marine waters, has the
10 exclusive right to the reclaimed water unless otherwise provided by
11 agreement.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.46 RCW
13 to read as follows:

14 The holder of a reclaimed water permit issued under this chapter
15 and any person using reclaimed water consistent with the reclaimed
16 water permit is not liable under chapter 70.105D or 90.48 RCW for any
17 discharge or release consistent with the provisions of the reclaimed
18 water permit.

1 **Sec. 3.** RCW 70.105D.040 and 1994 c 254 s 4 are each amended to
2 read as follows:

3 (1) Except as provided in subsection (3) of this section, the
4 following persons are liable with respect to a facility:

5 (a) The owner or operator of the facility;

6 (b) Any person who owned or operated the facility at the time of
7 disposal or release of the hazardous substances;

8 (c) Any person who owned or possessed a hazardous substance and who
9 by contract, agreement, or otherwise arranged for disposal or treatment
10 of the hazardous substance at the facility, or arranged with a
11 transporter for transport for disposal or treatment of the hazardous
12 substances at the facility, or otherwise generated hazardous wastes
13 disposed of or treated at the facility;

14 (d) Any person (i) who accepts or accepted any hazardous substance
15 for transport to a disposal, treatment, or other facility selected by
16 such person from which there is a release or a threatened release for
17 which remedial action is required, unless such facility, at the time of
18 disposal or treatment, could legally receive such substance; or (ii)
19 who accepts a hazardous substance for transport to such a facility and
20 has reasonable grounds to believe that such facility is not operated in
21 accordance with chapter 70.105 RCW; and

22 (e) Any person who both sells a hazardous substance and is
23 responsible for written instructions for its use if (i) the substance
24 is used according to the instructions and (ii) the use constitutes a
25 release for which remedial action is required at the facility.

26 (2) Each person who is liable under this section is strictly
27 liable, jointly and severally, for all remedial action costs and for
28 all natural resource damages resulting from the releases or threatened
29 releases of hazardous substances. The attorney general, at the request
30 of the department, is empowered to recover all costs and damages from
31 persons liable therefor.

32 (3) The following persons are not liable under this section:

33 (a) Any person who can establish that the release or threatened
34 release of a hazardous substance for which the person would be
35 otherwise responsible was caused solely by:

36 (i) An act of God;

37 (ii) An act of war; or

38 (iii) An act or omission of a third party (including but not
39 limited to a trespasser) other than (A) an employee or agent of the

1 person asserting the defense, or (B) any person whose act or omission
2 occurs in connection with a contractual relationship existing, directly
3 or indirectly, with the person asserting this defense to liability.
4 This defense only applies where the person asserting the defense has
5 exercised the utmost care with respect to the hazardous substance, the
6 foreseeable acts or omissions of the third party, and the foreseeable
7 consequences of those acts or omissions;

8 (b) Any person who is an owner, past owner, or purchaser of a
9 facility and who can establish by a preponderance of the evidence that
10 at the time the facility was acquired by the person, the person had no
11 knowledge or reason to know that any hazardous substance, the release
12 or threatened release of which has resulted in or contributed to the
13 need for the remedial action, was released or disposed of on, in, or at
14 the facility. This subsection (b) is limited as follows:

15 (i) To establish that a person had no reason to know, the person
16 must have undertaken, at the time of acquisition, all appropriate
17 inquiry into the previous ownership and uses of the property,
18 consistent with good commercial or customary practice in an effort to
19 minimize liability. Any court interpreting this subsection (b) shall
20 take into account any specialized knowledge or experience on the part
21 of the person, the relationship of the purchase price to the value of
22 the property if uncontaminated, commonly known or reasonably
23 ascertainable information about the property, the obviousness of the
24 presence or likely presence of contamination at the property, and the
25 ability to detect such contamination by appropriate inspection;

26 (ii) The defense contained in this subsection (b) is not available
27 to any person who had actual knowledge of the release or threatened
28 release of a hazardous substance when the person owned the real
29 property and who subsequently transferred ownership of the property
30 without first disclosing such knowledge to the transferee;

31 (iii) The defense contained in this subsection (b) is not available
32 to any person who, by any act or omission, caused or contributed to the
33 release or threatened release of a hazardous substance at the facility;

34 (c) Any natural person who uses a hazardous substance lawfully and
35 without negligence for any personal or domestic purpose in or near a
36 dwelling or accessory structure when that person is: (i) A resident of
37 the dwelling; (ii) a person who, without compensation, assists the
38 resident in the use of the substance; or (iii) a person who is employed
39 by the resident, but who is not an independent contractor;

1 (d) Any person who, for the purpose of growing food crops, applies
2 pesticides or fertilizers without negligence and in accordance with all
3 applicable laws and regulations;

4 (e) Any person who distributes or uses reclaimed water consistent
5 with a permit issued under chapter 90.46 RCW.

6 (4) There may be no settlement by the state with any person
7 potentially liable under this chapter except in accordance with this
8 section.

9 (a) The attorney general may agree to a settlement with any
10 potentially liable person only if the department finds, after public
11 notice and hearing, that the proposed settlement would lead to a more
12 expeditious cleanup of hazardous substances in compliance with cleanup
13 standards under RCW 70.105D.030(2)(d) and with any remedial orders
14 issued by the department. Whenever practicable and in the public
15 interest, the attorney general may expedite such a settlement with
16 persons whose contribution is insignificant in amount and toxicity.

17 (b) A settlement agreement under this section shall be entered as
18 a consent decree issued by a court of competent jurisdiction.

19 (c) A settlement agreement may contain a covenant not to sue only
20 of a scope commensurate with the settlement agreement in favor of any
21 person with whom the attorney general has settled under this section.
22 Any covenant not to sue shall contain a reopener clause which requires
23 the court to amend the covenant not to sue if factors not known at the
24 time of entry of the settlement agreement are discovered and present a
25 previously unknown threat to human health or the environment.

26 (d) A party who has resolved its liability to the state under this
27 section shall not be liable for claims for contribution regarding
28 matters addressed in the settlement. The settlement does not discharge
29 any of the other liable parties but it reduces the total potential
30 liability of the others to the state by the amount of the settlement.

31 (5) In addition to the settlement authority provided under
32 subsection (4) of this section, the attorney general may agree to a
33 settlement with a person not currently liable for remedial action at a
34 facility who proposes to purchase, redevelop, or reuse the facility,
35 provided that:

36 (a) The settlement will provide a substantial public benefit,
37 including but not limited to the reuse of a vacant or abandoned
38 manufacturing or industrial facility, or the development of a facility
39 by a governmental entity to address an important public purpose;

1 (b) The settlement will yield substantial new resources to
2 facilitate cleanup;

3 (c) The settlement will expedite remedial action consistent with
4 the rules adopted under this chapter; and

5 (d) Based on available information, the department determines that
6 the redevelopment or reuse of the facility is not likely to contribute
7 to the existing release or threatened release, interfere with remedial
8 actions that may be needed at the site, or increase health risks to
9 persons at or in the vicinity of the site.

10 (6) Nothing in this chapter affects or modifies in any way any
11 person's right to seek or obtain relief under other statutes or under
12 common law, including but not limited to damages for injury or loss
13 resulting from a release or threatened release of a hazardous
14 substance. No settlement by the department or remedial action ordered
15 by a court or the department affects any person's right to obtain a
16 remedy under common law or other statutes.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW
18 to read as follows:

19 Any discharge to the waters of this state that is consistent with
20 the provisions of a permit issued under chapter 90.46 RCW shall be
21 deemed to not cause or tend to cause pollution of such waters.

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