
HOUSE BILL 1437

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Kristiansen, Pearson, and McCune

Read first time 01/21/11. Referred to Committee on Environment.

1 AN ACT Relating to civil penalties under the clean air act;
2 amending RCW 70.94.431, 43.21B.300, and 43.21B.300; adding a new
3 section to chapter 70.94 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there have been
6 instances where regulatory agencies discovered actions by a regulated
7 entity that are in error after reports have been accepted and approved
8 or inspections have been conducted and approved. Retroactively
9 applying fines after governmental approval creates an unfriendly
10 business environment and can place unexpected financial burdens on
11 businesses. Businesses should be able to rely on government approval
12 and acceptance of reports and inspections and not risk penalties when
13 mistakes are made by government personnel or contractors. It is the
14 intent of the legislature that regulated parties who have received
15 acceptance and approval by the regulating government authority should
16 not be subsequently fined or penalized, but should be encouraged to
17 correct action that is deemed in error or violates reporting or
18 inspection requirements during the next reporting period. The

1 regulating authority should notify the regulated party of the violation
2 to prevent future violations.

3 The legislature intends to remove the financial incentives for
4 agencies to find violations. It is the intent of the legislature to
5 remove the connection between penalty assessment and funding of the
6 regulatory program and direct penalty assessments to be deposited in
7 the state general fund.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94 RCW
9 to read as follows:

10 (1) Neither the department nor the authority may issue a fine or
11 impose a penalty on a person for:

12 (a) A violation resulting from an inspection that was not
13 identified to the regulated party at the time of the inspection and
14 where the inspection was approved by a government official; or

15 (b) A violation based on failure to provide required documentation
16 when the documentation submitted to the department or authority has
17 been accepted and approved by a government official.

18 (2) The department or the authority must notify the regulated party
19 of the violation. Violations identified under subsection (1)(a) and
20 (b) of this section may be remedied through technical assistance to the
21 regulated party allowing them to correct the circumstances of the
22 violation for future reporting periods or inspections.

23 **Sec. 3.** RCW 70.94.431 and 1995 c 403 s 630 are each amended to
24 read as follows:

25 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
26 43.05.150, and in addition to or as an alternate to any other penalty
27 provided by law, any person who violates any of the provisions of
28 chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force
29 under such chapters may incur a civil penalty in an amount not to
30 exceed ten thousand dollars per day for each violation. Each such
31 violation shall be a separate and distinct offense, and in case of a
32 continuing violation, each day's continuance shall be a separate and
33 distinct violation.

34 Any person who fails to take action as specified by an order issued
35 pursuant to this chapter shall be liable for a civil penalty of not
36 more than ten thousand dollars for each day of continued noncompliance.

1 (2) Penalties incurred but not paid shall accrue interest,
2 beginning on the ninety-first day following the date that the penalty
3 becomes due and payable, at the highest rate allowed by RCW 19.52.020
4 on the date that the penalty becomes due and payable. If violations or
5 penalties are appealed, interest shall not begin to accrue until the
6 thirty-first day following final resolution of the appeal.

7 The maximum penalty amounts established in this section may be
8 increased annually to account for inflation as determined by the state
9 office of the economic and revenue forecast council.

10 (3) Each act of commission or omission which procures, aids or
11 abets in the violation shall be considered a violation under the
12 provisions of this section and subject to the same penalty. The
13 penalties provided in this section shall be imposed pursuant to RCW
14 43.21B.300.

15 (4) All penalties recovered under this section by the department
16 shall be paid into the state treasury and credited to the (~~air~~
17 ~~pollution control account established in RCW 70.94.015~~) general fund
18 or, if recovered by the authority, shall be paid into the treasury of
19 the authority (~~and credited to its funds~~). If a prior penalty for
20 the same violation has been paid to a local authority, the penalty
21 imposed by the department under subsection (1) of this section shall be
22 reduced by the amount of the payment.

23 (5) To secure the penalty incurred under this section, the state or
24 the authority shall have a lien on any vessel used or operated in
25 violation of this chapter which shall be enforced as provided in RCW
26 60.36.050.

27 (6) Public or private entities that are recipients or potential
28 recipients of department grants, whether for air quality related
29 activities or not, may have such grants rescinded or withheld by the
30 department for failure to comply with provisions of this chapter.

31 (7) In addition to other penalties provided by this chapter,
32 persons knowingly under-reporting emissions or other information used
33 to set fees, or persons required to pay emission or permit fees who are
34 more than ninety days late with such payments may be subject to a
35 penalty equal to three times the amount of the original fee owed.

36 (8) By January 1, 1992, the department shall develop rules for
37 excusing excess emissions from enforcement action if such excess
38 emissions are unavoidable. The rules shall specify the criteria and

1 procedures for the department and local air authorities to determine
2 whether a period of excess emissions is excusable in accordance with
3 the state implementation plan.

4 **Sec. 4.** RCW 43.21B.300 and 2010 c 84 s 4 are each amended to read
5 as follows:

6 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
7 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
8 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 90.76 RCW
9 shall be imposed by a notice in writing, either by certified mail with
10 return receipt requested or by personal service, to the person
11 incurring the penalty from the department or the local air authority,
12 describing the violation with reasonable particularity. Within thirty
13 days after the notice is received, the person incurring the penalty may
14 apply in writing to the department or the authority for the remission
15 or mitigation of the penalty. Upon receipt of the application, the
16 department or authority may remit or mitigate the penalty upon whatever
17 terms the department or the authority in its discretion deems proper.
18 The department or the authority may ascertain the facts regarding all
19 such applications in such reasonable manner and under such rules as it
20 may deem proper and shall remit or mitigate the penalty only upon a
21 demonstration of extraordinary circumstances such as the presence of
22 information or factors not considered in setting the original penalty.

23 (2) Any penalty imposed under this section may be appealed to the
24 pollution control hearings board in accordance with this chapter if the
25 appeal is filed with the hearings board and served on the department or
26 authority thirty days after the date of receipt by the person penalized
27 of the notice imposing the penalty or thirty days after the date of
28 receipt of the notice of disposition of the application for relief from
29 penalty.

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

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

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

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

36 (4) If the amount of any penalty is not paid to the department
37 within thirty days after it becomes due and payable, the attorney

1 general, upon request of the department, shall bring an action in the
2 name of the state of Washington in the superior court of Thurston
3 county, or of any county in which the violator does business, to
4 recover the penalty. If the amount of the penalty is not paid to the
5 authority within thirty days after it becomes due and payable, the
6 authority may bring an action to recover the penalty in the superior
7 court of the county of the authority's main office or of any county in
8 which the violator does business. In these actions, the procedures and
9 rules of evidence shall be the same as in an ordinary civil action.

10 (5) All penalties recovered shall be paid into the state treasury
11 and credited to the general fund except those penalties imposed
12 pursuant to RCW 18.104.155, which shall be credited to the reclamation
13 account as provided in RCW 18.104.155(7), (~~(RCW 70.94.431, the~~
14 ~~disposition of which shall be governed by that provision,)) RCW
15 70.105.080, which shall be credited to the hazardous waste control and
16 elimination account created by RCW 70.105.180, RCW 90.56.330, which
17 shall be credited to the coastal protection fund created by RCW
18 90.48.390, and RCW 90.76.080, which shall be credited to the
19 underground storage tank account created by RCW 90.76.100.~~

20 **Sec. 5.** RCW 43.21B.300 and 2010 c 210 s 12 are each amended to
21 read as follows:

22 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
23 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
24 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be
25 imposed by a notice in writing, either by certified mail with return
26 receipt requested or by personal service, to the person incurring the
27 penalty from the department or the local air authority, describing the
28 violation with reasonable particularity. For penalties issued by local
29 air authorities, within thirty days after the notice is received, the
30 person incurring the penalty may apply in writing to the authority for
31 the remission or mitigation of the penalty. Upon receipt of the
32 application, the authority may remit or mitigate the penalty upon
33 whatever terms the authority in its discretion deems proper. The
34 authority may ascertain the facts regarding all such applications in
35 such reasonable manner and under such rules as it may deem proper and
36 shall remit or mitigate the penalty only upon a demonstration of

1 extraordinary circumstances such as the presence of information or
2 factors not considered in setting the original penalty.

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

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

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

12 (b) Thirty days after receipt of the notice of disposition by a
13 local air authority on application for relief from penalty, if such an
14 application is made; or

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

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

28 (5) All penalties recovered shall be paid into the state treasury
29 and credited to the general fund except those penalties imposed
30 pursuant to RCW 18.104.155, which shall be credited to the reclamation
31 account as provided in RCW 18.104.155(7), (~~RCW 70.94.431, the~~
32 ~~disposition of which shall be governed by that provision,~~) RCW
33 70.105.080, which shall be credited to the hazardous waste control and
34 elimination account created by RCW 70.105.180, RCW 90.56.330, which
35 shall be credited to the coastal protection fund created by RCW
36 90.48.390, and RCW 90.76.080, which shall be credited to the
37 underground storage tank account created by RCW 90.76.100.

1 NEW SECTION. **Sec. 6.** This act shall be liberally construed to
2 give full effect to the objectives and purposes for which it was
3 enacted.

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

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