

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6203

55th Legislature
1998 Regular Session

Passed by the Senate March 7, 1998
YEAS 42 NAYS 2

President of the Senate

Passed by the House March 3, 1998
YEAS 80 NAYS 18

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6203** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6203

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Fraser, Snyder and Swecker)

Read first time 02/05/98.

1 AN ACT Relating to solid waste permitting; amending RCW 70.95.020,
2 70.95.170, 70.95.190, and 43.21B.110; adding new sections to chapter
3 70.95 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 70.95.020 and 1985 c 345 s 2 are each amended to read
6 as follows:

7 The purpose of this chapter is to establish a comprehensive state-
8 wide program for solid waste handling, and solid waste recovery and/or
9 recycling which will prevent land, air, and water pollution and
10 conserve the natural, economic, and energy resources of this state. To
11 this end it is the purpose of this chapter:

12 (1) To assign primary responsibility for adequate solid waste
13 handling to local government, reserving to the state, however, those
14 functions necessary to assure effective programs throughout the state;

15 (2) To provide for adequate planning for solid waste handling by
16 local government;

17 (3) To provide for the adoption and enforcement of basic minimum
18 performance standards for solid waste handling;

1 (4) To provide technical and financial assistance to local
2 governments in the planning, development, and conduct of solid waste
3 handling programs;

4 (5) To encourage storage, proper disposal, and recycling of
5 discarded vehicle tires and to stimulate private recycling programs
6 throughout the state; and

7 (6) To encourage the development and operation of waste recycling
8 facilities and activities needed to accomplish the management priority
9 of waste recycling and to promote consistency in the permitting
10 requirements for such facilities and activities throughout the state.

11 It is the intent of the legislature that local governments be
12 encouraged to use the expertise of private industry and to contract
13 with private industry to the fullest extent possible to carry out solid
14 waste recovery and/or recycling programs.

15 NEW SECTION. Sec. 2. A new section is added to chapter 70.95 RCW
16 to read as follows:

17 (1) The department may by rule exempt a solid waste from the
18 permitting requirements of this chapter for one or more beneficial
19 uses. In adopting such rules, the department shall specify both the
20 solid waste that is exempted from the permitting requirements and the
21 beneficial use or uses for which the solid waste is so exempted. The
22 department shall consider: (a) Whether the material will be
23 beneficially used or reused; and (b) whether the beneficial use or
24 reuse of the material will present threats to human health or the
25 environment.

26 (2) The department may also exempt a solid waste from the
27 permitting requirements of this chapter for one or more beneficial uses
28 by approving an application for such an exemption. The department
29 shall establish by rule procedures under which a person may apply to
30 the department for such an exemption. The rules shall establish
31 criteria for providing such an exemption, which shall include, but not
32 be limited to: (a) The material will be beneficially used or reused;
33 and (b) the beneficial use or reuse of the material will not present
34 threats to human health or the environment. Rules adopted under this
35 subsection shall identify the information that an application shall
36 contain. Persons seeking such an exemption shall apply to the
37 department under the procedures established by the rules adopted under
38 this subsection.

1 (3) After receipt of an application filed under rules adopted under
2 subsection (2) of this section, the department shall review the
3 application to determine whether it is complete, and forward a copy of
4 the completed application to all jurisdictional health departments for
5 review and comment. Within forty-five days, the jurisdictional health
6 departments shall forward to the department their comments and any
7 other information they deem relevant to the department's decision to
8 approve or disapprove the application. Every complete application
9 shall be approved or disapproved by the department within ninety days
10 of receipt. If the application is approved by the department, the
11 solid waste is exempt from the permitting requirements of this chapter
12 when used anywhere in the state in the manner approved by the
13 department. If the composition, use, or reuse of the solid waste is
14 not consistent with the terms and conditions of the department's
15 approval of the application, the use of the solid waste remains subject
16 to the permitting requirements of this chapter.

17 (4) The department shall establish procedures by rule for providing
18 to the public and the solid waste industry notice of and an opportunity
19 to comment on each application for an exemption under subsection (2) of
20 this section.

21 (5) Any jurisdictional health department or applicant may appeal
22 the decision of the department to approve or disapprove an application
23 under subsection (3) of this section. The appeal shall be made to the
24 pollution control hearings board by filing with the hearings board a
25 notice of appeal within thirty days of the decision of the department.
26 The hearings board's review of the decision shall be made in accordance
27 with chapter 43.21B RCW and any subsequent appeal of a decision of the
28 board shall be made in accordance with RCW 43.21B.180.

29 (6) This section shall not be deemed to invalidate the exemptions
30 or determinations of nonapplicability in the department's solid waste
31 rules as they exist on the effective date of this section, which
32 exemptions and determinations are recognized and confirmed subject to
33 the department's continuing authority to modify or revoke those
34 exemptions or determinations by rule.

35 **Sec. 3.** RCW 70.95.170 and 1997 c 213 s 2 are each amended to read
36 as follows:

37 Except as provided otherwise in section 5 or 6 of this act, after
38 approval of the comprehensive solid waste plan by the department no

1 solid waste handling facility or facilities shall be maintained,
2 established, or modified until the county, city, or other person
3 operating such site has obtained a permit (~~(from the jurisdictional~~
4 ~~health department)~~) pursuant to (~~(the provisions of)~~) RCW 70.95.180 or
5 70.95.190.

6 **Sec. 4.** RCW 70.95.190 and 1997 c 213 s 4 are each amended to read
7 as follows:

8 (1) Every permit for an existing solid waste handling facility
9 issued pursuant to RCW 70.95.180 shall be renewed at least every five
10 years on a date established by the jurisdictional health department
11 having jurisdiction of the site and as specified in the permit. If a
12 permit is to be renewed for longer than one year, the local
13 jurisdictional health department may hold a public hearing before
14 making such a decision. Prior to renewing a permit, the health
15 department shall conduct a review as it deems necessary to assure that
16 the solid waste handling facility or facilities located on the site
17 continues to meet minimum functional standards of the department,
18 applicable local regulations, and are not in conflict with the approved
19 solid waste management plan. A jurisdictional health department shall
20 approve or disapprove a permit renewal within forty-five days of
21 conducting its review. The department shall review and may appeal the
22 renewal as set forth for the approval of permits in RCW 70.95.185.

23 (2) The jurisdictional board of health may establish reasonable
24 fees for permits reviewed under this section. All permit fees
25 collected by the health department shall be deposited in the treasury
26 and to the account from which the health department's operating
27 expenses are paid.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.95 RCW
29 to read as follows:

30 (1) Notwithstanding any other provision of this chapter, the
31 department may by rule exempt from the requirements to obtain a solid
32 waste handling permit any category of solid waste handling facility
33 that it determines to:

34 (a) Present little or no environmental risk; and

35 (b) Meet the environmental protection and performance requirements
36 required for other similar solid waste facilities.

1 (2) This section does not apply to any facility or category of
2 facilities that:

3 (a) Receives municipal solid waste destined for final disposal,
4 including but not limited to transfer stations, landfills, and
5 incinerators;

6 (b) Applies putrescible solid waste on land for final disposal
7 purposes;

8 (c) Handles mixed solid wastes that have not been processed to
9 segregate solid waste materials destined for disposal from other solid
10 waste materials destined for a beneficial use;

11 (d) Receives or processes organic waste materials into compost in
12 volumes that generally far exceed those handled by municipal park
13 departments, master gardening programs, and households; or

14 (e) Receives solid waste destined for recycling or reuse, the
15 operation of which is determined by the department to present risks to
16 human health and the environment.

17 (3) Rules adopted under this section shall contain such terms and
18 conditions as the department deems necessary to ensure compliance with
19 applicable statutes and rules. If a facility does not operate in
20 compliance with the terms and conditions established for an exemption
21 under subsection (1) of this section, the facility is subject to the
22 permitting requirements for solid waste handling under this chapter.

23 (4) This section shall not be deemed to invalidate the exemptions
24 or determinations of nonapplicability in the department's solid waste
25 rules as they exist on the effective date of this section, which
26 exemptions and determinations are recognized and confirmed subject to
27 the department's continuing authority to modify or revoke those
28 exemptions or determinations by rule.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.95 RCW
30 to read as follows:

31 (1) Notwithstanding any other provisions of this chapter, the
32 department shall adopt rules:

33 (a) Describing when a jurisdictional health department may, at its
34 discretion, waive the requirement that a permit be issued for a
35 facility under this chapter if other air, water, or environmental
36 permits are issued for the same facility. As used in this section, a
37 jurisdictional health department's waiving the requirement that a
38 permit be issued for a facility under this chapter based on the

1 issuance of such other permits for the facility is the health
2 department's "deferring" to the other permits; and

3 (b) Allowing deferral only if the applicant and the jurisdictional
4 health department demonstrate that other permits for the facility will
5 provide a comparable level of protection for human health and the
6 environment that would be provided by a solid waste handling permit.

7 (2) This section does not apply to any transfer station, landfill,
8 or incinerator that receives municipal solid waste destined for final
9 disposal.

10 (3) If, before the effective date of this section, either the
11 department or a jurisdictional health department has deferred solid
12 waste permitting or regulation of a solid waste facility to permitting
13 or regulation under other environmental permits for the same facility,
14 such deferral is valid and shall not be affected by the rules developed
15 under subsection (1) of this section.

16 (4) Rules adopted under this section shall contain such terms and
17 conditions as the department deems necessary to ensure compliance with
18 applicable statutes and rules.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.95 RCW
20 to read as follows:

21 The department may assess a civil penalty in an amount not to
22 exceed one thousand dollars per day per violation to any person exempt
23 from solid waste permitting in accordance with section 2 or 5 of this
24 act who fails to comply with the terms and conditions of the exemption.
25 Each such violation shall be a separate and distinct offense, and in
26 the case of a continuing violation, each day's continuance shall be a
27 separate and distinct violation.

28 **Sec. 8.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
29 read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, the administrator of the office of marine safety, and the air
33 pollution control boards or authorities as established pursuant to
34 chapter 70.94 RCW, or local health departments:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
36 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
37 90.56.330.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, and 90.48.120.

4 (c) The issuance, modification, or termination of any permit,
5 certificate, or license by the department or any air authority in the
6 exercise of its jurisdiction, including the issuance or termination of
7 a waste disposal permit, the denial of an application for a waste
8 disposal permit, ~~((or))~~ the modification of the conditions or the terms
9 of a waste disposal permit, or a decision to approve or deny an
10 application for a solid waste permit exemption under section 2 of this
11 act.

12 (d) Decisions of local health departments regarding the grant or
13 denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

17 (f) Any other decision by the department, the administrator of the
18 office of marine safety, or an air authority which pursuant to law must
19 be decided as an adjudicative proceeding under chapter 34.05 RCW.

20 (2) The following hearings shall not be conducted by the hearings
21 board:

22 (a) Hearings required by law to be conducted by the shorelines
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
25 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

26 (c) Proceedings by the department relating to general adjudications
27 of water rights pursuant to chapter 90.03 or 90.44 RCW.

28 (d) Hearings conducted by the department to adopt, modify, or
29 repeal rules.

30 (3) Review of rules and regulations adopted by the hearings board
31 shall be subject to review in accordance with the provisions of the
32 Administrative Procedure Act, chapter 34.05 RCW.

33 NEW SECTION. Sec. 9. A new section is added to chapter 70.95 RCW
34 to read as follows:

1 Nothing in chapter . . . , Laws of 1998 (this act) may be construed
2 to affect chapter 81.77 RCW and the authority of the utilities and
3 transportation commission.

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