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HOUSE BILL 1824

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By Representatives Schual-Berke, G. Chandler, Linville, Lantz, Romero, McIntire, Dunshee, O'Brien, Veloria, Edwards, Poulsen, Keiser, McDermott and Miloscia

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1 AN ACT Relating to hazardous substance deposits on lesser  
2 contaminated sites; amending RCW 70.105D.020, 70.105D.050, and  
3 70.105D.080; adding a new section to chapter 70.105D RCW; creating a  
4 new section; prescribing penalties; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that each person  
7 has a fundamental and inalienable right to a healthful environment and  
8 each person has a responsibility to preserve and enhance that right.  
9 The state has a solemn obligation to the present generation for the  
10 benefit of future generations. The legislature finds a healthful  
11 environment is threatened by irresponsible disposal of hazardous  
12 substances from sites that have been cleaned up as required by law.

13 (2) The legislature finds that a deposit of hazardous substances on  
14 real property that results in increasing the contamination level of  
15 that property has potential significant adverse environmental impacts.  
16 The legislature therefore intends to prohibit such deposits except in  
17 limited circumstances, such as deposits on state-designated disposal  
18 sites or on properties that are part of an approved county solid waste  
19 plan. The legislature further intends to declare that, with these

1 limited exceptions, no hazardous substance may be deposited on real  
2 property containing the hazardous substances to a lesser quantity and  
3 degree than the hazardous substance being deposited.

4 **Sec. 2.** RCW 70.105D.020 and 1998 c 6 s 1 are each amended to read  
5 as follows:

6 (1) "Agreed order" means an order issued by the department under  
7 this chapter with which the potentially liable person receiving the  
8 order agrees to comply. An agreed order may be used to require or  
9 approve any cleanup or other remedial actions but it is not a  
10 settlement under RCW 70.105D.040(4) and shall not contain a covenant  
11 not to sue, or provide protection from claims for contribution, or  
12 provide eligibility for public funding of remedial actions under RCW  
13 70.105D.070(2)(d)(xi).

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

15 (3) "Director" means the director of ecology or the director's  
16 designee.

17 (4) "Facility" means (a) any building, structure, installation,  
18 equipment, pipe or pipeline (including any pipe into a sewer or  
19 publicly owned treatment works), well, pit, pond, lagoon, impoundment,  
20 ditch, landfill, storage container, motor vehicle, rolling stock,  
21 vessel, or aircraft, or (b) any site or area where a hazardous  
22 substance, other than a consumer product in consumer use, has been  
23 deposited, stored, disposed of, or placed, or otherwise come to be  
24 located.

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

28 (6) "Foreclosure and its equivalents" means purchase at a  
29 foreclosure sale, acquisition, or assignment of title in lieu of  
30 foreclosure, termination of a lease, or other repossession, acquisition  
31 of a right to title or possession, an agreement in satisfaction of the  
32 obligation, or any other comparable formal or informal manner, whether  
33 pursuant to law or under warranties, covenants, conditions,  
34 representations, or promises from the borrower, by which the holder  
35 acquires title to or possession of a facility securing a loan or other  
36 obligation.

37 (7) "Hazardous substance" means:

1 (a) Any dangerous or extremely hazardous waste as defined in RCW  
2 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste  
3 designated by rule pursuant to chapter 70.105 RCW;

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

6 (c) Any substance that, on March 1, 1989, is a hazardous substance  
7 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.  
8 9601(14);

9 (d) Petroleum or petroleum products; and

10 (e) Any substance or category of substances, including solid waste  
11 decomposition products, determined by the director by rule to present  
12 a threat to human health or the environment if released into the  
13 environment.

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

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

21 (9) "Holder" means a person who holds indicia of ownership  
22 primarily to protect a security interest. A holder includes the  
23 initial holder such as the loan originator, any subsequent holder such  
24 as a successor-in-interest or subsequent purchaser of the security  
25 interest on the secondary market, a guarantor of an obligation, surety,  
26 or any other person who holds indicia of ownership primarily to protect  
27 a security interest, or a receiver, court-appointed trustee, or other  
28 person who acts on behalf or for the benefit of a holder. A holder can  
29 be a public or privately owned financial institution, receiver,  
30 conservator, loan guarantor, or other similar persons that loan money  
31 or guarantee repayment of a loan. Holders typically are banks or  
32 savings and loan institutions but may also include others such as  
33 insurance companies, pension funds, or private individuals that engage  
34 in loaning of money or credit.

35 (10) "Indicia of ownership" means evidence of a security interest,  
36 evidence of an interest in a security interest, or evidence of an  
37 interest in a facility securing a loan or other obligation, including  
38 any legal or equitable title to a facility acquired incident to  
39 foreclosure and its equivalents. Evidence of such interests includes,

1 mortgages, deeds of trust, sellers interest in a real estate contract,  
2 liens, surety bonds, and guarantees of obligations, title held pursuant  
3 to a lease financing transaction in which the lessor does not select  
4 initially the leased facility, or legal or equitable title obtained  
5 pursuant to foreclosure and their equivalents. Evidence of such  
6 interests also includes assignments, pledges, or other rights to or  
7 other forms of encumbrance against the facility that are held primarily  
8 to protect a security interest.

9 (11) "Operating a facility primarily to protect a security  
10 interest" occurs when all of the following are met: (a) Operating the  
11 facility where the borrower has defaulted on the loan or otherwise  
12 breached the security agreement; (b) operating the facility to preserve  
13 the value of the facility as an ongoing business; (c) the operation is  
14 being done in anticipation of a sale, transfer, or assignment of the  
15 facility; and (d) the operation is being done primarily to protect a  
16 security interest. Operating a facility for longer than one year prior  
17 to foreclosure or its equivalents shall be presumed to be operating the  
18 facility for other than to protect a security interest.

19 (12) "Owner or operator" means:

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

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

25 The term does not include:

26 (i) An agency of the state or unit of local government which  
27 acquired ownership or control involuntarily through bankruptcy, tax  
28 delinquency, abandonment, or circumstances in which the government  
29 involuntarily acquires title. This exclusion does not apply to an  
30 agency of the state or unit of local government which has caused or  
31 contributed to the release or threatened release of a hazardous  
32 substance from the facility;

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

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

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

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

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

11 (E) Any remedial actions conducted by the holder are in compliance  
12 with any preexisting requirements identified by the department, or, if  
13 the department has not identified such requirements for the facility,  
14 the remedial actions are conducted consistent with the rules adopted  
15 under this chapter; and

16 (F) The holder does not exacerbate an existing release. The  
17 exemption in this subsection (12)(b)(ii) does not apply to holders who  
18 cause or contribute to a new release or threatened release or who are  
19 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);  
20 provided, however, that a holder shall not lose this exemption if it  
21 establishes that any such new release has been remediated according to  
22 the requirements of this chapter and that any hazardous substances  
23 remaining at the facility after remediation of the new release are  
24 divisible from such new release;

25 (iii) A fiduciary in his, her, or its personal or individual  
26 capacity. This exemption does not preclude a claim against the assets  
27 of the estate or trust administered by the fiduciary or against a  
28 nonemployee agent or independent contractor retained by a fiduciary.  
29 This exemption also does not apply to the extent that a person is  
30 liable under this chapter independently of the person's ownership as a  
31 fiduciary or for actions taken in a fiduciary capacity which cause or  
32 contribute to a new release or exacerbate an existing release of  
33 hazardous substances. This exemption applies provided that, to the  
34 extent of the fiduciary's powers granted by law or by the applicable  
35 governing instrument granting fiduciary powers, the fiduciary complies  
36 with all of the following:

37 (A) The fiduciary properly maintains the environmental compliance  
38 measures already in place at the facility;

1 (B) The fiduciary complies with the reporting requirements in the  
2 rules adopted under this chapter;

3 (C) The fiduciary complies with any order issued to the fiduciary  
4 by the department to abate an imminent or substantial endangerment;

5 (D) The fiduciary allows the department or potentially liable  
6 persons under an order, agreed order, or settlement agreement under  
7 this chapter access to the facility to conduct remedial actions and  
8 does not impede the conduct of such remedial actions;

9 (E) Any remedial actions conducted by the fiduciary are in  
10 compliance with any preexisting requirements identified by the  
11 department, or, if the department has not identified such requirements  
12 for the facility, the remedial actions are conducted consistent with  
13 the rules adopted under this chapter; and

14 (F) The fiduciary does not exacerbate an existing release.

15 The exemption in this subsection (12)(b)(iii) does not apply to  
16 fiduciaries who cause or contribute to a new release or threatened  
17 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),  
18 (d), and (e); provided however, that a fiduciary shall not lose this  
19 exemption if it establishes that any such new release has been  
20 remediated according to the requirements of this chapter and that any  
21 hazardous substances remaining at the facility after remediation of the  
22 new release are divisible from such new release. The exemption in this  
23 subsection (12)(b)(iii) also does not apply where the fiduciary's  
24 powers to comply with this subsection (12)(b)(iii) are limited by a  
25 governing instrument created with the objective purpose of avoiding  
26 liability under this chapter or of avoiding compliance with this  
27 chapter; or

28 (iv) Any person who has any ownership interest in, operates, or  
29 exercises control over real property where a hazardous substance has  
30 come to be located solely as a result of migration of the hazardous  
31 substance to the real property through the ground water from a source  
32 off the property, if:

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

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

1 (C) The person does not engage in activities that damage or  
2 interfere with the operation of remedial actions installed on the  
3 person's property or engage in activities that result in exposure of  
4 humans or the environment to the contaminated ground water that has  
5 migrated onto the property;

6 (D) If requested, the person allows the department, potentially  
7 liable persons who are subject to an order, agreed order, or consent  
8 decree, and the authorized employees, agents, or contractors of each,  
9 access to the property to conduct remedial actions required by the  
10 department. The person may attempt to negotiate an access agreement  
11 before allowing access; and

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

14 (13) "Participation in management" means exercising decision-making  
15 control over the borrower's operation of the facility, environmental  
16 compliance, or assuming or manifesting responsibility for the overall  
17 management of the enterprise encompassing the day-to-day decision  
18 making of the enterprise.

19 The term does not include any of the following: (a) A holder with  
20 the mere capacity or ability to influence, or the unexercised right to  
21 control facility operations; (b) a holder who conducts or requires a  
22 borrower to conduct an environmental audit or an environmental site  
23 assessment at the facility for which indicia of ownership is held; (c)  
24 a holder who requires a borrower to come into compliance with any  
25 applicable laws or regulations at the facility for which indicia of  
26 ownership is held; (d) a holder who requires a borrower to conduct  
27 remedial actions including setting minimum requirements, but does not  
28 otherwise control or manage the borrower's remedial actions or the  
29 scope of the borrower's remedial actions except to prepare a facility  
30 for sale, transfer, or assignment; (e) a holder who engages in workout  
31 or policing activities primarily to protect the holder's security  
32 interest in the facility; (f) a holder who prepares a facility for  
33 sale, transfer, or assignment or requires a borrower to prepare a  
34 facility for sale, transfer, or assignment; (g) a holder who operates  
35 a facility primarily to protect a security interest, or requires a  
36 borrower to continue to operate, a facility primarily to protect a  
37 security interest; and (h) a prospective holder who, as a condition of  
38 becoming a holder, requires an owner or operator to conduct an  
39 environmental audit, conduct an environmental site assessment, come

1 into compliance with any applicable laws or regulations, or conduct  
2 remedial actions prior to holding a security interest is not  
3 participating in the management of the facility.

4 (14) "Person" means an individual, firm, corporation, association,  
5 partnership, consortium, joint venture, commercial entity, state  
6 government agency, unit of local government, federal government agency,  
7 ~~((or))~~ Indian tribe, special district, port district, or any other  
8 entity established under law.

9 (15) "Policing activities" means actions the holder takes to insure  
10 that the borrower complies with the terms of the loan or security  
11 interest or actions the holder takes or requires the borrower to take  
12 to maintain the value of the security. Policing activities include:  
13 Requiring the borrower to conduct remedial actions at the facility  
14 during the term of the security interest; requiring the borrower to  
15 comply or come into compliance with applicable federal, state, and  
16 local environmental and other laws, regulations, and permits during the  
17 term of the security interest; securing or exercising authority to  
18 monitor or inspect the facility including on-site inspections, or to  
19 monitor or inspect the borrower's business or financial condition  
20 during the term of the security interest; or taking other actions  
21 necessary to adequately police the loan or security interest such as  
22 requiring a borrower to comply with any warranties, covenants,  
23 conditions, representations, or promises from the borrower.

24 (16) "Potentially liable person" means any person whom the  
25 department finds, based on credible evidence, to be liable under RCW  
26 70.105D.040. The department shall give notice to any such person and  
27 allow an opportunity for comment before making the finding, unless an  
28 emergency requires otherwise.

29 (17) "Prepare a facility for sale, transfer, or assignment" means  
30 to secure access to the facility; perform routine maintenance on the  
31 facility; remove inventory, equipment, or structures; properly maintain  
32 environmental compliance measures already in place at the facility;  
33 conduct remedial actions to clean up releases at the facility; or to  
34 perform other similar activities intended to preserve the value of the  
35 facility where the borrower has defaulted on the loan or otherwise  
36 breached the security agreement or after foreclosure and its  
37 equivalents and in anticipation of a pending sale, transfer, or  
38 assignment, primarily to protect the holder's security interest in the  
39 facility. A holder can prepare a facility for sale, transfer, or



1 assignment for up to one year prior to foreclosure and its equivalents  
2 and still stay within the security interest exemption in subsection  
3 (12)(b)(ii) of this section.

4 (18) "Primarily to protect a security interest" means the indicia  
5 of ownership is held primarily for the purpose of securing payment or  
6 performance of an obligation. The term does not include indicia of  
7 ownership held primarily for investment purposes nor indicia of  
8 ownership held primarily for purposes other than as protection for a  
9 security interest. A holder may have other, secondary reasons, for  
10 maintaining indicia of ownership, but the primary reason must be for  
11 protection of a security interest. Holding indicia of ownership after  
12 foreclosure or its equivalents for longer than five years shall be  
13 considered to be holding the indicia of ownership for purposes other  
14 than primarily to protect a security interest. For facilities that  
15 have been acquired through foreclosure or its equivalents prior to July  
16 23, 1995, this five-year period shall begin as of July 23, 1995.

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

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

26 (21) "Remedy" or "remedial action" means any action or expenditure  
27 consistent with the purposes of this chapter to identify, eliminate, or  
28 minimize any threat or potential threat posed by hazardous substances  
29 to human health or the environment including any investigative and  
30 monitoring activities with respect to any release or threatened release  
31 of a hazardous substance and any health assessments or health effects  
32 studies conducted in order to determine the risk or potential risk to  
33 human health.

34 (22) "Security interest" means an interest in a facility created or  
35 established for the purpose of securing a loan or other obligation.  
36 Security interests include deeds of trusts, sellers interest in a real  
37 estate contract, liens, legal, or equitable title to a facility  
38 acquired incident to foreclosure and its equivalents, and title  
39 pursuant to lease financing transactions. Security interests may also

1 arise from transactions such as sale and leasebacks, conditional sales,  
2 installment sales, trust receipt transactions, certain assignments,  
3 factoring agreements, accounts receivable financing arrangements,  
4 easements, and consignments, if the transaction creates or establishes  
5 an interest in a facility for the purpose of securing a loan or other  
6 obligation.

7 (23) "Industrial properties" means properties that are or have been  
8 characterized by, or are to be committed to, traditional industrial  
9 uses such as processing or manufacturing of materials, marine terminal  
10 and transportation areas and facilities, fabrication, assembly,  
11 treatment, or distribution of manufactured products, or storage of bulk  
12 materials, that are either:

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

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

18 (24) "Workout activities" means those actions by which a holder, at  
19 any time prior to foreclosure and its equivalents, seeks to prevent,  
20 cure, or mitigate a default by the borrower or obligor; or to preserve,  
21 or prevent the diminution of, the value of the security. Workout  
22 activities include: Restructuring or renegotiating the terms of the  
23 security interest; requiring payment of additional rent or interest;  
24 exercising forbearance; requiring or exercising rights pursuant to an  
25 assignment of accounts or other amounts owed to an obligor; requiring  
26 or exercising rights pursuant to an escrow agreement pertaining to  
27 amounts owed to an obligor; providing specific or general financial or  
28 other advice, suggestions, counseling, or guidance; and exercising any  
29 right or remedy the holder is entitled to by law or under any  
30 warranties, covenants, conditions, representations, or promises from  
31 the borrower.

32 (25)(a) "Fiduciary" means a person acting for the benefit of  
33 another party as a bona fide trustee; executor; administrator;  
34 custodian; guardian of estates or guardian ad litem; receiver;  
35 conservator; committee of estates of incapacitated persons; trustee in  
36 bankruptcy; trustee, under an indenture agreement, trust agreement,  
37 lease, or similar financing agreement, for debt securities,  
38 certificates of interest or certificates of participation in debt  
39 securities, or other forms of indebtedness as to which the trustee is

1 not, in the capacity of trustee, the lender. Except as provided in  
2 subsection (12)(b)(iii) of this section, the liability of a fiduciary  
3 under this chapter shall not exceed the assets held in the fiduciary  
4 capacity.

5 (b) "Fiduciary" does not mean:

6 (i) A person acting as a fiduciary with respect to a trust or other  
7 fiduciary estate that was organized for the primary purpose of, or is  
8 engaged in, actively carrying on a trade or business for profit, unless  
9 the trust or other fiduciary estate was created as part of, or to  
10 facilitate, one or more estate plans or because of the incapacity of a  
11 natural person;

12 (ii) A person who acquires ownership or control of a facility with  
13 the objective purpose of avoiding liability of the person or any other  
14 person. It is prima facie evidence that the fiduciary acquired  
15 ownership or control of the facility to avoid liability if the facility  
16 is the only substantial asset in the fiduciary estate at the time the  
17 facility became subject to the fiduciary estate;

18 (iii) A person who acts in a capacity other than that of a  
19 fiduciary or in a beneficiary capacity and in that capacity directly or  
20 indirectly benefits from a trust or fiduciary relationship;

21 (iv) A person who is a beneficiary and fiduciary with respect to  
22 the same fiduciary estate, and who while acting as a fiduciary receives  
23 benefits that exceed customary or reasonable compensation, and  
24 incidental benefits permitted under applicable law;

25 (v) A person who is a fiduciary and receives benefits that  
26 substantially exceed customary or reasonable compensation, and  
27 incidental benefits permitted under applicable law; or

28 (vi) A person who acts in the capacity of trustee of state or  
29 federal lands or resources.

30 (26) "Fiduciary capacity" means the capacity of a person holding  
31 title to a facility, or otherwise having control of an interest in the  
32 facility pursuant to the exercise of the responsibilities of the person  
33 as a fiduciary.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.105D  
35 RCW to read as follows:

36 No hazardous substance that has been removed from a facility may be  
37 deposited on real property that contains hazardous substances to a

1 lesser quantity and degree than the hazardous substance being deposited  
2 on the property. This section does not apply to:

3 (1) Actions taken in accordance with a settlement authorized in RCW  
4 70.105D.040(5); or

5 (2) Deposits on a disposal site or landfill as defined in RCW  
6 70.95.030 and deposits at facilities for the recycling, storage,  
7 treatment, incineration, or disposal of hazardous wastes as defined in  
8 RCW 70.105.010(11) and 70.95.010(15).

9 **Sec. 4.** RCW 70.105D.050 and 1994 c 257 s 12 are each amended to  
10 read as follows:

11 (1) With respect to any release, or threatened release, for which  
12 the department does not conduct or contract for conducting remedial  
13 action and for which the department believes remedial action is in the  
14 public interest, the director shall issue orders or agreed orders  
15 requiring potentially liable persons to provide the remedial action.

16 (2) Any liable person who refuses, without sufficient cause, to  
17 comply with an order or agreed order of the director or who violates  
18 section 3 of this act is liable in an action brought by the attorney  
19 general for:

20 (a) Up to three times the amount of any costs incurred by the state  
21 as a result of the party's refusal to comply or as a result of the  
22 violation of section 3 of this act; and

23 (b) A civil penalty of up to twenty-five thousand dollars for each  
24 day the party refuses to comply or up to twenty-five thousand dollars  
25 for each violation of section 3 of this act.

26 (3) The treble damages and civil penalty under ~~((this))~~ subsection  
27 (2) of this section apply to all recovery actions filed on or after  
28 March 1, 1989, and to all violations of section 3 of this act occurring  
29 on or after the effective date of this section.

30 ~~((+2))~~ (4) Any person who incurs costs complying with an order  
31 issued under subsection ~~((+1))~~ (2) of this section may petition the  
32 department for reimbursement of those costs. If the department refuses  
33 to grant reimbursement, the person may within thirty days thereafter  
34 file suit and recover costs by proving that he or she was not a liable  
35 person under RCW 70.105D.040 and that the costs incurred were  
36 reasonable.

37 ~~((+3))~~ (5) The attorney general shall seek, by filing an action if  
38 necessary, to recover the amounts spent by the department for

1 investigative and remedial actions and orders, and agreed orders,  
2 including amounts spent prior to March 1, 1989, and for investigations  
3 and other actions taken regarding violations of section 3 of this act.

4 ((+4)) (6) The attorney general may bring an action to secure such  
5 relief as is necessary to protect human health and the environment  
6 under this chapter.

7 ((+5)) (7)(a) Any person may commence a civil action to compel the  
8 department to perform any nondiscretionary duty under this chapter. At  
9 least thirty days before commencing the action, the person must give  
10 notice of intent to sue, unless a substantial endangerment exists. The  
11 court may award attorneys' fees and other costs to the prevailing party  
12 in the action.

13 (b) Civil actions under this section and RCW 70.105D.060 may be  
14 brought in the superior court of Thurston county or of the county in  
15 which the release or threatened release exists.

16 **Sec. 5.** RCW 70.105D.080 and 1997 c 406 s 6 are each amended to  
17 read as follows:

18 (1) Except as provided in RCW 70.105D.040(4) (d) and (f), a person  
19 may bring a private right of action, including a claim for contribution  
20 or for injunctive or declaratory relief, against any other person  
21 liable under RCW 70.105D.040 for the recovery of remedial action costs  
22 or for violations of section 3 of this act. In the action, natural  
23 resource damages paid to the state under this chapter may also be  
24 recovered. Recovery shall be based on such equitable factors as the  
25 court determines are appropriate. Remedial action costs and damages or  
26 other remedies for violations of section 3 of this act shall include  
27 reasonable attorneys' fees and expenses.

28 (2) Recovery of remedial action costs shall be limited to those  
29 remedial actions that, when evaluated as a whole, are the substantial  
30 equivalent of a department-conducted or department-supervised remedial  
31 action. Substantial equivalence shall be determined by the court with  
32 reference to the rules adopted by the department under this chapter.  
33 An action under this section may be brought after remedial action costs  
34 are incurred but must be brought within three years from the date  
35 remedial action confirms cleanup standards are met or within one year  
36 of May 12, 1993, whichever is later.

37 (3) The prevailing party in ((such)) an action brought under this  
38 section shall recover its reasonable attorneys' fees and costs. This

1 section applies to all causes of action regardless of when the cause of  
2 action may have arisen. To the extent a cause of action has arisen  
3 prior to May 12, 1993, this section applies retroactively, but in all  
4 other respects it applies prospectively.

5 NEW SECTION. **Sec. 6.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 immediately.

--- END ---