

# FINAL BILL REPORT

## Initiative-297

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Synopsis as Enacted

**Title:** An act relating to protection of public health, safety, and the environment at sites with wastes composed of radioactive and nonradioactive hazardous substances, including the Hanford Nuclear Reservation.

**Sponsors:** People of the State of Washington.

**Background:** The Hanford Reservation comprises approximately 586 square miles in Eastern Washington, north of Richland. The United States originally created the Hanford Reservation in the 1940's as part of the Manhattan Project to produce plutonium for the production of nuclear weapons. Portions of the Hanford Reservation are contaminated with materials meeting state and federal definitions of hazardous substances, hazardous waste, radioactive substances, and mixtures of substances falling into more than one category.

The United States Department of Energy (USDOE) currently operates the Hanford Reservation. The site's current mission is focused primarily on cleanup. A 1989 Tri-Party Agreement among the Department of Ecology (Ecology), the Environmental Protection Agency, and the USDOE addresses the setting of milestones and requirements for cleanup at Hanford.

The Ecology administers laws that address hazardous waste management and cleanup. The Hazardous Waste Management Act governs the transportation, treatment, storage, handling, and disposal of hazardous wastes. It implements the requirements of a parallel federal law, the Resource Conservation and Recovery Act. When hazardous wastes are mixed with radioactive wastes, this law applies only to the hazardous wastes in this "mixed waste." Under the law, the Ecology may allow a hazardous waste facility to operate under an "interim permit" after the facility has submitted an application for a "final facility permit." Another state law, the Model Toxics Control Act, provides for the cleanup of sites contaminated with hazardous substances and determines financial responsibility for cleanup costs.

The state Department of Health (DOH) is the state radiation control agency. It administers regulatory and licensing laws concerning radioactive materials, including radioactive waste. Most of the DOH's regulation of radioactive materials is done by agreement with the federal Nuclear Regulatory Commission. DOH rules address the licensing and operation of land disposal facilities, other types of radioactive materials licenses, radiation protection standards, and cleanup standards for radioactive contamination.

In addition to the mixed wastes generated at Hanford, the USDOE historically has disposed of low-level radioactive waste from other United States laboratory and weapons production sites at Hanford. Recently, the USDOE completed an environmental impact statement and issued a record of decision proposing to bring up to 20,000 cubic meters of mixed low-level waste from other sites to Hanford for disposal.

Also located on the Hanford Nuclear Reservation is a commercial low-level radioactive waste disposal site. This site is located on leased property within the Hanford Reservation, but has a separate purpose that is not related to the USDOE. Low-level radioactive wastes are accepted, including medical wastes, from 11 states that are part of an Interstate Compact on Low-Level Radioactive Waste Management or have entered an agreement with the Compact. Under the compact, which has been approved by the United States Congress, Washington prohibits the import of low-level radioactive waste from any other states for disposal at this site.

Initiative 297, known as the Cleanup Priority Act, was approved by the voters on November 2, 2004.

**Summary of Initiative:** The Initiative prohibits additional mixed radioactive and hazardous waste from being brought to sites, such as the Hanford Nuclear Reservation, until the existing on-site waste conforms to all state and federal environment laws. New requirements are established for sites and facilities that handle mixed radioactive and hazardous waste. Grant funding is provided to help the public and local governments evaluate permit, closure, and cleanup decisions, and to review funding priorities.

#### Increased Regulation of Mixed Wastes

The Ecology must regulate mixed waste to the fullest extent possible, where not preempted by federal law. The owner or operator of a facility that handles mixed wastes must obtain a "final facility permit" from Ecology before any additional mixed wastes, not generated at the facility, may be brought to the facility. The facility's activities must be in compliance with all relevant state and federal environmental laws prior to receiving a final facility permit.

Ecology may not grant or modify a treatment, storage, or disposal permit if a release of a hazardous substance has occurred at a facility and the release, or the cumulative impact of all releases, may exceed surface or ground water standards, or cleanup or other standards protective of human health or the environment. An exception may be allowed when necessary to accomplish the remediation or closing of existing facilities.

#### Releases of Radioactive Substances

The clean-up standards applying to releases of radioactive substances or radionuclides must be equal to the standards for other substances posing similar health risks. In calculating cleanup standards, corrective action levels, or maximum allowable projected releases from landfills and facilities that have mixed wastes, Ecology must consider the effects of all of the waste's known or suspected human carcinogens. Ecology must ensure that the cumulative risk from all of these carcinogens does not exceed acceptable standards, or a maximum of one additional cancer per 100,000 individuals exposed, whichever is more protective.

#### Disposal, Investigation, and Cleanup of Waste in Unlined Trenches and Closure of Mixed Waste Tank Systems

Within 60 days of the effective date of the initiative, Ecology must order any site owner or operator with mixed waste in unlined trenches to: (1) cease disposal in the trenches or facilities within 30 days; (2) prepare an inventory of the actual characterization of all hazardous substances potentially disposed of in the trenches; (3) investigate releases or potential releases of any hazardous substances in the trenches; (4) prepare a plan for waste retrieval, treatment, closure, and monitoring for the trenches; and (5) within two years, install and maintain a ground water and soil column monitoring system. Public notice, hearings, and comment on the scope of these investigations and actions are required.

Applications to expand existing facilities or create new facilities are not allowed at any site with unlined trenches containing mixed wastes where: (1) the wastes have not been fully characterized; (2) a release of a hazardous or radioactive substance or mixed waste has occurred; or (3) there is a significant potential for a release of hazardous substances.

Ecology's decisions relating to the closure of tank systems must consider the cumulative and potential impacts of all tank residuals and leaks. Before Ecology allows closure of a site with mixed wastes, the owner or operator must take all potentially effective and practicable actions to characterize and remediate releases, and potential releases, of mixed wastes.

#### Disclosure of Costs and Budgets

The owners or operators of a mixed waste facility who have had releases of hazardous substances must disclose their projected total and annual costs necessary to meet the legal requirements associated with their facilities. State or federal agencies that own or operate mixed waste facilities must also disclose budgets or budget requests for the current year and next three years. Annual disclosures by federal agencies must include a comparison of the cost estimates of all required activities versus the amount of funds requested and the amount appropriated. Ecology must hold public hearings on the disclosures.

### Exemptions

The initiative provisions do not apply to the U.S. Navy's storage or disposal of permitted nuclear reactor components of submarines or vessels. The provisions also do not apply where they would interfere with the obligations of the state under the Northwest Interstate Compact on Low-Level Radioactive Waste Management (the "Compact"). However, relevant provisions that do not interfere with state obligations would apply to any facility operated pursuant to the Compact if any hazardous or mixed waste was disposed or released at that facility.

### Public Involvement

Ecology must ensure that facility permits issued for any site or facility where there has been a release of mixed waste must include funding for "a broadly representative advisory board." The initiative limits the membership of the advisory board to representatives chosen by the following groups: (1) potentially affected tribes; (2) regional and statewide citizen groups with an established record of concern with human health or environmental impacts related to releases of waste at the facility; (3) local groups concerned with health and resource impacts; (4) local governments; and, (5) if certain conditions are met, the state of Oregon.

Ecology must request the board to advise it on procedural and substantive matters requiring informed public comment. Ecology must formally consider and respond to any comments from the advisory board prior to issuing any decision on a remedial, corrective, or closure action. Ecology must assess fees for its own oversight and permitting functions and include assessments to cover local government and public participation grants.

### Enforcement and Appeals

A cause of action is created, allowing citizens to file lawsuits to compel owners or operators of mixed waste facilities to comply with relevant laws and administrative orders. Citizen lawsuits are also authorized to compel Ecology to perform any nondiscretionary duties. Attorney fees and costs may be awarded to prevailing plaintiffs.

Any person whose interests, in natural resources or in their health, may be adversely affected by an order, action, or inaction of Ecology is granted legal standing to file an appeal with the Pollution Control Hearings Board. Violations of the provisions of the initiative are subject to enforcement by Ecology or the Attorney General, including the imposition of civil or criminal penalties.

**Effective Date:** December 2, 2004.