
SENATE BILL 5797

State of Washington

61st Legislature

2009 Regular Session

By Senators Haugen, Ranker, Brandland, and Hatfield

Read first time 02/02/09. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to exemptions from solid waste handling permit
2 requirements; amending RCW 43.21B.300, 43.21B.310, 70.95.170, and
3 70.95.315; adding a new section to chapter 70.95 RCW; and prescribing
4 penalties.

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

6 **Sec. 1.** RCW 43.21B.300 and 2007 c 147 s 9 are each amended to read
7 as follows:

8 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
9 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144,
10 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a
11 notice in writing, either by certified mail with return receipt
12 requested or by personal service, to the person incurring the penalty
13 from the department or the local air authority, describing the
14 violation with reasonable particularity. Within thirty days after the
15 notice is received, the person incurring the penalty may apply in
16 writing to the department or the authority for the remission or
17 mitigation of the penalty. Upon receipt of the application, the
18 department or authority may remit or mitigate the penalty upon whatever
19 terms the department or the authority in its discretion deems proper.

1 The department or the authority may ascertain the facts regarding all
2 such applications in such reasonable manner and under such rules as it
3 may deem proper and shall remit or mitigate the penalty only upon a
4 demonstration of extraordinary circumstances such as the presence of
5 information or factors not considered in setting the original penalty.

6 (2) Any penalty imposed under this section may be appealed to the
7 pollution control hearings board in accordance with this chapter if the
8 appeal is filed with the hearings board and served on the department or
9 authority thirty days after the date of receipt by the person penalized
10 of the notice imposing the penalty or thirty days after the date of
11 receipt of the notice of disposition of the application for relief from
12 penalty.

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

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

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

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

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

30 (5) All penalties recovered shall be paid into the state treasury
31 and credited to the general fund except those penalties imposed
32 pursuant to RCW 18.104.155, which shall be credited to the reclamation
33 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
34 disposition of which shall be governed by that provision, RCW
35 70.105.080, which shall be credited to the hazardous waste control and
36 elimination account created by RCW 70.105.180, RCW 90.56.330, which
37 shall be credited to the coastal protection fund created by RCW

1 90.48.390, and RCW 90.76.080, which shall be credited to the
2 underground storage tank account created by RCW 90.76.100.

3 **Sec. 2.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to read
4 as follows:

5 (1) Except as provided in RCW 90.03.210(2), any order issued by the
6 department or local air authority pursuant to RCW 43.27A.190,
7 70.94.211, 70.94.332, 70.95.315, 70.105.095, (~~(43.27A.190)~~) 86.16.020,
8 88.46.070, or 90.48.120(2) or any provision enacted after July 26,
9 1987, or any permit, certificate, or license issued by the department
10 may be appealed to the pollution control hearings board if the appeal
11 is filed with the board and served on the department or authority
12 within thirty days after the date of receipt of the order. Except as
13 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the
14 exclusive means of appeal of such an order.

15 (2) The department or the authority in its discretion may stay the
16 effectiveness of an order during the pendency of such an appeal.

17 (3) At any time during the pendency of an appeal of such an order
18 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
19 hearings board for a stay of the order or for the removal thereof.

20 (4) Any appeal must contain the following in accordance with the
21 rules of the hearings board:

22 (a) The appellant's name and address;

23 (b) The date and docket number of the order, permit, or license
24 appealed;

25 (c) A description of the substance of the order, permit, or license
26 that is the subject of the appeal;

27 (d) A clear, separate, and concise statement of every error alleged
28 to have been committed;

29 (e) A clear and concise statement of facts upon which the requester
30 relies to sustain his or her statements of error; and

31 (f) A statement setting forth the relief sought.

32 (5) Upon failure to comply with any final order of the department,
33 the attorney general, on request of the department, may bring an action
34 in the superior court of the county where the violation occurred or the
35 potential violation is about to occur to obtain such relief as
36 necessary, including injunctive relief, to insure compliance with the

1 order. The air authorities may bring similar actions to enforce their
2 orders.

3 (6) An appealable decision or order shall be identified as such and
4 shall contain a conspicuous notice to the recipient that it may be
5 appealed only by filing an appeal with the hearings board and serving
6 it on the department within thirty days of the date of receipt.

7 **Sec. 3.** RCW 70.95.170 and 1998 c 156 s 3 are each amended to read
8 as follows:

9 Except as provided otherwise in RCW 70.95.300, 70.95.305 ~~((or))~~,
10 70.95.306, 70.95.310, or section 4 of this act, after approval of the
11 comprehensive solid waste plan by the department no solid waste
12 handling facility or facilities shall be maintained, established, or
13 modified until the county, city, or other person operating such site
14 has obtained a permit pursuant to RCW 70.95.180 or 70.95.190.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.95 RCW
16 to read as follows:

17 (1) An anaerobic digester that is operated in compliance with the
18 conditions specified in subsection (2)(b) of this section is exempt
19 from the permitting requirements of this chapter.

20 (2)(a) By August 1, 2009, the department and the department of
21 agriculture, in consultation with the department of health, shall make
22 available to anaerobic digester owners and operators clearly written
23 guidelines for the anaerobic codigestion of livestock manure and
24 organic waste-derived material. The guidelines must explain the steps
25 necessary for an owner or operator to meet the conditions for exemption
26 from the permitting requirements of this chapter.

27 (b) An anaerobic digester must meet the conditions specified in
28 this subsection (b) to be exempt from the permitting requirements of
29 this chapter.

30 (i) The anaerobic digester must process at least fifty percent
31 livestock manure by volume.

32 (ii) The anaerobic digester may process no more than thirty percent
33 of imported organic waste-derived material by volume. Any imported
34 organic waste-derived material must be preconsumer in nature. Any
35 imported organic waste-derived material likely to contain animal by-
36 products must be source-separated at a facility licensed to process

1 food by the United States department of agriculture, the United States
2 food and drug administration, the Washington state department of
3 agriculture, or other applicable regulatory agency. Additionally, any
4 imported bovine processing waste must be derived from animals approved
5 by the United States department of agriculture food safety and
6 inspection service and must not contain any specified risk material.
7 Sheep processing waste may not be fed into the anaerobic digester.
8 Imported organic waste-derived material must be fed into the anaerobic
9 digester within thirty-six hours of receipt at the anaerobic digester.

10 (iii) The anaerobic digester must be designed, constructed, and
11 operated to meet the design and operating standards of natural
12 resources conservation service conservation practice standard code 366
13 in effect as of the effective date of this section.

14 (iv) The anaerobic digester owner or operator must handle imported
15 organic waste-derived materials in a manner that protects surface water
16 and groundwater. Storage and handling of imported organic waste-
17 derived materials must comply with best farm management practices.
18 Structures used to receive or store organic waste-derived materials
19 must either comply with natural resources conservation service
20 conservation practice standard code 313 in effect as of the effective
21 date of this section or, if constructed under previous versions of that
22 standard, be certified to be effective by a representative of the
23 natural resources conservation service. The digester owner or operator
24 must control nuisance odors from the handling of organic waste-derived
25 materials to prevent the potential for migration beyond property
26 boundaries, and manage the operation to minimize attraction of flies,
27 rodents, and other vectors.

28 (v) All liquid and solid digestate from the anaerobic digester
29 must:

30 (A) Be managed in accordance with a certified dairy nutrient
31 management plan under chapter 90.64 RCW, and any digestate so managed
32 shall no longer be considered a solid waste; or

33 (B) Meet compost quality standards (but not process requirements or
34 other applications) for pathogens, stability, nutrient testing, and
35 metals before it is distributed for off-farm use, or be sent to an off-
36 site permitted compost facility for further treatment to meet the
37 compost quality standards.

1 (vi) The anaerobic digester owner or operator must allow inspection
2 by the department or jurisdictional health department at reasonable
3 times to verify compliance with the conditions specified in this
4 subsection (2)(b).

5 (vii) The anaerobic digester owner or operator must notify the
6 department or the jurisdictional health department at least thirty days
7 prior to operating the anaerobic digester in accordance with the
8 conditions specified in this subsection (2)(b).

9 (viii) The anaerobic digester owner or operator must submit an
10 annual report to the department or the jurisdictional health department
11 that quantifies and characterizes the nonmanure waste received. The
12 anaerobic digester owner or operator must include test data in the
13 annual report if compliance testing was required under (b)(v)(B) of
14 this subsection.

15 (3) Liquid and solid digestate from an anaerobic digester that is
16 operated in compliance with the conditions specified in subsection
17 (2)(b) of this section is not subject to the requirements of this
18 chapter.

19 (4) If an anaerobic digester is not operated in compliance with the
20 conditions specified in subsection (2)(b) of this section, it may be
21 subject to the permitting requirements of this chapter. In addition,
22 violations of the terms and conditions of the exemption are subject to
23 provisions in RCW 70.95.315.

24 (5) The definitions in this subsection apply throughout this
25 section unless the context clearly requires otherwise.

26 (a) "Anaerobic digester" means a vessel that processes organic
27 material into biogas and digestate using microorganisms in a
28 decomposition process within a closed, oxygen-free container.

29 (b) "Imported" means originating off of the farm or other site
30 where the anaerobic digester is being operated.

31 (c) "Organic waste-derived material" has the same meaning as
32 defined in RCW 15.54.270 and any other organic wastes approved by the
33 department, except for organic waste-derived materials collected as
34 part of municipal commercial and residential solid waste collection
35 programs.

36 **Sec. 5.** RCW 70.95.315 and 2005 c 510 s 7 are each amended to read
37 as follows:

1 (1) The department may assess a civil penalty in an amount not to
2 exceed one thousand dollars per day per violation to any person exempt
3 from solid waste permitting in accordance with RCW 70.95.300,
4 70.95.305, ((or)) 70.95.306, or section 4 of this act who fails to
5 comply with the terms and conditions of the exemption. Each such
6 violation shall be a separate and distinct offense, and in the case of
7 a continuing violation, each day's continuance shall be a separate and
8 distinct violation. The penalty provided for in this section shall be
9 imposed pursuant to RCW 43.21B.300.

10 (2) If a person violates a provision of any of the sections
11 referenced in subsection (1) of this section, the department may issue
12 an appropriate order to ensure compliance with the conditions of the
13 exemption. Such an order may be appealed pursuant to RCW 43.21B.310.

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