

SENATE BILL REPORT

ESHB 1411

As Reported By Senate Committee On:
Environment, Energy & Water, February 28, 2002

Title: An act relating to public notification of releases of hazardous substances.

Brief Description: Providing public notice of releases of hazardous substances.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Veloria, Pennington, Cody, Campbell, Romero, Kenney, Keiser, Schual-Berke, Santos, Dunn, Linville, Boldt, Tokuda, Kagi, Cooper, McIntire and Rockefeller).

Brief History:

Committee Activity: Environment, Energy & Water: 2/26/02, 2/28/02 [DPA].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, Keiser and Morton.

Staff: Richard Rodger (786-7461)

Background: The owners and operators of a facility, or a site where hazardous substances are located, are responsible for reporting spills or other releases of hazardous substances to federal and state authorities. The time limits set for reporting vary depending on the type of facility and the type of release.

In Washington, there are five acts that require the reporting of a release. They are the Oil and Hazardous Substance Spill Prevention and Response Act, Hazardous Waste Management Act, Water Pollution Control Act, Underground Storage Tank Act, and the Model Toxics Control Act (MTCA). These acts require reporting either immediately, within 24 hours, or within 90 days, depending on the circumstances of the release.

Owners and operators of a facility must report immediately to the Department of Ecology (DOE) any releases into the state's waters, wells, or drinking water supplies. Immediate notification is also required for new discharges of hazardous substances into the environment, and for spills or overfills of regulated substances from underground storage tanks (UST) that come in contact with soil, groundwater, or surface water in an amount which is more than de minimis.

An owner or operator of a facility must report a release within 24 hours if a UST leak is discovered. Notification within 24 hours is also required if a UST spills or is overfilled and the hazardous substance does not come in contact with soils or water.

The MTCA requires an owner or operator to report to the DOE a known release of a substance that may be a threat to human health within 90 days of discovery. This requirement includes the reporting of any newly discovered historic releases that occurred as a result of past business practices.

There are currently no federal or state regulations requiring direct notice of a release to landowners adjacent to or in close proximity to a facility.

Summary of Amended Bill: Any owner or operator of a facility that is transitioning from federal oversight, under permit for treatment, storage, or disposal of hazardous waste, to oversight by the state, who knows or reasonably should have known of the release of a hazardous substance, is required to issue a notice to the Department of Ecology (department). This notice must be issued within 90 days of the release's discovery and it must disclose that the release has occurred, and describe the remedial actions that are being taken or that are planned.

To adequately notify the public, the notice must be posted in a visible and publicly accessible location in the facility and the department must mail notice to: (1) each residence and landowner within 300 feet of the facility or the area where the release occurred; (2) each business whose property is within 300 feet from the facility; (3) each residence landowner, and business within the area where the hazardous substance came to be located as a result of the release; (4) any neighborhood associations or community organizations recognized by the local city that represent an area within one mile of the facility; (5) the appropriate city, county, and local health district; and (6) the Department of Health.

The notice must include the common name and chemical abstract service registry number of the substance released, the date the release was discovered, the cause and date of the release, and the potential health and environmental effects of the release. The notice must also be translated if a significant segment of the effected community speaks a language other than English.

Certain releases are exempt from public notification. These include: (1) the application of pesticides in accordance with the label requirements; (2) the lawful and non-negligent use of a household product for domestic purposes; (3) the discharge of a hazardous substance in compliance with existing environmental laws and permits; (4) de minimus releases; (5) any releases originating from a residence, including discharge from a heating oil tank; (6) any spill on a public road or onto surface waters of the state that have been reported to the U.S. Coast Guard or the state Division of Emergency Management; (7) any release to the air; (8) releases that are part of a remedial action under the Model Toxics Control Act; and (9) releases on agriculture land.

Costs incurred by the department for issuing the notice are to be reimbursed by the facility where the release occurred. Violations are enforceable by the Attorney General. The Attorney General may seek a civil penalty up to \$5,000 per day.

Amended Bill Compared to Substitute Bill: The amendment clarifies which facilities are subject to the provisions of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill will help keep citizens informed of hazards posed by the release of harmful toxins in their communities. The bill ensures there are no gaps in the public notification process.

Testimony Against: The bill should clearly identify which facilities are subject to these provisions.

Testified: PRO: Representative Veloria, prime sponsor; Jerry Smedes, Emerald Services, Basin Disposal, WRRRA; Yalonda Sinde, Matt Remle, Comm. Coalition for Env. Justice; CONCERNS: Eric Johnson, WA Public Ports Assn.; Josh Baldi, WA Enviro Council.