
SENATE BILL 5051

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline, Rockefeller, Nelson, Keiser, Ranker, and Chase

Read first time 01/12/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to public notice of proposed settlements of
2 environmental and public health enforcement actions; amending RCW
3 15.58.340, 70.94.211, 70.94.332, 70.95.315, 70.95J.050, 70.105.095,
4 70.118.130, 70.118B.050, 70.118B.060, 70.119.130, 70.119A.040,
5 76.09.140, 77.55.291, 88.46.070, 90.03.605, 90.14.200, 90.46.270,
6 90.48.037, 90.56.270, 90.58.230, 90.76.070, and 90.76.080; adding a new
7 section to chapter 70.95 RCW; adding a new chapter to Title 70 RCW; and
8 creating a new section.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that when the
11 department of ecology enforces the model toxics control act, chapter
12 70.105D RCW, and negotiates a proposed settlement requiring a
13 potentially liable person to clean up a hazardous waste site, it must
14 provide the public with notice of and an opportunity to comment upon
15 the proposed settlement. As noted in RCW 70.105D.010, this requirement
16 serves the public interest because releases of hazardous substances can
17 adversely affect public health and welfare, the environment, and
18 property values. The legislature finds that the public interest is
19 served by requiring public notice of proposed settlements in actions to

1 enforce other environmental and public health laws and permits, which
2 often address pollution and other hazards having significant public
3 impact.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Enforcing agency or officer" means any state agency, local
7 government, or local government official authorized to bring an action
8 to enforce an environmental law or public health law or permit.

9 (2) "Environmental law or public health law or permit" means the
10 following laws, any rules adopted under these laws, and any conditions
11 imposed in or concerning permits issued pursuant to these laws:

12 (a) Chapter 15.58 RCW, the Washington pesticide control act;

13 (b) Chapter 70.94 RCW, the Washington clean air act;

14 (c) Chapter 70.95 RCW, regarding solid waste management;

15 (d) Chapter 70.95J RCW, regarding municipal sewage sludge;

16 (e) Chapter 70.105 RCW, the hazardous waste management act;

17 (f) Chapters 70.118 and 70.118B RCW, regarding on-site sewage
18 disposal;

19 (g) Chapters 70.119 and 70.119A RCW, regarding public water
20 systems;

21 (h) Chapter 76.09 RCW, the forest practices act;

22 (i) Chapter 77.55 RCW, regarding hydraulic permits;

23 (j) Chapter 88.46 RCW, regarding vessel oil spill prevention and
24 response;

25 (k) Chapters 90.03, 90.14, 90.22, and 90.44 RCW, regarding surface
26 and groundwater permits, change certificates, minimum water flows and
27 levels, and water rights abandonment and relinquishment actions;

28 (l) Chapter 90.46 RCW, regarding reclaimed water use;

29 (m) Chapter 90.48 RCW, regarding water pollution control;

30 (n) Chapter 90.56 RCW, regarding oil and hazardous substance spill
31 prevention and response; and

32 (o) Chapter 90.76 RCW, regarding underground storage tanks.

33 (3) "Public notice" means:

34 (a) Posting of the text of a proposed settlement on the enforcing
35 agency or officer's internet web site;

36 (b) Providing adequate notice of a proposed settlement to persons

1 who have made timely request of the enforcing agency or officer,
2 persons residing in the potentially affected vicinity of a proposed
3 settlement, and appropriate news media;

4 (c) Publishing adequate notice of a proposed settlement in the
5 newspaper of largest circulation in the city, county, or region
6 affected by the proposed settlement; and

7 (d) An opportunity for public comment.

8 (4) "Settlement" means an agreement issued by the enforcing agency
9 or officer or a consent decree issued by a court of competent
10 jurisdiction partially or entirely resolving liability of a person
11 alleged to have violated an environmental law.

12 NEW SECTION. **Sec. 3.** (1) In any civil enforcement action
13 involving an alleged violation or threatened violation of an
14 environmental law or public health law or permit, the enforcing agency
15 or officer must provide public notice of a proposed settlement at least
16 thirty days before it may approve the proposed settlement. In a
17 judicial enforcement action, the enforcing agency or officer must file
18 a proposed settlement with the court at least thirty days before it may
19 be approved by the court.

20 (2) The enforcing agency or officer must:

21 (a) Receive and consider any written comments regarding a proposed
22 settlement; and

23 (b) In a judicial enforcement action, file with the court any
24 written comments the enforcing agency or officer has received regarding
25 a proposed settlement.

26 (3) The enforcing agency or officer shall hold a public hearing
27 regarding a proposed settlement if:

28 (a) At least ten persons request a public hearing; or

29 (b) The enforcing agency or officer determines that the proposed
30 settlement significantly affects the environment or public health.

31 (4) The enforcing agency or officer may withdraw or withhold
32 consent to a proposed settlement if public comment discloses facts or
33 considerations indicating that the proposed settlement is
34 inappropriate.

35 (5) The enforcing agency or officer may permit an exception to
36 public notice requirements specified in this chapter in a specific case
37 due to:

1 (a) Insignificant effect of the proposed settlement upon the
2 environment or public health; or

3 (b) Extraordinary circumstances.

4 **Sec. 4.** RCW 15.58.340 and 1989 c 380 s 28 are each amended to read
5 as follows:

6 (1) The director may bring an action to enjoin the violation or
7 threatened violation of any provision of this chapter or any rule made
8 pursuant to this chapter in a court of competent jurisdiction of the
9 county in which such violation occurs or is about to occur.

10 (2) The director must comply with chapter 70.--- RCW (the new
11 chapter created in section 27 of this act) with respect to any proposed
12 settlement of the action.

13 **Sec. 5.** RCW 70.94.211 and 1991 c 199 s 309 are each amended to
14 read as follows:

15 (1) At least thirty days prior to the commencement of any formal
16 enforcement action under RCW 70.94.430 or 70.94.431 a local air
17 authority shall cause written notice to be served upon the alleged
18 violator or violators. The notice shall specify the provision of this
19 chapter or the rule or regulation alleged to be violated, and the facts
20 alleged to constitute a violation thereof, and may include an order
21 directing that necessary corrective action be taken within a reasonable
22 time. In lieu of an order, the board or the control officer may
23 require that the alleged violator or violators appear before the board
24 for a hearing. Every notice of violation shall offer to the alleged
25 violator an opportunity to meet with the local air authority prior to
26 the commencement of enforcement action.

27 (2) The local air authority must comply with chapter 70.--- RCW
28 (the new chapter created in section 27 of this act) with respect to any
29 proposed settlement of the enforcement action.

30 **Sec. 6.** RCW 70.94.332 and 1991 c 199 s 711 are each amended to
31 read as follows:

32 (1) At least thirty days prior to the commencement of any formal
33 enforcement action under RCW 70.94.430 and 70.94.431, the department of
34 ecology shall cause written notice to be served upon the alleged
35 violator or violators. The notice shall specify the provision of this

1 chapter or the rule or regulation alleged to be violated, and the facts
2 alleged to constitute a violation thereof, and may include an order
3 that necessary corrective action be taken within a reasonable time. In
4 lieu of an order, the department may require that the alleged violator
5 or violators appear before it for the purpose of providing the
6 department information pertaining to the violation or the charges
7 complained of. Every notice of violation shall offer to the alleged
8 violator an opportunity to meet with the department prior to the
9 commencement of enforcement action.

10 (2) The department must comply with chapter 70.--- RCW (the new
11 chapter created in section 27 of this act) with respect to any proposed
12 settlement of the enforcement action.

13 NEW SECTION. Sec. 7. A new section is added to chapter 70.95 RCW
14 to read as follows:

15 Local governments enforcing this chapter must comply with chapter
16 70.--- RCW (the new chapter created in section 27 of this act) with
17 respect to any proposed settlement of an enforcement action.

18 **Sec. 8.** RCW 70.95.315 and 2009 c 178 s 5 are each amended to read
19 as follows:

20 (1) The department may assess a civil penalty in an amount not to
21 exceed one thousand dollars per day per violation to any person exempt
22 from solid waste permitting in accordance with RCW 70.95.300,
23 70.95.305, 70.95.306, or 70.95.330 who fails to comply with the terms
24 and conditions of the exemption. Each such violation shall be a
25 separate and distinct offense, and in the case of a continuing
26 violation, each day's continuance shall be a separate and distinct
27 violation. The penalty provided in this section shall be imposed
28 pursuant to RCW 43.21B.300.

29 (2) If a person violates a provision of any of the sections
30 referenced in subsection (1) of this section, the department may issue
31 an appropriate order to ensure compliance with the conditions of the
32 exemption. The order may be appealed pursuant to RCW 43.21B.310.

33 (3) The department must comply with chapter 70.--- RCW (the new
34 chapter created in section 27 of this act) with respect to any proposed
35 settlement of the enforcement action.

1 **Sec. 9.** RCW 70.95J.050 and 1992 c 174 s 7 are each amended to read
2 as follows:

3 The department, with the assistance of the attorney general, may
4 bring an action at law or in equity, including an action for injunctive
5 relief, to enforce this chapter or a permit issued or rule adopted by
6 the department pursuant to this chapter. The department must comply
7 with chapter 70.--- RCW (the new chapter created in section 27 of this
8 act) with respect to any proposed settlement of the enforcement action.

9 **Sec. 10.** RCW 70.105.095 and 1987 c 109 s 16 are each amended to
10 read as follows:

11 (1) Whenever on the basis on any information the department
12 determines that a person has violated or is about to violate any
13 provision of this chapter, the department may issue an order requiring
14 compliance either immediately or within a specified period of time.
15 The order shall be delivered by registered mail or personally to the
16 person against whom the order is directed.

17 (2) Any person who fails to take corrective action as specified in
18 a compliance order shall be liable for a civil penalty of not more than
19 ten thousand dollars for each day of continued noncompliance. In
20 addition, the department may suspend or revoke any permits and/or
21 certificates issued under the provisions of this chapter to a person
22 who fails to comply with an order directed against him or her.

23 (3) Any order may be appealed pursuant to RCW 43.21B.310.

24 (4) The department must comply with chapter 70.--- RCW (the new
25 chapter created in section 27 of this act) with respect to any proposed
26 settlement of an enforcement action.

27 **Sec. 11.** RCW 70.118.130 and 2007 c 343 s 9 are each amended to
28 read as follows:

29 (1) A local health officer who is responsible for administering and
30 enforcing regulations regarding on-site sewage disposal systems is
31 authorized to issue civil penalties for violations of those regulations
32 under the same limitations and requirements imposed on the department
33 under RCW 70.118B.050, except that the amount of a penalty shall not
34 exceed one thousand dollars per day for every violation, and judgments
35 shall be entered in the name of the local health jurisdiction and

1 penalties shall be placed into the general fund or funds of the entity
2 or entities operating the local health jurisdiction.

3 (2) The officer must comply with chapter 70.--- RCW (the new
4 chapter created in section 27 of this act) with respect to any proposed
5 settlement of an enforcement action.

6 **Sec. 12.** RCW 70.118B.050 and 2007 c 343 s 6 are each amended to
7 read as follows:

8 (1) A person who violates a law or rule regulating large on-site
9 sewage systems administered by the department is subject to a penalty
10 of not more than ten thousand dollars per day for every violation.
11 Every violation is a separate and distinct offense. In case of a
12 continuing violation, each day's continuing violation is a separate and
13 distinct violation. The penalty assessed must reflect the significance
14 of the violation and the previous record of compliance on the part of
15 the person responsible for compliance with large on-site sewage system
16 requirements.

17 (2) Every person who, through an act of commission or omission,
18 procures, aids, or abets a violation is considered to have violated the
19 provisions of this section and is subject to the penalty provided in
20 this section.

21 (3) The penalty provided for in this section must be imposed by a
22 notice in writing to the person against whom the civil penalty is
23 assessed and must describe the violation. The notice must be
24 personally served in the manner of service of a summons in a civil
25 action or in a manner that shows proof of receipt. A penalty imposed
26 by this section is due twenty-eight days after receipt of notice unless
27 application for an adjudicative proceeding is filed as provided in
28 subsection (4) of this section.

29 (4) Within twenty-eight days after notice is received, the person
30 incurring the penalty may file an application for an adjudicative
31 proceeding and may pursue subsequent review as provided in chapter
32 34.05 RCW and applicable rules.

33 (5) A penalty imposed by a final administrative order is due upon
34 service of the final administrative order. A person who fails to pay
35 a penalty assessed by a final administrative order within thirty days
36 of service of the final administrative order shall pay, in addition to
37 the amount of the penalty, interest at the rate of one percent of the

1 unpaid balance of the assessed penalty for each month or part of a
2 month that the penalty remains unpaid, commencing with the month in
3 which the notice of penalty was served, and reasonable attorneys' fees
4 as are incurred if civil enforcement of the final administrative order
5 is required to collect the penalty.

6 (6) A person who institutes proceedings for judicial review of a
7 final administrative order assessing a civil penalty under this chapter
8 shall place the full amount of the penalty in an interest-bearing
9 account in the registry of the reviewing court. At the conclusion of
10 the proceeding the court shall, as appropriate, enter a judgment on
11 behalf of the department and order that the judgment be satisfied to
12 the extent possible from moneys paid into the registry of the court or
13 shall enter a judgment in favor of the person appealing the penalty
14 assessment and order return of the moneys paid into the registry of the
15 court together with accrued interest to the person appealing. The
16 judgment may award reasonable attorneys' fees for the cost of the
17 attorney general's office in representing the department.

18 (7) If no appeal is taken from a final administrative order
19 assessing a civil penalty under this chapter, the department may file
20 a certified copy of the final administrative order with the clerk of
21 the superior court in which the large on-site sewage system is located
22 or in Thurston county, and the clerk shall enter judgment in the name
23 of the department and in the amount of the penalty assessed in the
24 final administrative order.

25 (8) A judgment entered under subsection (6) or (7) of this section
26 has the same force and effect as, and is subject to all of the
27 provisions of law relating to, a judgment in a civil action, and may be
28 enforced in the same manner as any other judgment of the court in which
29 it is entered.

30 (9) The department must comply with chapter 70.--- RCW (the new
31 chapter created in section 27 of this act) with any respect to any
32 proposed settlement of an enforcement action.

33 (10) The large on-site sewage systems account is created in the
34 custody of the state treasurer. All receipts from penalties imposed
35 under this section shall be deposited into the account. Expenditures
36 from the account shall be used by the department to provide training
37 and technical assistance to large on-site sewage system owners and
38 operators. Only the secretary or the secretary's designee may

1 authorize expenditures from the account. The account is subject to
2 allotment procedures under chapter 43.88 RCW, but an appropriation is
3 not required for expenditures.

4 **Sec. 13.** RCW 70.118B.060 and 2007 c 343 s 7 are each amended to
5 read as follows:

6 (1) Notwithstanding the existence or use of any other remedy, the
7 department may bring an action to enjoin a violation or threatened
8 violation of this chapter or rules adopted under this chapter.

9 (2) The department may bring the action in the superior court of
10 the county in which the large on-site sewage system is located or in
11 the superior court of Thurston county.

12 (3) The department must comply with chapter 70.--- RCW (the new
13 chapter created in section 27 of this act) with respect to any proposed
14 settlement of an enforcement action.

15 **Sec. 14.** RCW 70.119.130 and 2009 c 221 s 6 are each amended to
16 read as follows:

17 (1) Any person, including any operator or any firm, association,
18 corporation, municipal corporation, or other governmental subdivision
19 or agency who, after thirty days' written notice, operates a public
20 water system which is not in compliance with RCW 70.119.030(1), shall
21 be guilty of a misdemeanor. Each month of such operation out of
22 compliance with RCW 70.119.030(1) shall constitute a separate offense.
23 Upon conviction, violators shall be fined an amount not exceeding one
24 hundred dollars for each offense.

25 (2) It shall be the duty of the prosecuting attorney or the
26 attorney general, as appropriate, to secure injunctions of continuing
27 violations of any provisions of this chapter or the rules and
28 regulations adopted under this chapter. The prosecuting attorney or
29 the attorney general must comply with chapter 70.--- RCW (the new
30 chapter created in section 27 of this act) with respect to any proposed
31 settlement of an enforcement action.

32 **Sec. 15.** RCW 70.119A.040 and 1995 c 376 s 8 are each amended to
33 read as follows:

34 (1)(a) In addition to or as an alternative to any other penalty or
35 action allowed by law, a person who violates a law or rule regulating

1 public water systems and administered by the department of health is
2 subject to a penalty of not more than five thousand dollars per day for
3 every such violation, or, in the case of a violation that has been
4 determined to be a public health emergency, a penalty of not more than
5 ten thousand dollars per day for every such violation. Every such
6 violation shall be a separate and distinct offense. The amount of fine
7 shall reflect the health significance of the violation and the previous
8 record of compliance on the part of the public water supplier. In case
9 of continuing violation, every day's continuance shall be a separate
10 and distinct violation.

11 (b) In addition, a person who constructs, modifies, or expands a
12 public water system or who commences the construction, modification, or
13 expansion of a public water system without first obtaining the required
14 departmental approval is subject to penalties of not more than five
15 thousand dollars per service connection, or, in the case of a system
16 serving a transient population, a penalty of not more than four hundred
17 dollars per person based on the highest average daily population the
18 system serves or is anticipated to serve may be imposed. The total
19 penalty that may be imposed pursuant to this subsection (1)(b) is five
20 hundred thousand dollars. For the purpose of computing the penalty
21 under this subsection, a service connection shall include any new
22 service connection actually constructed, any anticipated service
23 connection the system has been designed to serve, and, in the case of
24 a system modification not involving expansions, each existing service
25 connection that benefits or would benefit from the modification.

26 (c) Every person who, through an act of commission or omission,
27 procures, aids, or abets a violation is considered to have violated the
28 provisions of this section and is subject to the penalty provided in
29 this section.

30 (2) The penalty provided for in this section shall be imposed by a
31 notice in writing to the person against whom the civil penalty is
32 assessed and shall describe the violation. The notice shall be
33 personally served in the manner of service of a summons in a civil
34 action or in a manner that shows proof of receipt. A penalty imposed
35 by this section is due twenty-eight days after receipt of notice unless
36 application for an adjudicative proceeding is filed as provided in
37 subsection (3) of this section.

1 (3) Within twenty-eight days after notice is received, the person
2 incurring the penalty may file an application for an adjudicative
3 proceeding and may pursue subsequent review as provided in chapter
4 34.05 RCW and applicable rules of the department or board of health.

5 (4) A penalty imposed by a final administrative order is due upon
6 service of the final administrative order. A person who fails to pay
7 a penalty assessed by a final administrative order within thirty days
8 of service of the final administrative order shall pay, in addition to
9 the amount of the penalty, interest at the rate of one percent of the
10 unpaid balance of the assessed penalty for each month or part of a
11 month that the penalty remains unpaid, commencing with the month in
12 which the notice of penalty was served and such reasonable attorney's
13 fees as are incurred in securing the final administrative order.

14 (5) A person who institutes proceedings for judicial review of a
15 final administrative order assessing a civil penalty under this chapter
16 shall place the full amount of the penalty in an interest bearing
17 account in the registry of the reviewing court. At the conclusion of
18 the proceeding the court shall, as appropriate, enter a judgment on
19 behalf of the department and order that the judgment be satisfied to
20 the extent possible from moneys paid into the registry of the court or
21 shall enter a judgment in favor of the person appealing the penalty
22 assessment and order return of the moneys paid into the registry of the
23 court together with accrued interest to the person appealing. The
24 judgment may award reasonable attorney's fees for the cost of the
25 attorney general's office in representing the department.

26 (6) If no appeal is taken from a final administrative order
27 assessing a civil penalty under this chapter, the department may file
28 a certified copy of the final administrative order with the clerk of
29 the superior court in which the public water system is located or in
30 Thurston county, and the clerk shall enter judgment in the name of the
31 department and in the amount of the penalty assessed in the final
32 administrative order.

33 (7) A judgment entered under subsection (5) or (6) of this section
34 shall have the same force and effect as, and is subject to all of the
35 provisions of law relating to, a judgment in a civil action, and may be
36 enforced in the same manner as any other judgment of the court in which
37 it is entered.

1 (8) The department must comply with chapter 70.--- RCW (the new
2 chapter created in section 27 of this act) with respect to any proposed
3 settlement of an enforcement action.

4 (9) All penalties imposed under this section shall be payable to
5 the state treasury and credited to the safe drinking water account, and
6 shall be used by the department to provide training and technical
7 assistance to system owners and operators.

8 (~~(9)~~) (10) Except in cases of public health emergencies, the
9 department may not impose monetary penalties under this section unless
10 a prior effort has been made to resolve the violation informally.

11 **Sec. 16.** RCW 76.09.140 and 2000 c 11 s 6 are each amended to read
12 as follows:

13 (1) The department of natural resources may take any necessary
14 action to enforce any final order or final decision, and may disapprove
15 any forest practices application or notification submitted by any
16 person who has failed to comply with a final order or final decision or
17 has failed to pay any civil penalties as provided in RCW 76.09.170, for
18 up to one year from the issuance of a notice of intent to disapprove
19 notifications and applications under this section or until the violator
20 pays all outstanding civil penalties and complies with all validly
21 issued and outstanding notices to comply and stop work orders,
22 whichever is longer. For purposes of chapter 482, Laws of 1993, the
23 terms "final order" and "final decision" shall mean the same as set
24 forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall
25 provide written notice of its intent to disapprove an application or
26 notification under this subsection. The department shall forward
27 copies of its notice of intent to disapprove to any affected landowner.
28 The disapproval period shall run from thirty days following the date of
29 actual notice or when all administrative and judicial appellate
30 processes, if any, have been exhausted. Any person provided the notice
31 may seek review from the appeals board by filing a request for review
32 within thirty days of the date of the notice of intent. While the
33 notice of intent to disapprove is in effect, the violator may not serve
34 as a person in charge of, be employed by, manage, or otherwise
35 participate to any degree in forest practices.

36 (2) On request of the department, the attorney general may take
37 action necessary to enforce this chapter, including, but not limited

1 to: Seeking penalties, interest, costs, and attorneys' fees; enforcing
2 final orders or decisions; and seeking civil injunctions, show cause
3 orders, or contempt orders.

4 (3) A county may bring injunctive, declaratory, or other actions
5 for enforcement for forest practice activities within its jurisdiction
6 in the superior court as provided by law against the department, the
7 forest landowner, timber owner or operator to enforce the forest
8 practices rules or any final order of the department, or the appeals
9 board. No civil or criminal penalties shall be imposed for past
10 actions or omissions if such actions or omissions were conducted
11 pursuant to an approval or directive of the department. Injunctions,
12 declaratory actions, or other actions for enforcement under this
13 subsection may not be commenced unless the department fails to take
14 appropriate action after ten days written notice to the department by
15 the county of a violation of the forest practices rules or final orders
16 of the department or the appeals board.

17 (4) The department or county must comply with chapter 70.--- RCW
18 (the new chapter created in section 27 of this act) with respect to any
19 proposed settlement of an enforcement action.

20 (5)(a) The department may require financial assurance prior to the
21 conduct of any further forest practices from an operator or landowner
22 who within the preceding three-year period has:

23 (i) Operated without an approved forest practices application,
24 other than an unintentional operation in connection with an approved
25 application outside the approved boundary of such an application;

26 (ii) Continued to operate in breach of, or failed to comply with,
27 the terms of an effective stop work order or notice to comply; or

28 (iii) Failed to pay any civil or criminal penalty.

29 (b) The department may deny any application for failure to submit
30 financial assurances as required.

31 **Sec. 17.** RCW 77.55.291 and 2010 c 210 s 31 are each amended to
32 read as follows:

33 (1) The department may levy civil penalties of up to one hundred
34 dollars per day for violation of any provisions of RCW 77.55.021. The
35 penalty provided shall be imposed by notice in writing, either by
36 certified mail or personal service to the person incurring the penalty,
37 from the director or the director's designee describing the violation.

1 (2)(a) Except as provided in (b) of this subsection, any person
2 incurring any penalty under this chapter may appeal the same under
3 chapter 34.05 RCW to the board. Appeals shall be filed within thirty
4 days from the date of receipt of the penalty in accordance with RCW
5 43.21B.230.

6 (b) Issuance of a civil penalty may be informally appealed to the
7 department within thirty days from the date of receipt of the penalty.
8 Requests for informal appeal must be filed in the form and manner
9 prescribed by the department by rule. A civil penalty that has been
10 informally appealed to the department is appealable to the board within
11 thirty days from the date of receipt of the department's decision on
12 the informal appeal.

13 (3) The penalty imposed shall become due and payable thirty days
14 after receipt of a notice imposing the penalty unless an appeal is
15 filed. Whenever an appeal of any penalty incurred under this chapter
16 is filed, the penalty shall become due and payable only upon completion
17 of all review proceedings and the issuance of a final order confirming
18 the penalty in whole or in part.

19 (4) If the amount of any penalty is not paid within thirty days
20 after it becomes due and payable, the attorney general, upon the
21 request of the director, shall bring an action in the name of the state
22 of Washington in the superior court of Thurston county or of any county
23 in which such violator may do business, to recover such penalty. In
24 all such actions the procedure and rules of evidence shall be the same
25 as an ordinary civil action. All penalties recovered under this
26 section shall be paid into the state's general fund.

27 (5) The department must comply with chapter 70.--- RCW (the new
28 chapter created in section 27 of this act) with respect to any proposed
29 settlement of an enforcement action.

30 **Sec. 18.** RCW 88.46.070 and 2000 c 69 s 7 are each amended to read
31 as follows:

32 (1) The provisions of prevention plans and contingency plans
33 approved by the department pursuant to this chapter shall be legally
34 binding on those persons submitting them to the department and on their
35 successors, assigns, agents, and employees. The superior court shall
36 have jurisdiction to restrain a violation of, compel specific
37 performance of, or otherwise to enforce such plans upon application by

1 the department. The department may issue an order pursuant to chapter
2 34.05 RCW requiring compliance with a contingency plan or a prevention
3 plan and may impose administrative penalties for failure to comply with
4 a plan. The department must comply with chapter 70.--- RCW (the new
5 chapter created in section 27 of this act) with respect to any proposed
6 settlement of an enforcement action.

7 (2) If the director believes a person has violated or is violating
8 or creates a substantial potential to violate the provisions of this
9 chapter, the director shall notify the person of the director's
10 determination by registered mail. The determination shall not
11 constitute an order or directive under RCW 43.21B.310. Within thirty
12 days from the receipt of notice of the determination, the person shall
13 file with the director a full report stating what steps have been and
14 are being taken to comply with the determination of the director. The
15 director shall issue an order or directive, as the director deems
16 appropriate under the circumstances, and shall notify the person by
17 registered mail.

18 (3) If the director believes immediate action is necessary to
19 accomplish the purposes of this chapter, the director may issue an
20 order or directive, as appropriate under the circumstances, without
21 first issuing a notice or determination pursuant to subsection (2) of
22 this section. An order or directive issued pursuant to this subsection
23 shall be served by registered mail or personally upon any person to
24 whom it is directed.

25 **Sec. 19.** RCW 90.03.605 and 2002 c 329 s 2 are each amended to read
26 as follows:

27 (1) The department shall, through a network of water masters
28 appointed under this chapter, stream patrollers appointed under chapter
29 90.08 RCW, and other assigned compliance staff to the extent such a
30 network is funded, achieve compliance with the water laws and rules of
31 the state of Washington in the following sequence:

32 (a) The department shall prepare and distribute technical and
33 educational information to the general public to assist the public in
34 complying with the requirements of their water rights and applicable
35 water laws;

36 (b) When the department determines that a violation has occurred or
37 is about to occur, it shall first attempt to achieve voluntary

1 compliance. As part of this first response, the department shall offer
2 information and technical assistance to the person in writing
3 identifying one or more means to accomplish the person's purposes
4 within the framework of the law; and

5 (c) If education and technical assistance do not achieve compliance
6 the department shall issue a notice of violation, a formal
7 administrative order under RCW 43.27A.190, or assess penalties under
8 RCW 90.03.600 unless the noncompliance is corrected expeditiously or
9 the department determines no impairment or harm. The department must
10 comply with chapter 70.--- RCW (the new chapter created in section 27
11 of this act) with respect to any proposed settlement of an enforcement
12 action.

13 (2) Nothing in the section is intended to prevent the department of
14 ecology from taking immediate action to cause a violation to be ceased
15 immediately if in the opinion of the department the nature of the
16 violation is causing harm to other water rights or to public resources.

17 (3) The department of ecology shall to the extent practicable
18 station its compliance personnel within the watershed communities they
19 serve. To the extent practicable, compliance personnel shall be
20 distributed evenly among the regions of the state.

21 **Sec. 20.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
22 read as follows:

23 (1) All matters relating to the implementation and enforcement of
24 this chapter by the department of ecology shall be carried out in
25 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
26 except where the provisions of this chapter expressly conflict with
27 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
28 adjudicative proceedings within the meaning of chapter 34.05 RCW.
29 Final decisions of the department of ecology in these proceedings are
30 subject to review in accordance with chapter 43.21B RCW.

31 (2) RCW 90.14.130 provides nonexclusive procedures for determining
32 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
33 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
34 among other proceedings, general adjudication proceedings initiated
35 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
36 apply to litigation involving determinations of the department of

1 ecology under RCW 90.03.290 relating to the impairment of existing
2 rights.

3 (3) The department must comply with chapter 70.--- RCW (the new
4 chapter created in section 27 of this act) with respect to any proposed
5 settlement of an enforcement action.

6 **Sec. 21.** RCW 90.46.270 and 2009 c 456 s 14 are each amended to
7 read as follows:

8 (1) Except as provided in RCW 43.05.060 through 43.05.080,
9 43.05.100, 43.05.110, and 43.05.150, any person who:

10 (a) Generates any reclaimed water for a use regulated under this
11 chapter and distributes or uses that water without a permit;

12 (b) Violates the terms or conditions of a permit issued under this
13 chapter; or

14 (c) Violates rules or orders adopted or issued pursuant to this
15 chapter,

16 shall incur, in addition to any other penalty as provided by law, a
17 penalty in an amount of up to ten thousand dollars per day for every
18 violation. Each violation shall be a separate and distinct offense,
19 and in case of a continuing violation, every day's continuance shall be
20 a separate and distinct violation. Every act of commission or omission
21 which procures, aids, or abets in the violation shall be considered a
22 violation under the provisions of this section and subject to the
23 penalty herein provided for. The penalty amount shall be set in
24 consideration of the previous history of the violator and the severity
25 of the violation's impact on public health, the environment, or both,
26 in addition to other relevant factors. The lead agency must comply
27 with chapter 70.--- RCW (the new chapter created in section 27 of this
28 act) with respect to any proposed settlement of an enforcement action.

29 (2) A penalty imposed by a final administrative order is due upon
30 service of the final administrative order. A person who fails to pay
31 a penalty assessed by a final administrative order within thirty days
32 of service of the final administrative order shall pay, in addition to
33 the amount of the penalty, interest at the rate of one percent of the
34 unpaid balance of the assessed penalty for each month or part of a
35 month that the penalty remains unpaid, commencing within the month in
36 which the notice of penalty was served, and reasonable attorneys' fees

1 as are incurred if civil enforcement of the final administrative order
2 is required to collect penalty.

3 (3) A person who institutes proceedings for judicial review of a
4 final administrative order assessing a civil penalty under this chapter
5 shall place the full amount of the penalty in an interest bearing
6 account in the registry of the reviewing court. At the conclusion of
7 the proceeding the court shall, as appropriate, enter a judgment on
8 behalf of the lead agency and order that the judgment be satisfied to
9 the extent possible from moneys paid into the registry of the court or
10 shall enter a judgment in favor of the person appealing the penalty
11 assessment and order return of the moneys paid into the registry of the
12 court together with accrued interest to the person appealing. The
13 judgment may award reasonable attorneys' fees for the cost of the
14 attorney general's office in representing the lead agency.

15 (4) If no appeal is taken from a final administrative order
16 assessing a civil penalty under this chapter, the lead agency may file
17 a certified copy of the final administrative order with the clerk of
18 the superior court in which the person resides, or in Thurston county,
19 and the clerk shall enter judgment in the name of the lead agency and
20 in the amount of the penalty assessed in the final administrative
21 order.

22 (5) When the penalty (~~herein~~) provided for in this section is
23 imposed by the department of ecology, it shall be imposed pursuant to
24 the procedures set forth in RCW 43.21B.300. All penalties imposed by
25 the department of ecology pursuant to RCW 43.21B.300 shall be deposited
26 into the state treasury and credited to the general fund.

27 (6) When the penalty is imposed by the department of health, it
28 shall be imposed pursuant to the procedures set forth in RCW 43.70.095.
29 All receipts from penalties shall be deposited into the health
30 reclaimed water account. The department of health shall use revenue
31 derived from penalties only to provide training and technical
32 assistance to reclaimed water system owners and operators.

33 **Sec. 22.** RCW 90.48.037 and 1991 c 200 s 1102 are each amended to
34 read as follows:

35 (1) The department, with the assistance of the attorney general, is
36 authorized to bring any appropriate action at law or in equity,

1 including action for injunctive relief, in the name of the people of
2 the state of Washington as may be necessary to carry out the provisions
3 of this chapter or chapter 90.56 RCW.

4 (2) The department must comply with chapter 70.--- RCW (the new
5 chapter created in section 27 of this act) with respect to any proposed
6 settlement of an enforcement action.

7 **Sec. 23.** RCW 90.56.270 and 1991 c 200 s 206 are each amended to
8 read as follows:

9 (1) The provisions of contingency plans approved by the department
10 under RCW 90.56.210 and prevention plans approved by the department
11 pursuant to RCW 90.56.200 shall be legally binding on those persons
12 submitting them to the department and on their successors, assigns,
13 agents, and employees. The superior court shall have jurisdiction to
14 restrain a violation of, compel specific performance of, or otherwise
15 to enforce such plans upon application by the department. The
16 department may issue an order pursuant to chapter 34.05 RCW requiring
17 compliance with a contingency plan or a prevention plan and may impose
18 administrative penalties under RCW 43.21B.300 for failure to comply
19 with a plan. An order under this section is not subject to review by
20 the pollution control hearings board as provided in RCW 43.21B.110.
21 The department must comply with chapter 70.--- RCW (the new chapter
22 created in section 27 of this act) with respect to any proposed
23 settlement of an enforcement action.

24 (2)(a) Any person responsible or potentially responsible for a
25 discharge, all of the agents and employees of that person, the
26 operators of all vessels docked at an onshore or offshore facility that
27 is a source of a discharge, and all state and local agencies shall
28 carry out response and cleanup operations in accordance with applicable
29 contingency plans, unless directed otherwise by the director or the
30 coast guard. Except as provided in (b) of this subsection, the
31 responsible party, potentially responsible parties, their agents and
32 employees, the operators of all vessels docked at an onshore or
33 offshore facility that is the source of the discharge, and all state
34 and local agencies shall carry out whatever direction is given by the
35 director in connection with the response, containment, and cleanup of
36 the spill, if the directions are not in direct conflict with the
37 directions of the coast guard.

1 (b) If a responsible party or potentially responsible party
2 reasonably, and in good faith, believes that the directions or orders
3 given by the director pursuant to (a) of this subsection will
4 substantially endanger the public safety or the environment, the party
5 may refuse to act in compliance with the orders or directions of the
6 director. The responsible party or potentially responsible party shall
7 state, at the time of the refusal, the reasons why the party refuses to
8 follow the orders or directions of the director. The responsible party
9 or potentially responsible party shall give the director written notice
10 of the reasons for the refusal within forty-eight hours of refusing to
11 follow the orders or directions of the director. In any civil or
12 criminal proceeding commenced pursuant to this section, the burden of
13 proof shall be on the responsible party or potentially responsible
14 party to demonstrate, by clear and convincing evidence, why the refusal
15 to follow the orders or directions of the director was justified under
16 the circumstances.

17 **Sec. 24.** RCW 90.58.230 and 1971 ex.s. c 286 s 23 are each amended
18 to read as follows:

19 (1) Any person subject to the regulatory program of this chapter
20 who violates any provision of this chapter or permit issued pursuant
21 thereto shall be liable for all damage to public or private property
22 arising from such violation, including the cost of restoring the
23 affected area to its condition prior to violation. The attorney
24 general or local government attorney shall bring suit for damages under
25 this section on behalf of the state or local governments. Private
26 persons shall have the right to bring suit for damages under this
27 section on their own behalf and on the behalf of all persons similarly
28 situated. If liability has been established for the cost of restoring
29 an area affected by a violation the court shall make provision to
30 (~~assure~~) ensure that restoration will be accomplished within a
31 reasonable time at the expense of the violator. In addition to such
32 relief, including money damages, the court in its discretion may award
33 (~~attorney's~~) attorneys' fees and costs of the suit to the prevailing
34 party.

35 (2) The attorney general or local government attorney must comply
36 with chapter 70.--- RCW (the new chapter created in section 27 of this
37 act) with respect to any proposed settlement of an enforcement action.

1 **Sec. 25.** RCW 90.76.070 and 2007 c 147 s 5 are each amended to read
2 as follows:

3 (1) The director may seek appropriate injunctive or other judicial
4 relief by filing an action in Thurston county superior court or issue
5 such order as the director deems appropriate to:

6 ~~((1))~~ (a) Enjoin any threatened or continuing violation of this
7 chapter or rules adopted under this chapter;

8 ~~((2))~~ (b) Restrain immediately and effectively a person from
9 engaging in unauthorized activity that results in a violation of any
10 requirement of this chapter or rules adopted under this chapter and is
11 endangering or causing damage to public health or the environment;

12 ~~((3))~~ (c) Require compliance with requests for information,
13 access, testing, or monitoring under RCW 90.76.060; or

14 ~~((4))~~ (d) Assess and recover civil penalties authorized under RCW
15 90.76.080.

16 (2) The director must comply with chapter 70.--- RCW (the new
17 chapter created in section 27 of this act) with respect to any proposed
18 settlement of an enforcement action.

19 **Sec. 26.** RCW 90.76.080 and 2007 c 147 s 6 are each amended to read
20 as follows:

21 (1) A person who fails to notify the department pursuant to tank
22 notification requirements or who submits false information is subject
23 to a civil penalty not to exceed five thousand dollars per violation.

24 (2) A person who violates this chapter or rules adopted under this
25 chapter is subject to a civil penalty not to exceed five thousand
26 dollars for each tank per day of violation.

27 (3) A person incurring a penalty under this chapter or rules
28 adopted under this chapter may apply to the department in writing for
29 the remission or mitigation of the penalty as set out in RCW
30 43.21B.300. A person also may appeal a penalty directly to the
31 pollution control hearings board in accordance with RCW 43.21B.300.

32 (4) The department must comply with chapter 70.--- RCW (the new
33 chapter created in section 27 of this act) with respect to any proposed
34 settlement of an enforcement action.

35 NEW SECTION. **Sec. 27.** Sections 2 and 3 of this act constitute a
36 new chapter in Title 70 RCW.

1 NEW SECTION. **Sec. 28.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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