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SENATE BILL 5612

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State of Washington

56th Legislature

1999 Regular Session

By Senators Fraser, Finkbeiner, Eide, Winsley and Kline

Read first time 01/29/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to wastewater pollution prevention and control, and  
2 imposing mandatory minimum penalties upon chronic or significant water  
3 quality violators; amending RCW 70.95C.200, 70.95C.220, 90.48.140, and  
4 43.21B.300; adding new sections to chapter 90.48 RCW; creating a new  
5 section; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that pollution  
8 prevention should be the first priority in a hierarchy for reducing  
9 pollution and managing wastes, and to achieve environmental stewardship  
10 for society. The legislature also finds that pollution prevention is  
11 necessary to achieve the federal goal of zero discharge of pollutants  
12 into navigable waters.

13 The legislature further finds that mandatory minimum penalties for  
14 chronic or significant violators of wastewater discharge permits is an  
15 effective tool for bringing violators into compliance with their  
16 permits and encouraging voluntary compliance by all permit holders.  
17 The legislature also finds that mandatory minimum penalties for chronic  
18 and significant violators reduces the overall cost to the taxpayers of  
19 Washington of ensuring compliance with wastewater discharge permits.

1       **Sec. 2.** RCW 70.95C.200 and 1991 c 319 s 314 are each amended to  
2 read as follows:

3       (1) Each hazardous waste generator who generates more than two  
4 thousand six hundred forty pounds of hazardous waste per year and each  
5 hazardous substance user, except for those facilities that are  
6 primarily permitted treatment, storage, and disposal facilities or  
7 recycling facilities, shall prepare a plan for the voluntary reduction  
8 of the use of hazardous substances and the generation of hazardous  
9 wastes. Hazardous waste generated and recycled for beneficial use,  
10 including initial amount of hazardous substances introduced into a  
11 process and subsequently recycled for beneficial use, shall not be used  
12 in the calculation of hazardous waste generated for purposes of this  
13 section. The department may develop reporting requirements, consistent  
14 with existing reporting, to establish recycling for beneficial use  
15 under this section. Used oil to be rerefined or burned for energy or  
16 heat recovery shall not be used in the calculation of hazardous wastes  
17 generated for purposes of this section, and is not required to be  
18 addressed by plans prepared under this section. A person with multiple  
19 interrelated facilities where the processes in the facilities are  
20 substantially similar, may prepare a single plan covering one or more  
21 of those facilities.

22       (2) Each user or generator required to write a plan (~~(is encouraged~~  
23 ~~to)) shall advise its employees of the planning process and solicit  
24 comments or suggestions from its employees on hazardous substance use  
25 and waste reduction options.~~

26       (3) The department shall adopt by April 1, 1991, rules for  
27 preparation of plans. The rules shall require the plan to address the  
28 following options, according to the following order of priorities:  
29 Hazardous substance use reduction, waste reduction, recycling, and  
30 treatment. In the planning process, first consideration shall be given  
31 to hazardous substance use reduction and waste reduction options.  
32 Consideration shall be given next to recycling options. Recycling  
33 options may be considered only after hazardous substance use reduction  
34 options and waste reduction options have been thoroughly researched and  
35 shown to be inappropriate. Treatment options may be considered only  
36 after hazardous substance use reduction, waste reduction, and recycling  
37 options have been thoroughly researched and shown to be inappropriate.  
38 Documentation of the research shall be available to the department upon  
39 request. The rules shall also require the plans to discuss the

1 hazardous substance use reduction, waste reduction, and closed loop  
2 recycling options separately from other recycling and treatment  
3 options. All plans shall be written in conformance with the format  
4 prescribed in the rules adopted under this section. The rules shall  
5 require the plans to include, but not be limited to:

6 (a) A written policy articulating management and corporate support  
7 for the plan and a commitment to implementing planned activities and  
8 achieving established goals;

9 (b) The plan scope and objectives;

10 (c) Analysis of current hazardous substance use and hazardous waste  
11 generation, and a description of current hazardous substance use  
12 reduction, waste reduction, recycling, and treatment activities;

13 (d) An identification of further hazardous substance use reduction,  
14 waste reduction, recycling, and treatment opportunities, and an  
15 analysis of the amount of hazardous substance use reduction and waste  
16 reduction that would be achieved, and the costs. The analysis of  
17 options shall demonstrate that the priorities provided for in this  
18 section have been followed;

19 (e) A selection of options to be implemented in accordance with the  
20 priorities established in this section;

21 (f) An analysis of impediments to implementing the options.  
22 Impediments that shall be considered acceptable include, but are not  
23 limited to: Adverse impacts on product quality, legal or contractual  
24 obligations, economic practicality, and technical feasibility;

25 (g) A written policy stating that in implementing the selected  
26 options, whenever technically and economically practicable, risks will  
27 not be shifted from one part of a process, environmental media, or  
28 product to another;

29 (h) Specific performance goals in each of the following categories,  
30 expressed in numeric terms:

31 (i) Hazardous substances to be reduced or eliminated from use;

32 (ii) Wastes to be reduced or eliminated through waste reduction  
33 techniques;

34 (iii) Materials or wastes to be recycled; and

35 (iv) Wastes to be treated;

36 If the establishment of numeric performance goals is not  
37 practicable, the performance goals shall include a clearly stated list  
38 of objectives designed to lead to the establishment of numeric goals as  
39 soon as is practicable. Goals shall be set for a five-year period from

1 the first reporting date, and shall include the earliest date  
2 practicable to achieve the national goal of zero discharge of  
3 pollutants to waterways if the plan is for a wastewater discharger  
4 permitted under chapter 90.48 RCW, regardless of whether the zero  
5 discharge date is beyond the five-year period from the first reporting  
6 date or if the zero discharge date will occur after the expiration of  
7 the permit in which the plan will be incorporated. A plan submitted by  
8 a wastewater discharger permitted under chapter 90.48 RCW whose permit  
9 includes toxic effluent limits shall include yearly toxic effluent  
10 reduction goals represented by specific percent reductions per year per  
11 toxic effluent parameter;

12 (i) A description of how the wastes that are not recycled or  
13 treated and the residues from recycling and treatment processes are  
14 managed may be included in the plan;

15 (j) Hazardous substance use and hazardous waste accounting systems  
16 that identify hazardous substance use and waste management costs and  
17 factor in liability, compliance, and oversight costs;

18 (k) A financial description of the plan;

19 (l) Personnel training and employee involvement programs;

20 (m) A five-year plan implementation schedule;

21 (n) Documentation of hazardous substance use reduction and waste  
22 reduction efforts completed before or in progress at the time of the  
23 first reporting date; ((and))

24 (o) An executive summary of the plan, which shall include, but not  
25 be limited to:

26 (i) The information required by (c), (e), (h), and (n) of this  
27 subsection; and

28 (ii) A summary of the information required by (d) and (f) of this  
29 subsection;

30 (p) Timelines that include milestones that reflect the earliest  
31 practicable dates for meeting the performance goals or list of  
32 objectives established in (h) of this subsection; and

33 (q) A cost analysis using full-cost accounting and standard  
34 measures of profitability. The analysis shall include a discussion of  
35 all of the following:

36 (i) The reduction in operating costs caused by using less raw  
37 materials and conserving energy;

38 (ii) The savings from the reduced need for pollution control and  
39 treatment equipment and monitoring;

1 (iii) The savings from reduced exposures to hazardous wastes and  
2 chemicals among the work force and community;

3 (iv) The reduced costs for compliance with waste transportation,  
4 storage, and disposal rules;

5 (v) Improved public image from taking positive steps toward the  
6 community's waste problems;

7 (vi) Revenues from the recovery and sale of reusable wastes;

8 (vii) Reduced liabilities through the elimination of wastes;

9 (viii) Avoided costs of actions required for potential accidental  
10 releases or cleanup of contaminated sites;

11 (ix) Additional operating and capital costs resulting from changes  
12 in industrial processes, plant operations, and modifications of  
13 equipment.

14 (4) Upon completion of a plan, the owner, chief executive officer,  
15 or other person with the authority to commit management to the plan  
16 shall sign and submit an executive summary of the plan to the  
17 department.

18 (5) Plans shall be completed and executive summaries submitted in  
19 accordance with the following schedule:

20 (a) Hazardous waste generators who generated more than fifty  
21 thousand pounds of hazardous waste in calendar year 1991 and hazardous  
22 substance users who were required to report in 1991, by September 1,  
23 1992;

24 (b) Hazardous waste generators who generated between seven thousand  
25 and fifty thousand pounds of hazardous waste in calendar year 1992 and  
26 hazardous substance users who were required to report for the first  
27 time in 1992, by September 1, 1993;

28 (c) Hazardous waste generators who generated between two thousand  
29 six hundred forty and seven thousand pounds of hazardous waste in 1993  
30 and hazardous substance users who were required to report for the first  
31 time in 1993, by September 1, 1994;

32 (d) Hazardous waste generators who have not been required to  
33 complete a plan on or prior to September 1, 1994, must complete a plan  
34 by September 1 of the year following the first year that they generate  
35 more than two thousand six hundred forty pounds of hazardous waste; and

36 (e) Hazardous substance users who have not been required to  
37 complete a plan on or prior to September 1, 1994, must complete a plan  
38 by September 1 of the year following the first year that they are

1 required to report under section 313 of Title III of the Superfund  
2 Amendments and Reauthorization Act.

3 (6) Annual progress reports, including a description of the  
4 progress made toward achieving the specific performance goals  
5 established in the plan, shall be prepared and submitted to the  
6 department in accordance with rules developed under this section. Upon  
7 the request of two or more users or generators belonging to similar  
8 industrial classifications, the department may aggregate data contained  
9 in their annual progress reports for the purpose of developing a public  
10 record.

11 (7) Every five years, each plan shall be updated, and a new  
12 executive summary shall be submitted to the department.

13 **Sec. 3.** RCW 70.95C.220 and 1990 c 114 s 8 are each amended to read  
14 as follows:

15 (1) The department may review a plan, executive summary, or an  
16 annual progress report to determine whether the plan, executive  
17 summary, or annual progress report is adequate pursuant to the rules  
18 developed under this section and with the provisions of RCW 70.95C.200.  
19 Plans, executive summaries, and progress reports for facilities subject  
20 to a wastewater discharge permit issued under chapter 90.48 RCW shall  
21 be reviewed by the department. In determining the adequacy of any  
22 plan, executive summary, or annual progress report, the department  
23 shall base its determination solely on whether the plan, executive  
24 summary, or annual progress report is complete and prepared in  
25 accordance with the provisions of RCW 70.95C.200.

26 (2) Plans developed under RCW 70.95C.200 shall be retained at the  
27 facility of the hazardous substance user or hazardous waste generator  
28 preparing a plan. The plan is not a public record under the public  
29 disclosure laws of the state of Washington contained in chapter 42.17  
30 RCW. A user or generator required to prepare a plan shall permit the  
31 director or a representative of the director to review the plan to  
32 determine its adequacy. No visit made by the director or a  
33 representative of the director to a facility for the purposes of this  
34 subsection may be regarded as an inspection or investigation, and no  
35 notices or citations may be issued, nor any civil penalty assessed,  
36 upon such a visit.

37 (3) If a hazardous substance user or hazardous waste generator  
38 fails to complete an adequate plan, executive summary, or annual

1 progress report, the department shall notify the user or generator of  
2 the inadequacy, identifying specific deficiencies. For the purposes of  
3 this section, a deficiency may include failure to develop a plan,  
4 failure to submit an executive summary pursuant to the schedule  
5 provided in RCW 70.95C.200(5), and failure to submit an annual progress  
6 report pursuant to the rules developed under RCW 70.95C.200(6). The  
7 department shall specify a reasonable time frame, of not less than  
8 ninety days, within which the user or generator shall complete a  
9 modified plan, executive summary, or annual progress report addressing  
10 the specified deficiencies.

11 (4) If the department determines that a modified plan, executive  
12 summary, or annual progress report is inadequate, the department may,  
13 within its discretion, either require further modification or enter an  
14 order pursuant to subsection (5)(a) of this section.

15 (5)(a) If, after having received a list of specified deficiencies  
16 from the department, a hazardous substance user or hazardous waste  
17 generator required to prepare a plan fails to complete modification of  
18 a plan, executive summary, or annual progress report within the time  
19 period specified by the department, the department may enter an order  
20 pursuant to chapter 34.05 RCW finding the user or generator not in  
21 compliance with the requirements of RCW 70.95C.200. When the order is  
22 final, the department shall notify the department of revenue to charge  
23 a penalty fee. The penalty fee shall be the greater of one thousand  
24 dollars or three times the amount of the user's or generator's previous  
25 year's fee, in addition to the current year's fee. If no fee was  
26 assessed the previous year, the penalty shall be the greater of one  
27 thousand dollars or three times the amount of the current year's fee.  
28 The penalty assessed under this subsection shall be collected each year  
29 after the year for which the penalty was assessed until an adequate  
30 plan or executive summary is completed.

31 (b) If a hazardous substance user or hazardous waste generator  
32 required to prepare a plan fails to complete an adequate plan,  
33 executive summary, or annual progress report after the department has  
34 levied against the user or generator the penalty provided in (a) of  
35 this subsection, the user or generator shall be required to pay a  
36 surcharge to the department whenever the user or generator disposes of  
37 a hazardous waste at any hazardous waste incinerator or hazardous waste  
38 landfill facility located in Washington state, until a plan, executive  
39 summary, or annual progress report is completed and determined to be

1 adequate by the department. The surcharge shall be equal to three  
2 times the fee charged for disposal. The department shall furnish the  
3 incinerator and landfill facilities in this state with a list of  
4 environmental protection agency/state identification numbers of the  
5 hazardous waste generators that are not in compliance with the  
6 requirements of RCW 70.95C.200.

7 (6) Any hazardous waste generator that is the holder of a  
8 wastewater discharge permit issued under chapter 90.48 RCW and that is  
9 required to submit plans under this chapter before the effective date  
10 of this section may use completed elements of its existing plan in  
11 preparing the plan required in this chapter. Any such generator shall  
12 not be required to conduct new analyses of completed elements of its  
13 plan before the time when the generator would be required to submit a  
14 new plan under the provisions of this chapter that were in force before  
15 the effective date of this section.

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

18 (1) Notwithstanding the provisions of RCW 43.05.060 through  
19 43.05.080 and in addition to any penalty provided by law, the  
20 department shall assess a minimum mandatory civil penalty of no less  
21 than five thousand dollars for each violation to a holder of a  
22 wastewater discharge permit issued under this chapter, if the permit  
23 holder is in chronic or significant noncompliance with its permit.

24 (2) The following definitions apply for the purposes of this  
25 section only:

26 (a) "Chronic or significant noncompliance" means:

27 (i) Discharges of forty percent or more above the conventional  
28 pollutant limit listed in the permit two or more times in any one  
29 hundred eighty-day period; or

30 (ii) Discharges of twenty percent or more above the toxic pollutant  
31 limit listed in the permit two or more times in any one hundred eighty-  
32 day period; or

33 (iii) Exceeding any pollutant limit listed in the permit by any  
34 amount four or more times in any one hundred eighty-day period;

35 (b) "Conventional pollutant" means a pollutant listed as a  
36 conventional pollutant under 33 U.S.C. Sec. 1314(a)(4) as it existed on  
37 the effective date of this section;



1 (c) "Toxic pollutant" means a pollutant listed as a toxic pollutant  
2 pursuant to 33 U.S.C. Sec. 1317(a) as it existed on the effective date  
3 of this section.

4 (3) There is no liability under this section if the discharge is  
5 caused solely by any one or combination of the following:

6 (a) An act of war;

7 (b) An unanticipated grave natural disaster or other natural  
8 phenomenon of an exceptional, inevitable, or irresistible character,  
9 the effects of which could not have been prevented or avoided by the  
10 exercise of due care or foresight;

11 (c) Negligence on the part of the state, the United States, or any  
12 department or agency of the state or the United States, however, this  
13 subsection (3) shall not be interpreted to provide the state, the  
14 United States, or any department or agency of the state or United  
15 States a defense to liability for any discharge caused by its own  
16 negligence;

17 (d) An intentional act of a third party, the effects of which could  
18 not have been prevented or avoided by the exercise of due care or  
19 foresight; or

20 (e) Any other circumstance or event that causes the discharge  
21 despite the exercise of every reasonable precaution to prevent or  
22 mitigate the discharge.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.48 RCW  
24 to read as follows:

25 The department shall provide the public current information on  
26 penalties imposed and other enforcement actions taken under this  
27 chapter for at least the preceding twelve months, and shall update the  
28 information at least monthly. The information shall be made available  
29 in paper copy as well as electronically.

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

32 (1) Not later than July 1, 2001, the department shall adopt by rule  
33 a methodology for calculating the economic benefits or savings accruing  
34 to a discharger as a result of any violation of an effluent limitation  
35 in a permit issued under this chapter.

36 (2) Following adoption of the rule, an administrative or civil  
37 penalty imposed under the authority of this chapter shall not be less

1 than the amount calculated under the rule. This section shall not be  
2 construed to mean that a penalty may not be assessed at a level greater  
3 than the amount calculated under the rule.

4 **Sec. 7.** RCW 90.48.140 and 1992 c 73 s 26 are each amended to read  
5 as follows:

6 Any person found guilty of willfully violating any of the  
7 provisions of this chapter or chapter 90.56 RCW, or any final written  
8 orders or directive of the department or a court in pursuance thereof  
9 shall be deemed guilty of a crime, and upon conviction thereof shall be  
10 punished by a fine of up to (~~ten~~) twenty thousand dollars and costs  
11 of prosecution, or by imprisonment in the county jail for not more than  
12 (~~one year~~) two years, or by both such fine and imprisonment in the  
13 discretion of the court. Each day upon which a willful violation of  
14 the provisions of this chapter or chapter 90.56 RCW occurs may be  
15 deemed a separate and additional violation.

16 **Sec. 8.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to  
17 read as follows:

18 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
19 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
20 90.56.330 shall be imposed by a notice in writing, either by certified  
21 mail with return receipt requested or by personal service, to the  
22 person incurring the penalty from the department, the administrator of  
23 the office of marine safety, or the local air authority, describing the  
24 violation with reasonable particularity. Within fifteen days after the  
25 notice is received, the person incurring the penalty may apply in  
26 writing to the department, the administrator, or the authority for the  
27 remission or mitigation of the penalty. Upon receipt of the  
28 application, the department, the administrator, or authority may remit  
29 or mitigate the penalty upon whatever terms the department, the  
30 administrator, or the authority in its discretion deems proper. The  
31 department or the authority may ascertain the facts regarding all such  
32 applications in such reasonable manner and under such rules as it may  
33 deem proper and shall remit or mitigate the penalty only upon a  
34 demonstration of extraordinary circumstances such as the presence of  
35 information or factors not considered in setting the original penalty.

36 (2) Any penalty imposed under this section may be appealed to the  
37 pollution control hearings board in accordance with this chapter if the

1 appeal is filed with the hearings board and served on the department,  
2 the administrator, or authority thirty days after receipt by the person  
3 penalized of the notice imposing the penalty or thirty days after  
4 receipt of the notice of disposition of the application for relief from  
5 penalty.

6 (3) A penalty shall become due and payable on the later of:

7 (a) Thirty days after receipt of the notice imposing the penalty;

8 (b) Thirty days after receipt of the notice of disposition on  
9 application for relief from penalty, if such an application is made; or

10 (c) Thirty days after receipt of the notice of decision of the  
11 hearings board if the penalty is appealed.

12 (4) If the amount of any penalty is not paid to the department or  
13 the administrator within thirty days after it becomes due and payable,  
14 the attorney general, upon request of the department or the  
15 administrator, shall bring an action in the name of the state of  
16 Washington in the superior court of Thurston county, or of any county  
17 in which the violator does business, to recover the penalty. If the  
18 amount of the penalty is not paid to the authority within thirty days  
19 after it becomes due and payable, the authority may bring an action to  
20 recover the penalty in the superior court of the county of the  
21 authority's main office or of any county in which the violator does  
22 business. In these actions, the procedures and rules of evidence shall  
23 be the same as in an ordinary civil action.

24 (5) All penalties recovered shall be paid into the state treasury  
25 and credited to the general fund except those penalties imposed  
26 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
27 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
28 disposition of which shall be governed by that provision, RCW  
29 70.105.080, which shall be credited to the hazardous waste control and  
30 elimination account, created by RCW 70.105.180, (~~and~~) RCW 90.56.330,  
31 90.48.144, and sections 4 and 5 of this act, which shall be credited to  
32 the coastal protection fund created by RCW 90.48.390.

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