
SENATE BILL 6700

State of Washington

55th Legislature

1998 Regular Session

By Senators Thibaudeau, Fraser, Kline and Kohl

Read first time 01/28/98. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to environmental protection of vulnerable
2 subpopulations; amending RCW 70.94.011, 70.94.030, 70.105.005,
3 70.105.010, 70.105D.010, 70.105D.020, 90.48.010, and 90.48.020; adding
4 new sections to chapter 70.94 RCW; adding new sections to chapter
5 70.105 RCW; adding new sections to chapter 70.105D RCW; and adding new
6 sections to chapter 90.48 RCW.

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

8 **Sec. 1.** RCW 70.94.011 and 1991 c 199 s 102 are each amended to
9 read as follows:

10 It is declared to be the public policy to preserve, protect, and
11 enhance the air quality for current and future generations. Air is an
12 essential resource that must be protected from harmful levels of
13 pollution. Improving air quality is a matter of state-wide concern and
14 is in the public interest. It is the intent of this chapter to secure
15 and maintain levels of air quality that protect human health and
16 safety, including the most sensitive members of the population, to
17 comply with the requirements of the federal clean air act, to prevent
18 injury to plant, animal life, and property, to foster the comfort and
19 convenience of Washington's inhabitants, to promote the economic and

1 social development of the state, and to facilitate the enjoyment of the
2 natural attractions of the state.

3 It is further the intent of this chapter to protect the public
4 welfare, to preserve visibility, to protect scenic, aesthetic,
5 historic, and cultural values, and to prevent air pollution problems
6 that interfere with the enjoyment of life, property, or natural
7 attractions.

8 Because of the extent of the air pollution problem the legislature
9 finds it necessary to return areas with poor air quality to levels
10 adequate to protect health and the environment as expeditiously as
11 possible but no later than December 31, 1995. Further, it is the
12 intent of this chapter to prevent any areas of the state with
13 acceptable air quality from reaching air contaminant levels that are
14 not protective of human health and the environment.

15 The legislature recognizes that air pollution control projects may
16 affect other environmental media. In selecting air pollution control
17 strategies state and local agencies shall support those strategies that
18 lessen the negative environmental impact of the project on all
19 environmental media, including air, water, and land.

20 The legislature further recognizes that energy efficiency and
21 energy conservation can help to reduce air pollution and shall
22 therefore be considered when making decisions on air pollution control
23 strategies and projects.

24 It is the policy of the state that the costs of protecting the air
25 resource and operating state and local air pollution control programs
26 shall be shared as equitably as possible among all sources whose
27 emissions cause air pollution.

28 It is also declared as public policy that regional air pollution
29 control programs are to be encouraged and supported to the extent
30 practicable as essential instruments for the securing and maintenance
31 of appropriate levels of air quality.

32 To these ends it is the purpose of this chapter to safeguard the
33 public interest through an intensive, progressive, and coordinated
34 state-wide program of air pollution prevention and control, to provide
35 for an appropriate distribution of responsibilities, and to encourage
36 coordination and cooperation between the state, regional, and local
37 units of government, to improve cooperation between state and federal
38 government, public and private organizations, and the concerned

1 individual, as well as to provide for the use of all known, available,
2 and reasonable methods to reduce, prevent, and control air pollution.

3 The legislature recognizes that the problems and effects of air
4 pollution cross political boundaries, are frequently regional or
5 interjurisdictional in nature, and are dependent upon the existence of
6 human activity in areas having common topography and weather conditions
7 conducive to the buildup of air contaminants. In addition, the
8 legislature recognizes that air pollution levels are aggravated and
9 compounded by increased population, and its consequences. These
10 changes often result in increasingly serious problems for the public
11 and the environment.

12 The legislature further recognizes that air emissions from
13 thousands of small individual sources are major contributors to air
14 pollution in many regions of the state. As the population of a region
15 grows, small sources may contribute an increasing proportion of that
16 region's total air emissions. It is declared to be the policy of the
17 state to achieve significant reductions in emissions from those small
18 sources whose aggregate emissions constitute a significant contribution
19 to air pollution in a particular region.

20 The legislature finds that children and other vulnerable
21 subpopulations are generally more susceptible to illness and injury
22 from exposure to pollutants than are other populations, and that
23 society has a moral obligation to protect children and other vulnerable
24 subpopulations from illness and injury associated with pollution. It
25 is thus the policy of the state of Washington that all decisions
26 related to pollutants be made in such a way that children and other
27 vulnerable subpopulations are protected.

28 The legislature further finds that toxic substances that persist in
29 the environment building up in the food supply, body fat, and breast
30 milk pose particularly serious threats to children, other vulnerable
31 subpopulations, and society as a whole. The legislature thus
32 establishes a goal of ending releases of persistent and bioaccumulative
33 toxic substances to the environment on realistic yet urgent timelines.

34 It is the intent of the legislature that air pollution goals be
35 incorporated in the missions and actions of state agencies.

36 **Sec. 2.** RCW 70.94.030 and 1993 c 252 s 2 are each amended to read
37 as follows:

1 Unless a different meaning is plainly required by the context, the
2 following words and phrases as hereinafter used in this chapter shall
3 have the following meanings:

4 (1) "Air contaminant" means dust, fumes, mist, smoke, other
5 particulate matter, vapor, gas, odorous substance, or any combination
6 thereof.

7 (2) "Air pollution" is presence in the outdoor atmosphere of one or
8 more air contaminants in sufficient quantities and of such
9 characteristics and duration as is, or is likely to be, injurious to
10 human health, plant or animal life, or property, or which unreasonably
11 interfere with enjoyment of life and property. For the purpose of this
12 chapter, air pollution shall not include air contaminants emitted in
13 compliance with chapter 17.21 RCW.

14 (3) "Air quality standard" means an established concentration,
15 exposure time, and frequency of occurrence of an air contaminant or
16 multiple contaminants in the ambient air which shall not be exceeded.

17 (4) "Ambient air" means the surrounding outside air.

18 (5) "Authority" means any air pollution control agency whose
19 jurisdictional boundaries are coextensive with the boundaries of one or
20 more counties.

21 (6) "Best available control technology" (BACT) means an emission
22 limitation based on the maximum degree of reduction for each air
23 pollutant subject to regulation under this chapter emitted from or that
24 results from any new or modified stationary source, that the permitting
25 authority, on a case-by-case basis, taking into account energy,
26 environmental, and economic impacts and other costs, determines is
27 achievable for such a source or modification through application of
28 production processes and available methods, systems, and techniques,
29 including fuel cleaning, clean fuels, or treatment or innovative fuel
30 combustion techniques for control of each such a pollutant. In no
31 event shall application of "best available control technology" result
32 in emissions of any pollutants that will exceed the emissions allowed
33 by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they
34 exist on July 25, 1993, or their later enactments as adopted by
35 reference by the director by rule. Emissions from any source utilizing
36 clean fuels, or any other means, to comply with this subsection shall
37 not be allowed to increase above levels that would have been required
38 under the definition of BACT as it existed prior to enactment of the
39 (~~{federal}~~) federal clean air act amendments of 1990.

1 (7) "Best available retrofit technology" (BART) means an emission
2 limitation based on the degree of reduction achievable through the
3 application of the best system of continuous emission reduction for
4 each pollutant that is emitted by an existing stationary facility. The
5 emission limitation must be established, on a case-by-case basis,
6 taking into consideration the technology available, the costs of
7 compliance, the energy and nonair quality environmental impacts of
8 compliance, any pollution control equipment in use or in existence at
9 the source, the remaining useful life of the source, and the degree of
10 improvement in visibility that might reasonably be anticipated to
11 result from the use of the technology.

12 (8) "Board" means the board of directors of an authority.

13 (9) "Control officer" means the air pollution control officer of
14 any authority.

15 (10) "Department" or "ecology" means the department of ecology.

16 (11) "Emission" means a release of air contaminants into the
17 ambient air.

18 (12) "Emission standard" and "emission limitation" mean a
19 requirement established under the federal clean air act or this chapter
20 that limits the quantity, rate, or concentration of emissions of air
21 contaminants on a continuous basis, including any requirement relating
22 to the operation or maintenance of a source to assure continuous
23 emission reduction, and any design, equipment, work practice, or
24 operational standard adopted under the federal clean air act or this
25 chapter.

26 (13) "Lowest achievable emission rate" (LAER) means for any source
27 that rate of emissions that reflects:

28 (a) The most stringent emission limitation that is contained in the
29 implementation plan of any state for such class or category of source,
30 unless the owner or operator of the proposed source demonstrates that
31 such limitations are not achievable; or

32 (b) The most stringent emission limitation that is achieved in
33 practice by such class or category of source, whichever is more
34 stringent.

35 In no event shall the application of this term permit a proposed
36 new or modified source to emit any pollutant in excess of the amount
37 allowable under applicable new source performance standards.

38 (14) "Modification" means any physical change in, or change in the
39 method of operation of, a stationary source that increases the amount

1 of any air contaminant emitted by such source or that results in the
2 emission of any air contaminant not previously emitted. The term
3 modification shall be construed consistent with the definition of
4 modification in Section 7411, Title 42, United States Code, and with
5 rules implementing that section.

6 (15) "Multicounty authority" means an authority which consists of
7 two or more counties.

8 (16) "New source" means (a) the construction or modification of a
9 stationary source that increases the amount of any air contaminant
10 emitted by such source or that results in the emission of any air
11 contaminant not previously emitted, and (b) any other project that
12 constitutes a new source under the federal clean air act.

13 (17) "Permit program source" means a source required to apply for
14 or to maintain an operating permit under RCW 70.94.161.

15 (18) "Person" means an individual, firm, public or private
16 corporation, association, partnership, political subdivision of the
17 state, municipality, or governmental agency.

18 (19) "Reasonably available control technology" (RACT) means the
19 lowest emission limit that a particular source or source category is
20 capable of meeting by the application of control technology that is
21 reasonably available considering technological and economic
22 feasibility. RACT is determined on a case-by-case basis for an
23 individual source or source category taking into account the impact of
24 the source upon air quality, the availability of additional controls,
25 the emission reduction to be achieved by additional controls, the
26 impact of additional controls on air quality, and the capital and
27 operating costs of the additional controls. RACT requirements for a
28 source or source category shall be adopted only after notice and
29 opportunity for comment are afforded.

30 (20) "Silvicultural burning" means burning of wood fiber on forest
31 land consistent with the provisions of RCW 70.94.660.

32 (21) "Source" means all of the emissions units including
33 quantifiable fugitive emissions, that are located on one or more
34 contiguous or adjacent properties, and are under the control of the
35 same person, or persons under common control, whose activities are
36 ancillary to the production of a single product or functionally related
37 group of products.

38 (22) "Stationary source" means any building, structure, facility,
39 or installation that emits or may emit any air contaminant.

1 (23) "Vulnerable subpopulations" means children, pregnant women,
2 the elderly, individuals with illnesses, and other subpopulations
3 identified by the director as likely to experience elevated health
4 risks from environmental pollutants.

5 NEW SECTION. Sec. 3. A new section is added to chapter 70.94 RCW
6 to read as follows:

7 All permits, rules, standards, and other decisions approved by the
8 director after the effective date of this section must protect children
9 and other vulnerable subpopulations from the full range of health
10 effects that may be associated with prenatal and other exposures to
11 pollutants or combinations of pollutants, including but not limited to
12 neurological effects such as learning impairments and attention
13 problems, hormone disruption, reproductive problems, birth defects,
14 immune system damage, cancer, and other problems. The director shall
15 ensure that an explicit evaluation of environmental health hazards for
16 children and other vulnerable subpopulations is included in the
17 decision-making record for each permit, rule, standard, and other
18 decision made after the effective date of this section. The evaluation
19 shall identify the known and suspected health effects of each pollutant
20 covered by the agency decision and shall show that the agency decision
21 will not result in the occurrence of any of these effects. The
22 evaluation shall take into account other exposures to the same and
23 other pollutants that children and other vulnerable subpopulations may
24 be experiencing. These other exposures may include those associated
25 with body burdens and breast milk contamination from prior exposures
26 and those associated with releases from other pollution sources.

27 NEW SECTION. Sec. 4. A new section is added to chapter 70.94 RCW
28 to read as follows:

29 Within eighteen months of the effective date of this section, the
30 director shall establish a strategy and timeline for ending releases of
31 persistent and bioaccumulative toxic substances to other environmental
32 media such as air and land. This strategy and timeline shall include
33 a schedule for adopting rules that parallel those adopted for water
34 under chapter . . ., Laws of 1998 (this act).

35 NEW SECTION. Sec. 5. A new section is added to chapter 70.94 RCW
36 to read as follows:

1 Any citizen may commence a civil action in a superior court on his
2 or her own behalf against the director where there is alleged a failure
3 of the director to perform any act or duty under section 3 or 4 of this
4 act that is not discretionary. The courts shall have jurisdiction,
5 without regard to the amount in controversy or the citizenship of the
6 parties, to order the director to perform the act or duty. The court,
7 in issuing any final order in any action brought under this section,
8 may award costs of litigation, including reasonable attorneys' fees and
9 expert witness fees, to any prevailing or substantially prevailing
10 party, whenever the court determines such award is appropriate.

11 **Sec. 6.** RCW 70.105.005 and 1985 c 448 s 2 are each amended to read
12 as follows:

13 The legislature hereby finds and declares:

14 (1) The health and welfare of the people of the state depend on
15 clean and pure environmental resources unaffected by hazardous waste
16 contamination. At the same time, the quality of life of the people of
17 the state is in part based upon a large variety of goods produced by
18 the economy of the state. The complex industrial processes that
19 produce these goods also generate waste byproducts, some of which are
20 hazardous to the public health and the environment if improperly
21 managed.

22 (2) Safe and responsible management of hazardous waste is necessary
23 to prevent adverse effects on the environment and to protect public
24 health and safety.

25 (3) The availability of safe, effective, economical, and
26 environmentally sound facilities for the management of hazardous waste
27 is essential to protect public health and the environment and to
28 preserve the economic strength of the state.

29 (4) Strong and effective enforcement of federal and state hazardous
30 waste laws and regulations is essential to protect the public health
31 and the environment and to meet the public's concerns regarding the
32 acceptance of needed new hazardous waste management facilities.

33 (5) Negotiation, mediation, and similar conflict resolution
34 techniques are useful in resolving concerns over the local impacts of
35 siting hazardous waste management facilities.

36 (6) Safe and responsible management of hazardous waste requires an
37 effective planning process that involves local and state governments,
38 the public, and industry.

1 (7) Public acceptance and successful siting of needed new hazardous
2 waste management facilities depends on several factors, including:

3 (a) Public confidence in the safety of the facilities;

4 (b) Assurance that the hazardous waste management priorities
5 established in this chapter are being carried out to the maximum degree
6 practical;

7 (c) Recognition that all state citizens benefit from certain
8 products whose manufacture results in the generation of hazardous
9 byproducts, and that all state citizens must, therefore, share in the
10 responsibility for finding safe and effective means to manage this
11 hazardous waste; and

12 (d) Provision of adequate opportunities for citizens to meet with
13 facility operators and resolve concerns about local hazardous waste
14 management facilities.

15 (8) Due to the controversial and regional nature of facilities for
16 the disposal and incineration of hazardous waste, the facilities have
17 had difficulty in obtaining necessary local approvals. The legislature
18 finds that there is a state-wide interest in assuring that such
19 facilities can be sited.

20 It is therefore the intent of the legislature to preempt local
21 government's authority to approve, deny, or otherwise regulate disposal
22 and incineration facilities, and to vest in the department of ecology
23 the sole authority among state, regional, and local agencies to
24 approve, deny, and regulate preempted facilities, as defined in this
25 chapter.

26 In addition, it is the intent of the legislature that such complete
27 preemptive authority also be vested in the department for treatment and
28 storage facilities, in addition to disposal and incineration
29 facilities, if a local government fails to carry out its
30 responsibilities established in RCW 70.105.225.

31 It is further the intent of the legislature that no local
32 ordinance, permit requirement, other requirement, or decision shall
33 prohibit on the basis of land use considerations the construction of a
34 hazardous waste management facility within any zone designated and
35 approved in accordance with this chapter, provided that the proposed
36 site for the facility is consistent with applicable state siting
37 criteria.

38 (9) With the exception of the disposal site authorized for
39 acquisition under this chapter, the private sector has had the primary

1 role in providing hazardous waste management facilities and services in
2 the state. It is the intent of the legislature that this role be
3 encouraged and continue into the future to the extent feasible.
4 Whether privately or publicly owned and operated, hazardous waste
5 management facilities and services should be subject to strict
6 governmental regulation as provided under this chapter.

7 (10) Wastes that are exempt or excluded from full regulation under
8 this chapter due to their small quantity or household origin have the
9 potential to pose significant risk to public health and the environment
10 if not properly managed. It is the intent of the legislature that the
11 specific risks posed by such waste be investigated and assessed and
12 that programs be carried out as necessary to manage the waste
13 appropriately. In addition, the legislature finds that, because local
14 conditions vary substantially in regard to the quantities, risks, and
15 management opportunities available for such wastes, local government is
16 the appropriate level of government to plan for and carry out programs
17 to manage moderate-risk waste, with assistance and coordination
18 provided by the department.

19 (11) The legislature finds that children and other vulnerable
20 subpopulations are generally more susceptible to illness and injury
21 from exposure to pollutants than are other populations, and that
22 society has a moral obligation to protect children and other vulnerable
23 subpopulations from illness and injury associated with pollution. It
24 is thus the policy of the state of Washington that all decisions
25 related to pollutants be made in such a way that children and other
26 vulnerable subpopulations are protected.

27 The legislature further finds that toxic substances that persist in
28 the environment building up in the food supply, body fat, and breast
29 milk pose particularly serious threats to children, other vulnerable
30 subpopulations, and society as a whole. The legislature thus
31 establishes a goal of ending releases of persistent and bioaccumulative
32 toxic substances to the environment on realistic yet urgent timelines.

33 **Sec. 7.** RCW 70.105.010 and 1989 c 376 s 1 are each amended to read
34 as follows:

35 The words and phrases defined in this section shall have the
36 meanings indicated when used in this chapter unless the context clearly
37 requires otherwise.

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

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

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

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

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

15 (a) Have short-lived, toxic properties that may cause death,
16 injury, or illness or have mutagenic, teratogenic, or carcinogenic
17 properties; or

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

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

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

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

26 (ii) is highly toxic to man or wildlife

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

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

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

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

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

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

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

9 (13) "Hazardous household substances" means those substances
10 identified by the department as hazardous household substances in the
11 guidelines developed under RCW 70.105.220.

12 (14) "Hazardous substances" means any liquid, solid, gas, or
13 sludge, including any material, substance, product, commodity, or
14 waste, regardless of quantity, that exhibits any of the characteristics
15 or criteria of hazardous waste as described in rules adopted under this
16 chapter.

17 (15) "Hazardous waste" means and includes all dangerous and
18 extremely hazardous waste, including substances composed of both
19 radioactive and hazardous components.

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

21 (17) "Moderate-risk waste" means (a) any waste that exhibits any of
22 the properties of hazardous waste but is exempt from regulation under
23 this chapter solely because the waste is generated in quantities below
24 the threshold for regulation, and (b) any household wastes which are
25 generated from the disposal of substances identified by the department
26 as hazardous household substances.

27 (18) "Service charge" means an assessment imposed under RCW
28 70.105.280 against those facilities that store, treat, incinerate, or
29 dispose of dangerous or extremely hazardous waste that contains both a
30 nonradioactive hazardous component and a radioactive component.
31 Service charges shall also apply to facilities undergoing closure under
32 this chapter in those instances where closure entails the physical
33 characterization of remaining wastes which contain both a
34 nonradioactive hazardous component and a radioactive component or the
35 management of such wastes through treatment or removal, except any
36 commercial low-level radioactive waste facility.

37 (19) "Vulnerable subpopulations" means children, pregnant women,
38 the elderly, individuals with illnesses, and other subpopulations

1 identified by the director as likely to experience elevated health
2 risks from environmental pollutants.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.105 RCW
4 to read as follows:

5 All permits, rules, standards, and other decisions approved by the
6 director after the effective date of this section must protect children
7 and other vulnerable subpopulations from the full range of health
8 effects that may be associated with prenatal and other exposures to
9 pollutants or combinations of pollutants, including but not limited to
10 neurological effects such as learning impairments and attention
11 problems, hormone disruption, reproductive problems, birth defects,
12 immune system damage, cancer, and other problems. The director shall
13 ensure that an explicit evaluation of environmental health hazards for
14 children and other vulnerable subpopulations is included in the
15 decision-making record for each permit, rule, standard, and other
16 decision made after the effective date of this section. The evaluation
17 shall identify the known and suspected health effects of each pollutant
18 covered by the agency decision and shall show that the agency decision
19 will not result in the occurrence of any of these effects. The
20 evaluation shall take into account other exposures to the same and
21 other pollutants that children and other vulnerable subpopulations may
22 be experiencing. These other exposures may include those associated
23 with body burdens and breast milk contamination from prior exposures
24 and those associated with releases from other pollution sources.

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.105 RCW
26 to read as follows:

27 Within eighteen months of the effective date of this section, the
28 director shall establish a strategy and timeline for ending releases of
29 persistent and bioaccumulative toxic substances to other environmental
30 media such as air and land. This strategy and timeline shall include
31 a schedule for adopting rules that parallel those adopted for water
32 under chapter . . . , Laws of 1998 (this act).

33 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.105
34 RCW to read as follows:

35 Any citizen may commence a civil action in a superior court on his
36 or her own behalf against the director where there is alleged a failure

1 of the director to perform any act or duty under section 8 or 9 of this
2 act that is not discretionary. The courts shall have jurisdiction,
3 without regard to the amount in controversy or the citizenship of the
4 parties, to order the director to perform the act or duty. The court,
5 in issuing any final order in any action brought under this section,
6 may award costs of litigation, including reasonable attorneys' fees and
7 expert witness fees, to any prevailing or substantially prevailing
8 party, whenever the court determines such award is appropriate.

9 **Sec. 11.** RCW 70.105D.010 and 1994 c 254 s 1 are each amended to
10 read as follows:

11 (1) Each person has a fundamental and inalienable right to a
12 healthful environment, and each person has a responsibility to preserve
13 and enhance that right. The beneficial stewardship of the land, air,
14 and waters of the state is a solemn obligation of the present
15 generation for the benefit of future generations.

16 (2) A healthful environment is now threatened by the irresponsible
17 use and disposal of hazardous substances. There are hundreds of
18 hazardous waste sites in this state, and more will be created if
19 current waste practices continue. Hazardous waste sites threaten the
20 state's water resources, including those used for public drinking
21 water. Many of our municipal landfills are current or potential
22 hazardous waste sites and present serious threats to human health and
23 environment. The costs of eliminating these threats in many cases are
24 beyond the financial means of our local governments and ratepayers.
25 The main purpose of chapter 2, Laws of 1989 is to raise sufficient
26 funds to clean up all hazardous waste sites and to prevent the creation
27 of future hazards due to improper disposal of toxic wastes into the
28 state's land and waters.

29 (3) Many farmers and small business owners who have followed the
30 law with respect to their uses of pesticides and other chemicals
31 nonetheless may face devastating economic consequences because their
32 uses have contaminated the environment or the water supplies of their
33 neighbors. With a source of funds, the state may assist these farmers
34 and business owners, as well as those persons who sustain damages, such
35 as the loss of their drinking water supplies, as a result of the
36 contamination.

37 (4) It is in the public's interest to efficiently use our finite
38 land base, to integrate our land use planning policies with our clean-

1 up policies, and to clean up and reuse contaminated industrial
2 properties in order to minimize industrial development pressures on
3 undeveloped land and to make clean land available for future social
4 use.

5 (5) The legislature finds that children and other vulnerable
6 subpopulations are generally more susceptible to illness and injury
7 from exposure to pollutants than are other populations, and that
8 society has a moral obligation to protect children and other vulnerable
9 subpopulations from illness and injury associated with pollution. It
10 is thus the policy of the state of Washington that all decisions
11 related to pollutants be made in such a way that children and other
12 vulnerable subpopulations are protected.

13 The legislature further finds that toxic substances that persist in
14 the environment building up in the food supply, body fat, and breast
15 milk pose particularly serious threats to children, other vulnerable
16 subpopulations, and society as a whole. The legislature thus
17 establishes a goal of ending releases of persistent and bioaccumulative
18 toxic substances to the environment on realistic yet urgent timelines.

19 (6) Because it is often difficult or impossible to allocate
20 responsibility among persons liable for hazardous waste sites and
21 because it is essential that sites be cleaned up well and
22 expeditiously, each responsible person should be liable jointly and
23 severally.

24 **Sec. 12.** RCW 70.105D.020 and 1997 c 406 s 2 are each amended to
25 read as follows:

26 (1) "Agreed order" means an order issued by the department under
27 this chapter with which the potentially liable person receiving the
28 order agrees to comply. An agreed order may be used to require or
29 approve any cleanup or other remedial actions but it is not a
30 settlement under RCW 70.105D.040(4) and shall not contain a covenant
31 not to sue, or provide protection from claims for contribution, or
32 provide eligibility for public funding of remedial actions under RCW
33 70.105D.070(2)(d)(xi).

34 (2) "Department" means the department of ecology.

35 (3) "Director" means the director of ecology or the director's
36 designee.

37 (4) "Facility" means (a) any building, structure, installation,
38 equipment, pipe or pipeline (including any pipe into a sewer or

1 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
2 ditch, landfill, storage container, motor vehicle, rolling stock,
3 vessel, or aircraft, or (b) any site or area where a hazardous
4 substance, other than a consumer product in consumer use, has been
5 deposited, stored, disposed of, or placed, or otherwise come to be
6 located.

7 (5) "Federal cleanup law" means the federal comprehensive
8 environmental response, compensation, and liability act of 1980, 42
9 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

10 (6) "Foreclosure and its equivalents" means purchase at a
11 foreclosure sale, acquisition, or assignment of title in lieu of
12 foreclosure, termination of a lease, or other repossession, acquisition
13 of a right to title or possession, an agreement in satisfaction of the
14 obligation, or any other comparable formal or informal manner, whether
15 pursuant to law or under warranties, covenants, conditions,
16 representations, or promises from the borrower, by which the holder
17 acquires title to or possession of a facility securing a loan or other
18 obligation.

19 (7) "Hazardous substance" means:

20 (a) Any dangerous or extremely hazardous waste as defined in RCW
21 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
22 designated by rule pursuant to chapter 70.105 RCW;

23 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
24 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

25 (c) Any substance that, on March 1, 1989, is a hazardous substance
26 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
27 9601(14);

28 (d) Petroleum or petroleum products; and

29 (e) Any substance or category of substances, including solid waste
30 decomposition products, determined by the director by rule to present
31 a threat to human health or the environment if released into the
32 environment.

33 The term hazardous substance does not include any of the following
34 when contained in an underground storage tank from which there is not
35 a release: Crude oil or any fraction thereof or petroleum, if the tank
36 is in compliance with all applicable federal, state, and local law.

37 (8) "Independent remedial actions" means remedial actions conducted
38 without department oversight or approval, and not under an order,
39 agreed order, or consent decree.

1 (9) "Holder" means a person who holds indicia of ownership
2 primarily to protect a security interest. A holder includes the
3 initial holder such as the loan originator, any subsequent holder such
4 as a successor-in-interest or subsequent purchaser of the security
5 interest on the secondary market, a guarantor of an obligation, surety,
6 or any other person who holds indicia of ownership primarily to protect
7 a security interest, or a receiver, court-appointed trustee, or other
8 person who acts on behalf or for the benefit of a holder. A holder can
9 be a public or privately owned financial institution, receiver,
10 conservator, loan guarantor, or other similar persons that loan money
11 or guarantee repayment of a loan. Holders typically are banks or
12 savings and loan institutions but may also include others such as
13 insurance companies, pension funds, or private individuals that engage
14 in loaning of money or credit.

15 (10) "Indicia of ownership" means evidence of a security interest,
16 evidence of an interest in a security interest, or evidence of an
17 interest in a facility securing a loan or other obligation, including
18 any legal or equitable title to a facility acquired incident to
19 foreclosure and its equivalents. Evidence of such interests includes,
20 mortgages, deeds of trust, sellers interest in a real estate contract,
21 liens, surety bonds, and guarantees of obligations, title held pursuant
22 to a lease financing transaction in which the lessor does not select
23 initially the leased facility, or legal or equitable title obtained
24 pursuant to foreclosure and their equivalents. Evidence of such
25 interests also includes assignments, pledges, or other rights to or
26 other forms of encumbrance against the facility that are held primarily
27 to protect a security interest.

28 (11) "Operating a facility primarily to protect a security
29 interest" occurs when all of the following are met: (a) Operating the
30 facility where the borrower has defaulted on the loan or otherwise
31 breached the security agreement; (b) operating the facility to preserve
32 the value of the facility as an ongoing business; (c) the operation is
33 being done in anticipation of a sale, transfer, or assignment of the
34 facility; and (d) the operation is being done primarily to protect a
35 security interest. Operating a facility for longer than one year prior
36 to foreclosure or its equivalents shall be presumed to be operating the
37 facility for other than to protect a security interest.

38 (12) "Owner or operator" means:

1 (a) Any person with any ownership interest in the facility or who
2 exercises any control over the facility; or

3 (b) In the case of an abandoned facility, any person who had owned,
4 or operated, or exercised control over the facility any time before its
5 abandonment;

6 The term does not include:

7 (i) An agency of the state or unit of local government which
8 acquired ownership or control involuntarily through bankruptcy, tax
9 delinquency, abandonment, or circumstances in which the government
10 involuntarily acquires title. This exclusion does not apply to an
11 agency of the state or unit of local government which has caused or
12 contributed to the release or threatened release of a hazardous
13 substance from the facility;

14 (ii) A person who, without participating in the management of a
15 facility, holds indicia of ownership primarily to protect the person's
16 security interest in the facility. Holders after foreclosure and its
17 equivalent and holders who engage in any of the activities identified
18 in subsection (13)(e) through (g) of this section shall not lose this
19 exemption provided the holder complies with all of the following:

20 (A) The holder properly maintains the environmental compliance
21 measures already in place at the facility;

22 (B) The holder complies with the reporting requirements in the
23 rules adopted under this chapter;

24 (C) The holder complies with any order issued to the holder by the
25 department to abate an imminent or substantial endangerment;

26 (D) The holder allows the department or potentially liable persons
27 under an order, agreed order, or settlement agreement under this
28 chapter access to the facility to conduct remedial actions and does not
29 impede the conduct of such remedial actions;

30 (E) Any remedial actions conducted by the holder are in compliance
31 with any preexisting requirements identified by the department, or, if
32 the department has not identified such requirements for the facility,
33 the remedial actions are conducted consistent with the rules adopted
34 under this chapter; and

35 (F) The holder does not exacerbate an existing release; or

36 (iii) Any person who has any ownership interest in, operates, or
37 exercises control over real property where a hazardous substance has
38 come to be located solely as a result of migration of the hazardous

1 substance to the real property through the ground water from a source
2 off the property, if:

3 (A) The person can demonstrate that the hazardous substance has not
4 been used, placed, managed, or otherwise handled on the property in a
5 manner likely to cause or contribute to a release of the hazardous
6 substance that has migrated onto the property;

7 (B) The person has not caused or contributed to the release of the
8 hazardous substance;

9 (C) The person does not engage in activities that damage or
10 interfere with the operation of remedial actions installed on the
11 person's property or engage in activities that result in exposure of
12 humans or the environment to the contaminated ground water that has
13 migrated onto the property;

14 (D) If requested, the person allows the department, potentially
15 liable persons who are subject to an order, agreed order, or consent
16 decree, and the authorized employees, agents, or contractors of each,
17 access to the property to conduct remedial actions required by the
18 department. The person may attempt to negotiate an access agreement
19 before allowing access; and

20 (E) Legal withdrawal of ground water does not disqualify a person
21 from the exemption in this subsection (12)(b)(iii).

22 The exemption in (b)(ii) of this subsection does not apply to
23 holders who cause or contribute to a new release or threatened release
24 or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and
25 (e); provided, however, that a holder shall not lose this exemption if
26 it establishes that any such new release has been remediated according
27 to the requirements of this chapter and that any hazardous substances
28 remaining at the facility after remediation of the new release are
29 divisible from such new release.

30 (13) "Participation in management" means exercising decision-making
31 control over the borrower's operation of the facility, environmental
32 compliance, or assuming or manifesting responsibility for the overall
33 management of the enterprise encompassing the day-to-day decision
34 making of the enterprise.

35 The term does not include any of the following: (a) A holder with
36 the mere capacity or ability to influence, or the unexercised right to
37 control facility operations; (b) a holder who conducts or requires a
38 borrower to conduct an environmental audit or an environmental site
39 assessment at the facility for which indicia of ownership is held; (c)

1 a holder who requires a borrower to come into compliance with any
2 applicable laws or regulations at the facility for which indicia of
3 ownership is held; (d) a holder who requires a borrower to conduct
4 remedial actions including setting minimum requirements, but does not
5 otherwise control or manage the borrower's remedial actions or the
6 scope of the borrower's remedial actions except to prepare a facility
7 for sale, transfer, or assignment; (e) a holder who engages in workout
8 or policing activities primarily to protect the holder's security
9 interest in the facility; (f) a holder who prepares a facility for
10 sale, transfer, or assignment or requires a borrower to prepare a
11 facility for sale, transfer, or assignment; (g) a holder who operates
12 a facility primarily to protect a security interest, or requires a
13 borrower to continue to operate, a facility primarily to protect a
14 security interest; and (h) a prospective holder who, as a condition of
15 becoming a holder, requires an owner or operator to conduct an
16 environmental audit, conduct an environmental site assessment, come
17 into compliance with any applicable laws or regulations, or conduct
18 remedial actions prior to holding a security interest is not
19 participating in the management of the facility.

20 (14) "Person" means an individual, firm, corporation, association,
21 partnership, consortium, joint venture, commercial entity, state
22 government agency, unit of local government, federal government agency,
23 or Indian tribe.

24 (15) "Policing activities" means actions the holder takes to insure
25 that the borrower complies with the terms of the loan or security
26 interest or actions the holder takes or requires the borrower to take
27 to maintain the value of the security. Policing activities include:
28 Requiring the borrower to conduct remedial actions at the facility
29 during the term of the security interest; requiring the borrower to
30 comply or come into compliance with applicable federal, state, and
31 local environmental and other laws, regulations, and permits during the
32 term of the security interest; securing or exercising authority to
33 monitor or inspect the facility including on-site inspections, or to
34 monitor or inspect the borrower's business or financial condition
35 during the term of the security interest; or taking other actions
36 necessary to adequately police the loan or security interest such as
37 requiring a borrower to comply with any warranties, covenants,
38 conditions, representations, or promises from the borrower.

1 (16) "Potentially liable person" means any person whom the
2 department finds, based on credible evidence, to be liable under RCW
3 70.105D.040. The department shall give notice to any such person and
4 allow an opportunity for comment before making the finding, unless an
5 emergency requires otherwise.

6 (17) "Prepare a facility for sale, transfer, or assignment" means
7 to secure access to the facility; perform routine maintenance on the
8 facility; remove inventory, equipment, or structures; properly maintain
9 environmental compliance measures already in place at the facility;
10 conduct remedial actions to clean up releases at the facility; or to
11 perform other similar activities intended to preserve the value of the
12 facility where the borrower has defaulted on the loan or otherwise
13 breached the security agreement or after foreclosure and its
14 equivalents and in anticipation of a pending sale, transfer, or
15 assignment, primarily to protect the holder's security interest in the
16 facility. A holder can prepare a facility for sale, transfer, or
17 assignment for up to one year prior to foreclosure and its equivalents
18 and still stay within the security interest exemption in subsection
19 (12)(b)(ii) of this section.

20 (18) "Primarily to protect a security interest" means the indicia
21 of ownership is held primarily for the purpose of securing payment or
22 performance of an obligation. The term does not include indicia of
23 ownership held primarily for investment purposes nor indicia of
24 ownership held primarily for purposes other than as protection for a
25 security interest. A holder may have other, secondary reasons, for
26 maintaining indicia of ownership, but the primary reason must be for
27 protection of a security interest. Holding indicia of ownership after
28 foreclosure or its equivalents for longer than five years shall be
29 considered to be holding the indicia of ownership for purposes other
30 than primarily to protect a security interest. For facilities that
31 have been acquired through foreclosure or its equivalents prior to July
32 23, 1995, this five-year period shall begin as of July 23, 1995.

33 (19) "Public notice" means, at a minimum, adequate notice mailed to
34 all persons who have made timely request of the department and to
35 persons residing in the potentially affected vicinity of the proposed
36 action; mailed to appropriate news media; published in the newspaper of
37 largest circulation in the city or county of the proposed action; and
38 opportunity for interested persons to comment.

1 (20) "Release" means any intentional or unintentional entry of any
2 hazardous substance into the environment, including but not limited to
3 the abandonment or disposal of containers of hazardous substances.

4 (21) "Remedy" or "remedial action" means any action or expenditure
5 consistent with the purposes of this chapter to identify, eliminate, or
6 minimize any threat or potential threat posed by hazardous substances
7 to human health or the environment including any investigative and
8 monitoring activities with respect to any release or threatened release
9 of a hazardous substance and any health assessments or health effects
10 studies conducted in order to determine the risk or potential risk to
11 human health.

12 (22) "Security interest" means an interest in a facility created or
13 established for the purpose of securing a loan or other obligation.
14 Security interests include deeds of trusts, sellers interest in a real
15 estate contract, liens, legal, or equitable title to a facility
16 acquired incident to foreclosure and its equivalents, and title
17 pursuant to lease financing transactions. Security interests may also
18 arise from transactions such as sale and leasebacks, conditional sales,
19 installment sales, trust receipt transactions, certain assignments,
20 factoring agreements, accounts receivable financing arrangements,
21 easements, and consignments, if the transaction creates or establishes
22 an interest in a facility for the purpose of securing a loan or other
23 obligation.

24 (23) "Industrial properties" means properties that are or have been
25 characterized by, or are to be committed to, traditional industrial
26 uses such as processing or manufacturing of materials, marine terminal
27 and transportation areas and facilities, fabrication, assembly,
28 treatment, or distribution of manufactured products, or storage of bulk
29 materials, that are either:

30 (a) Zoned for industrial use by a city or county conducting land
31 use planning under chapter 36.70A RCW; or

32 (b) For counties not planning under chapter 36.70A RCW and the
33 cities within them, zoned for industrial use and adjacent to properties
34 currently used or designated for industrial purposes.

35 (24) "Vulnerable subpopulations" means children, pregnant women,
36 the elderly, individuals with illnesses, and other subpopulations
37 identified by the director as likely to experience elevated health
38 risks from environmental pollutants.

1 (25) "Workout activities" means those actions by which a holder, at
2 any time prior to foreclosure and its equivalents, seeks to prevent,
3 cure, or mitigate a default by the borrower or obligor; or to preserve,
4 or prevent the diminution of, the value of the security. Workout
5 activities include: Restructuring or renegotiating the terms of the
6 security interest; requiring payment of additional rent or interest;
7 exercising forbearance; requiring or exercising rights pursuant to an
8 assignment of accounts or other amounts owed to an obligor; requiring
9 or exercising rights pursuant to an escrow agreement pertaining to
10 amounts owed to an obligor; providing specific or general financial or
11 other advice, suggestions, counseling, or guidance; and exercising any
12 right or remedy the holder is entitled to by law or under any
13 warranties, covenants, conditions, representations, or promises from
14 the borrower.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.105D
16 RCW to read as follows:

17 All permits, rules, standards, and other decisions approved by the
18 director after the effective date of this section must protect children
19 and other vulnerable subpopulations from the full range of health
20 effects that may be associated with prenatal and other exposures to
21 pollutants or combinations of pollutants, including but not limited to
22 neurological effects such as learning impairments and attention
23 problems, hormone disruption, reproductive problems, birth defects,
24 immune system damage, cancer, and other problems. The director shall
25 ensure that an explicit evaluation of environmental health hazards for
26 children and other vulnerable subpopulations is included in the
27 decision-making record for each permit, rule, standard, and other
28 decision made after the effective date of this section. The evaluation
29 shall identify the known and suspected health effects of each pollutant
30 covered by the agency decision and shall show that the agency decision
31 will not result in the occurrence of any of these effects. The
32 evaluation shall take into account other exposures to the same and
33 other pollutants that children and other vulnerable subpopulations may
34 be experiencing. These other exposures may include those associated
35 with body burdens and breast milk contamination from prior exposures
36 and those associated with releases from other pollution sources.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.105D
2 RCW to read as follows:

3 Within eighteen months of the effective date of this section, the
4 director shall establish a strategy and timeline for ending releases of
5 persistent and bioaccumulative toxic substances to other environmental
6 media such as air and land. This strategy and timeline shall include
7 a schedule for adopting rules that parallel those adopted for water
8 under chapter . . . , Laws of 1998 (this act).

9 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.105D
10 RCW to read as follows:

11 Any citizen may commence a civil action in a superior court on his
12 or her own behalf against the director where there is alleged a failure
13 of the director to perform any act or duty under section 13 or 14 of
14 this act that is not discretionary. The courts shall have
15 jurisdiction, without regard to the amount in controversy or the
16 citizenship of the parties, to order the director to perform the act or
17 duty. The court, in issuing any final order in any action brought
18 under this section, may award costs of litigation, including reasonable
19 attorneys' fees and expert witness fees, to any prevailing or
20 substantially prevailing party, whenever the court determines such
21 award is appropriate.

22 **Sec. 16.** RCW 90.48.010 and 1973 c 155 s 1 are each amended to read
23 as follows:

24 It is declared to be the public policy of the state of Washington
25 to maintain the highest possible standards to insure the purity of all
26 waters of the state consistent with public health and public enjoyment
27 thereof, the propagation and protection of wild life, birds, game, fish
28 and other aquatic life, and the industrial development of the state,
29 and to that end require the use of all known available and reasonable
30 methods by industries and others to prevent and control the pollution
31 of the waters of the state of Washington. Consistent with this policy,
32 the state of Washington will exercise its powers, as fully and as
33 effectively as possible, to retain and secure high quality for all
34 waters of the state. The state of Washington in recognition of the
35 federal government's interest in the quality of the navigable waters of
36 the United States, of which certain portions thereof are within the
37 jurisdictional limits of this state, proclaims a public policy of

1 working cooperatively with the federal government in a joint effort to
2 extinguish the sources of water quality degradation, while at the same
3 time preserving and vigorously exercising state powers to insure that
4 present and future standards of water quality within the state shall be
5 determined by the citizenry, through and by the efforts of state
6 government, of the state of Washington.

7 The legislature finds that children and other vulnerable
8 subpopulations are generally more susceptible to illness and injury
9 from exposure to pollutants than are other populations, and that
10 society has a moral obligation to protect children and other vulnerable
11 subpopulations from illness and injury associated with pollution. It
12 is thus the policy of the state of Washington that all decisions
13 related to pollutants be made in such a way that children and other
14 vulnerable subpopulations are protected.

15 The legislature further finds that toxic substances that persist in
16 the environment building up in the food supply, body fat, and breast
17 milk pose particularly serious threats to children, other vulnerable
18 subpopulations, and society as a whole. The legislature thus
19 establishes a goal of ending releases of persistent and bioaccumulative
20 toxic substances to the environment on realistic yet urgent timelines.

21 **Sec. 17.** RCW 90.48.020 and 1995 c 255 s 7 are each amended to read
22 as follows:

23 Whenever the word "person" is used in this chapter, it shall be
24 construed to include any political subdivision, government agency,
25 municipality, industry, public or private corporation, copartnership,
26 association, firm, individual or any other entity whatsoever.

27 Wherever the words "waters of the state" shall be used in this
28 chapter, they shall be construed to include lakes, rivers, ponds,
29 streams, inland waters, underground waters, salt waters and all other
30 surface waters and watercourses within the jurisdiction of the state of
31 Washington.

32 Whenever the word "pollution" is used in this chapter, it shall be
33 construed to mean such contamination, or other alteration of the
34 physical, chemical or biological properties, of any waters of the
35 state, including change in temperature, taste, color, turbidity, or
36 odor of the waters, or such discharge of any liquid, gaseous, solid,
37 radioactive, or other substance into any waters of the state as will or
38 is likely to create a nuisance or render such waters harmful,

1 detrimental or injurious to the public health, safety or welfare, or to
2 domestic, commercial, industrial, agricultural, recreational, or other
3 legitimate beneficial uses, or to livestock, wild animals, birds, fish
4 or other aquatic life.

5 Wherever the word "department" is used in this chapter it shall
6 mean the department of ecology.

7 Whenever the word "director" is used in this chapter it shall mean
8 the director of ecology.

9 Whenever the words "aquatic noxious weed" are used in this chapter,
10 they have the meaning prescribed under RCW 17.26.020.

11 Whenever the phrase "vulnerable subpopulations" is used in this
12 chapter it means children, pregnant women, the elderly, individuals
13 with illnesses, and other subpopulations identified by the director as
14 likely to experience elevated health risks from environmental
15 pollutants.

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

18 All permits, rules, standards, and other decisions approved by the
19 director after the effective date of this section must protect children
20 and other vulnerable subpopulations from the full range of health
21 effects that may be associated with prenatal and other exposures to
22 pollutants or combinations of pollutants, including but not limited to
23 neurological effects such as learning impairments and attention
24 problems, hormone disruption, reproductive problems, birth defects,
25 immune system damage, cancer, and other problems. The director shall
26 ensure that an explicit evaluation of environmental health hazards for
27 children and other vulnerable subpopulations is included in the
28 decision-making record for each permit, rule, standard, and other
29 decision made after the effective date of this section. The evaluation
30 shall identify the known and suspected health effects of each pollutant
31 covered by the agency decision and shall show that the agency decision
32 will not result in the occurrence of any of these effects. The
33 evaluation shall take into account other exposures to the same and
34 other pollutants that children and other vulnerable subpopulations may
35 be experiencing. These other exposures may include those associated
36 with body burdens and breast milk contamination from prior exposures
37 and those associated with releases from other pollution sources.

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.48 RCW
2 to read as follows:

3 Within eighteen months of the effective date of this section, the
4 director shall adopt rules that establish a clear timeline for ending
5 the release to state waters of toxic substances that persist and
6 bioaccumulate. The rules must include the following provisions:

7 (1) Criteria for identifying persistent and bioaccumulative toxic
8 substances;

9 (2) A preliminary list of substances meeting the criteria in
10 subsection (1) of this section and a process for adding additional
11 substances to the list;

12 (3) A realistic yet urgent specific deadline by which release of
13 persistent and bioaccumulative toxic substances to water will be
14 prohibited; and

15 (4) Criteria and a process for granting limited exceptions from the
16 prohibition on releasing persistent and bioaccumulative toxic
17 substances to water where there is an overriding public health interest
18 in doing so.

19 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.48 RCW
20 to read as follows:

21 Any citizen may commence a civil action in a superior court on his
22 or her own behalf against the director where there is alleged a failure
23 of the director to perform any act or duty under section 18 or 19 of
24 this act that is not discretionary. The courts shall have
25 jurisdiction, without regard to the amount in controversy or the
26 citizenship of the parties, to order the director to perform the act or
27 duty. The court, in issuing any final order in any action brought
28 under this section, may award costs of litigation, including reasonable
29 attorneys' fees and expert witness fees, to any prevailing or
30 substantially prevailing party, whenever the court determines such
31 award is appropriate.

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