
SUBSTITUTE HOUSE BILL 1948

State of Washington 63rd Legislature 2013 Regular Session

By House Environment (originally sponsored by Representatives Tharinger and Upthegrove)

READ FIRST TIME 03/07/13.

1 AN ACT Relating to nonsubstantive changes to programs relevant to
2 the department of ecology designed to create administrative efficiency;
3 amending RCW 43.21B.305, 70.93.200, 70.93.220, 70.93.250, 70.94.037,
4 70.95.130, 70.95.140, 70.95.230, 70.95.290, 70.95.530, 70.95C.220,
5 70.95E.010, 70.95E.040, 70.95I.080, 70.95J.025, 70.105.160, 70.105.180,
6 70.105.210, and 90.58.190; reenacting and amending RCW 43.21B.110,
7 43.21B.110, and 43.21B.300; repealing RCW 70.93.090, 70.94.505, and
8 70.95.545; providing an effective date; and providing an expiration
9 date.

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

11 **Sec. 1.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
12 each reenacted and amended to read as follows:

13 (1) The hearings board shall only have jurisdiction to hear and
14 decide appeals from the following decisions of the department, the
15 director, local conservation districts, the air pollution control
16 boards or authorities as established pursuant to chapter 70.94 RCW,
17 local health departments, the department of natural resources, the
18 department of fish and wildlife, and the parks and recreation
19 commission:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
3 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
6 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

7 (c) A final decision by the department or director made under
8 chapter 183, Laws of 2009.

9 (d) Except as provided in RCW 90.03.210(2), the issuance,
10 modification, or termination of any permit, certificate, or license by
11 the department or any air authority in the exercise of its
12 jurisdiction, including the issuance or termination of a waste disposal
13 permit, the denial of an application for a waste disposal permit, the
14 modification of the conditions or the terms of a waste disposal permit,
15 or a decision to approve or deny an application for a solid waste
16 permit exemption under RCW 70.95.300.

17 (e) Decisions of local health departments regarding the grant or
18 denial of solid waste permits pursuant to chapter 70.95 RCW.

19 (f) Decisions of local health departments regarding the issuance
20 and enforcement of permits to use or dispose of biosolids under RCW
21 70.95J.080.

22 (g) Decisions of the department regarding waste-derived fertilizer
23 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
24 department regarding waste-derived soil amendments under RCW 70.95.205.

25 (h) Decisions of local conservation districts related to the denial
26 of approval or denial of certification of a dairy nutrient management
27 plan; conditions contained in a plan; application of any dairy nutrient
28 management practices, standards, methods, and technologies to a
29 particular dairy farm; and failure to adhere to the plan review and
30 approval timelines in RCW 90.64.026.

31 (i) Any other decision by the department or an air authority which
32 pursuant to law must be decided as an adjudicative proceeding under
33 chapter 34.05 RCW.

34 (j) Decisions of the department of natural resources, the
35 department of fish and wildlife, and the department that are reviewable
36 under chapter 76.09 RCW, and the department of natural resources'
37 appeals of county, city, or town objections under RCW 76.09.050(7).

1 (k) Forest health hazard orders issued by the commissioner of
2 public lands under RCW 76.06.180.

3 (l) Decisions of the department of fish and wildlife to issue,
4 deny, condition, or modify a hydraulic project approval permit under
5 chapter 77.55 RCW.

6 (m) Decisions of the department of natural resources that are
7 reviewable under RCW 78.44.270.

8 (n) Decisions of a state agency that is an authorized public entity
9 under RCW 79.100.010 to take temporary possession or custody of a
10 vessel or to contest the amount of reimbursement owed that are
11 reviewable under RCW 79.100.120.

12 (2) The following hearings shall not be conducted by the hearings
13 board:

14 (a) Hearings required by law to be conducted by the shorelines
15 hearings board pursuant to chapter 90.58 RCW.

16 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
17 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

18 (c) Appeals of decisions by the department under RCW 90.03.110 and
19 90.44.220.

20 (d) Hearings conducted by the department to adopt, modify, or
21 repeal rules.

22 ~~((e) Appeals of decisions by the department as provided in chapter
23 43.21B RCW.))~~

24 (3) Review of rules and regulations adopted by the hearings board
25 shall be subject to review in accordance with the provisions of the
26 administrative procedure act, chapter 34.05 RCW.

27 **Sec. 2.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are
28 each reenacted and amended to read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and
30 decide appeals from the following decisions of the department, the
31 director, local conservation districts, the air pollution control
32 boards or authorities as established pursuant to chapter 70.94 RCW,
33 local health departments, the department of natural resources, the
34 department of fish and wildlife, and the parks and recreation
35 commission:

36 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,

1 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
2 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
5 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

6 (c) Except as provided in RCW 90.03.210(2), the issuance,
7 modification, or termination of any permit, certificate, or license by
8 the department or any air authority in the exercise of its
9 jurisdiction, including the issuance or termination of a waste disposal
10 permit, the denial of an application for a waste disposal permit, the
11 modification of the conditions or the terms of a waste disposal permit,
12 or a decision to approve or deny an application for a solid waste
13 permit exemption under RCW 70.95.300.

14 (d) Decisions of local health departments regarding the grant or
15 denial of solid waste permits pursuant to chapter 70.95 RCW.

16 (e) Decisions of local health departments regarding the issuance
17 and enforcement of permits to use or dispose of biosolids under RCW
18 70.95J.080.

19 (f) Decisions of the department regarding waste-derived fertilizer
20 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
21 department regarding waste-derived soil amendments under RCW 70.95.205.

22 (g) Decisions of local conservation districts related to the denial
23 of approval or denial of certification of a dairy nutrient management
24 plan; conditions contained in a plan; application of any dairy nutrient
25 management practices, standards, methods, and technologies to a
26 particular dairy farm; and failure to adhere to the plan review and
27 approval timelines in RCW 90.64.026.

28 (h) Any other decision by the department or an air authority which
29 pursuant to law must be decided as an adjudicative proceeding under
30 chapter 34.05 RCW.

31 (i) Decisions of the department of natural resources, the
32 department of fish and wildlife, and the department that are reviewable
33 under chapter 76.09 RCW, and the department of natural resources'
34 appeals of county, city, or town objections under RCW 76.09.050(7).

35 (j) Forest health hazard orders issued by the commissioner of
36 public lands under RCW 76.06.180.

37 (k) Decisions of the department of fish and wildlife to issue,

1 deny, condition, or modify a hydraulic project approval permit under
2 chapter 77.55 RCW.

3 (l) Decisions of the department of natural resources that are
4 reviewable under RCW 78.44.270.

5 (m) Decisions of a state agency that is an authorized public entity
6 under RCW 79.100.010 to take temporary possession or custody of a
7 vessel or to contest the amount of reimbursement owed that are
8 reviewable under RCW 79.100.120.

9 (2) The following hearings shall not be conducted by the hearings
10 board:

11 (a) Hearings required by law to be conducted by the shorelines
12 hearings board pursuant to chapter 90.58 RCW.

13 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
14 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

15 (c) Appeals of decisions by the department under RCW 90.03.110 and
16 90.44.220.

17 (d) Hearings conducted by the department to adopt, modify, or
18 repeal rules.

19 ~~((e) Appeals of decisions by the department as provided in chapter
20 43.21B RCW.))~~

21 (3) Review of rules and regulations adopted by the hearings board
22 shall be subject to review in accordance with the provisions of the
23 administrative procedure act, chapter 34.05 RCW.

24 **Sec. 3.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are
25 each reenacted and amended to read as follows:

26 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
27 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
28 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 90.76 RCW
29 shall be imposed by a notice in writing, either by certified mail with
30 return receipt requested or by personal service, to the person
31 incurring the penalty from the department or the local air authority,
32 describing the violation with reasonable particularity. For penalties
33 issued by local air authorities, within thirty days after the notice is
34 received, the person incurring the penalty may apply in writing to the
35 authority for the remission or mitigation of the penalty. Upon receipt
36 of the application, the authority may remit or mitigate the penalty
37 upon whatever terms the authority in its discretion deems proper. The

1 authority may ascertain the facts regarding all such applications in
2 such reasonable manner and under such rules as it may deem proper and
3 shall remit or mitigate the penalty only upon a demonstration of
4 extraordinary circumstances such as the presence of information or
5 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 by a local air authority of the
12 application for relief from 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 by a
16 local air authority on application for relief from penalty, if such an
17 application is made; or

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

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

31 (5) All penalties recovered shall be paid into the state treasury
32 and credited to the general fund except those penalties imposed
33 pursuant to RCW 18.104.155, which shall be credited to the reclamation
34 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
35 disposition of which shall be governed by that provision, RCW
36 70.105.080, which shall be credited to the (~~hazardous waste control~~
37 ~~and elimination~~) state toxics control account created by RCW
38 (~~(70.105.180)~~) 70.105D.070, RCW 90.56.330, which shall be credited to

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

4 **Sec. 4.** RCW 43.21B.305 and 2005 c 34 s 2 are each amended to read
5 as follows:

6 In an appeal that involves a penalty of fifteen thousand dollars or
7 less or an appeal of an administrative or enforcement order, the appeal
8 may be heard by one member of the board or by an administrative appeals
9 judge employed by the board, whose decision shall be the final decision
10 of the board. The board shall define by rule alternative procedures to
11 expedite appeals involving penalties of fifteen thousand dollars or
12 less. These alternatives may include: Mediation, upon agreement of
13 all parties; submission of testimony by affidavit; or other forms that
14 may lead to less formal and faster resolution of appeals.

15 **Sec. 5.** RCW 70.93.200 and 1998 c 257 s 8 are each amended to read
16 as follows:

17 In addition to the ~~((foregoing))~~ other provisions of this chapter,
18 the department ~~((of ecology shall))~~ may, when the director determines
19 that funding is available:

20 (1) Serve as the coordinating agency between the various industry
21 organizations seeking to aid in the waste reduction, anti-litter, and
22 recycling efforts;

23 (2) Serve as the coordinating and administrating agency for all
24 state agencies and local governments receiving funds for waste
25 reduction, litter control, and recycling under this chapter;

26 (3) Recommend to the governing bodies of all local governments that
27 they adopt ordinances similar to the provisions of this chapter;

28 (4) Cooperate with all local governments to accomplish coordination
29 of local waste reduction, anti-litter, and recycling efforts;

30 (5) Encourage, organize, and coordinate all voluntary local waste
31 reduction, anti-litter, and recycling campaigns seeking to focus the
32 attention of the public on the programs of this state to reduce waste,
33 control and remove litter, and foster recycling;

34 (6) Investigate the availability of, and apply for funds available
35 from any private or public source to be used in the program outlined in
36 this chapter;

1 (7) Develop statewide programs by working with local governments,
2 payers of the waste reduction, recycling, and litter control tax, and
3 industry organizations that are active in waste reduction, anti-litter,
4 and recycling efforts to increase public awareness of and participation
5 in recycling and to stimulate and encourage local private recycling
6 centers, public participation in recycling and research and development
7 in the field of litter control, and recycling, removal, and disposal of
8 litter-related recycling materials;

9 (8) Conduct a ~~((biennial))~~ periodic statewide litter survey
10 targeted at litter composition, sources, demographics, and geographic
11 trends; and

12 (9) Provide ~~((a biennial))~~, when requested by the governor or the
13 legislature, a periodic summary of all waste reduction, litter control,
14 and recycling efforts statewide including those of the department ~~((of~~
15 ~~ecology))~~, and other state agencies and local governments funded for
16 such programs under this chapter. ~~((This report is due to the~~
17 ~~legislature in March of even-numbered years.))~~

18 **Sec. 6.** RCW 70.93.220 and 1998 c 257 s 6 are each amended to read
19 as follows:

20 (1) The department ~~((of ecology))~~ is the coordinating and
21 administrative agency working with the departments of natural
22 resources, revenue, transportation, and corrections, and the parks and
23 recreation commission in developing a biennial budget request for funds
24 for the various agencies' litter collection programs.

25 (2) Funds may be used to meet the needs of efficient and effective
26 litter collection and illegal dumping programs identified by the
27 various agencies. The department shall develop criteria for evaluating
28 the effectiveness and efficiency of the waste reduction, litter
29 control, and recycling programs being administered by the various
30 agencies listed in RCW 70.93.180, and shall distribute funds according
31 to the effectiveness and efficiency of those programs. In addition,
32 the department shall approve funding requests for efficient and
33 effective waste reduction, litter control, and recycling programs,
34 provide funds, and monitor the results of all agency programs.

35 (3) All agencies are responsible for reporting information on their
36 litter collection programs~~((7))~~ as requested by the department ~~((of~~

1 ecology. ~~Beginning in the year 2000, this information shall be~~
2 ~~provided to the department by March of even numbered years. In 1998,~~
3 ~~this information shall be provided by July 1st.~~

4 ~~(4) By December 1998, and in every even numbered year thereafter,~~
5 ~~the department shall provide a report to the legislature summarizing~~
6 ~~biennial waste reduction, litter control, and recycling activities by~~
7 ~~state agencies and submitting the coordinated litter budget request of~~
8 ~~all agencies)).~~

9 **Sec. 7.** RCW 70.93.250 and 2002 c 175 s 46 are each amended to read
10 as follows:

11 (1) The department shall provide funding to local units of
12 government to establish, conduct, and evaluate community restitution
13 and other programs for waste reduction, litter and illegal dump
14 cleanup, and recycling. Programs eligible for funding under this
15 section shall include, but not be limited to, programs established
16 pursuant to RCW 72.09.260.

17 (2) Funds may be offered for costs associated with community waste
18 reduction, litter cleanup and prevention, and recycling activities.
19 The funding program must be flexible, allowing local governments to use
20 funds broadly to meet their needs to reduce waste, control litter and
21 illegal dumping, and promote recycling. Local governments are required
22 to contribute resources or in-kind services. The department shall
23 evaluate funding requests from local government according to the same
24 criteria as those developed in RCW 70.93.220, provide funds according
25 to the effectiveness and efficiency of local government litter control
26 programs, and monitor the results of all local government programs
27 under this section.

28 (3) Local governments shall report information as requested by the
29 department in funding agreements entered into by the department and a
30 local government. ~~((The department shall report to the appropriate~~
31 ~~standing committees of the legislature by December of even numbered~~
32 ~~years on the effectiveness of local government waste reduction, litter,~~
33 ~~and recycling programs funded under this section.))~~

34 **Sec. 8.** RCW 70.94.037 and 1991 c 199 s 219 are each amended to
35 read as follows:

36 In areas subject to a state implementation plan, no state agency,

1 metropolitan planning organization, or local government shall approve
2 or fund a transportation plan, program, or project within or that
3 affects a nonattainment area unless a determination has been made that
4 the plan, program, or project conforms with the state implementation
5 plan for air quality as required by the federal clean air act.

6 Conformity determination shall be made by the state or local
7 government or metropolitan planning organization administering or
8 developing the plan, program, or project.

9 ~~((No later than eighteen months after May 15, 1991,))~~ The director
10 of the department ~~((of ecology))~~ and the secretary of transportation,
11 in consultation with other state, regional, and local agencies as
12 appropriate, shall adopt by rule criteria and guidance for
13 demonstrating and assuring conformity of plans, programs, and projects
14 that are wholly or partially federally funded.

15 A project with a scope that is limited to preservation or
16 maintenance, or both, shall be exempted from a conformity determination
17 requirement.

18 **Sec. 9.** RCW 70.95.130 and 1969 ex.s. c 134 s 13 are each amended
19 to read as follows:

20 Any county may apply to the department on a form prescribed thereby
21 for financial aid for the preparation and implementation of the
22 comprehensive county plan for solid waste management required by RCW
23 70.95.080. Any city electing to prepare an independent city plan, a
24 joint city plan, or a joint county-city plan for solid waste management
25 for inclusion in the county comprehensive plan may apply for financial
26 aid for such purpose through the county. Every city application for
27 financial aid for planning shall be filed with the county auditor and
28 shall be included as a part of the county's application for financial
29 aid. ~~((Any city preparing an independent plan shall provide for
30 disposal sites wholly within its jurisdiction.))~~

31 The department shall allocate to the counties and cities applying
32 for financial aid for planning, such funds as may be available pursuant
33 to legislative appropriations or from any federal grants for such
34 purpose.

35 The department shall determine priorities and allocate available
36 funds among the counties and cities applying for aid according to
37 criteria established by regulations of the department considering

1 population, urban development, environmental effects of waste disposal,
2 existing waste handling practices, and the local justification of their
3 proposed expenditures.

4 **Sec. 10.** RCW 70.95.140 and 1969 ex.s. c 134 s 14 are each amended
5 to read as follows:

6 Counties and cities shall match their planning and implementation
7 aid allocated by the director by an amount (~~(not less than)~~) up to
8 twenty-five percent of the estimated cost of such planning. Any
9 federal planning aid made directly to a county or city shall not be
10 considered either a state or local contribution in determining local
11 matching requirements. Counties and cities may meet their share of
12 planning costs by cash and contributed services.

13 **Sec. 11.** RCW 70.95.230 and 1969 ex.s. c 134 s 23 are each amended
14 to read as follows:

15 The jurisdictional health department applying for state assistance
16 for the enforcement of this chapter shall match such aid allocated by
17 the department in an amount (~~(not less than)~~) up to twenty-five percent
18 of the total amount spent for such enforcement activity during the
19 year. The local share of enforcement costs may be met by cash and
20 contributed services.

21 **Sec. 12.** RCW 70.95.290 and 1988 c 184 s 3 are each amended to read
22 as follows:

23 (1) The evaluation of the solid waste stream required in RCW
24 70.95.280 shall include the following elements:

25 (a) The department shall determine which management method for each
26 category of solid waste will have the least environmental impact; and

27 (b) The department shall evaluate the costs of various management
28 options for each category of solid waste, including a review of market
29 availability, and shall take into consideration the economic impact on
30 affected parties;

31 (c) Based on the results of (a) and (b) of this subsection, the
32 department shall determine the best management for each category of
33 solid waste. Different management methods for the same categories of
34 waste may be developed for different parts of the state.

1 (2) The department shall give priority to evaluating categories of
2 solid waste that, in relation to other categories of solid waste,
3 comprise a large volume of the solid waste stream or present a high
4 potential of harm to human health. ~~((At a minimum the following
5 categories of waste shall be evaluated:~~

6 ~~(a) By January 1, 1989, yard waste and other biodegradable
7 materials, paper products, disposable diapers, and batteries; and~~

8 ~~(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid
9 lightweight cellular polystyrene, and tires.))~~

10 **Sec. 13.** RCW 70.95.530 and 2009 c 261 s 5 are each amended to read
11 as follows:

12 (1) Moneys in the waste tire removal account may be appropriated to
13 the department of ecology:

14 (a) To provide for funding to state and local governments for the
15 removal of discarded vehicle tires from unauthorized tire dump sites;
16 and

17 (b) To accomplish the other purposes of RCW 70.95.020 as they
18 relate to waste tire cleanup under this chapter.

19 (2) In spending funds in the account under this section, the
20 department of ecology shall identify communities with the most severe
21 problems with waste tires and provide funds first to those communities
22 to remove accumulations of waste tires.

23 (3) ~~((On September 1st of even-numbered years,))~~ The department of
24 ecology shall ~~((provide a report to the house [of representatives] and
25 senate transportation committees on the progress being made on the
26 cleanup of unauthorized waste tire piles in the state and efforts
27 underway to prevent the formation of future unauthorized waste tire
28 piles. The report must detail any additional unauthorized waste tire
29 piles discovered since the last report and present a plan to clean up
30 these new unauthorized waste tire piles if they have not already done
31 so, as well as include a listing of authorized waste tire piles and
32 transporters. The report must also include the status of funds
33 available to the program and a needs assessment of the program. On
34 September 1, 2010, the department shall also make recommendations to
35 the committees for an ongoing program to prevent the formation of
36 future unauthorized waste tire piles. Such a program, if required,
37 must include joint efforts with local governments and the tire~~

1 industry)) include in the program's annual report a summary of state
2 and local government efforts funded using the waste tire removal
3 account. The department shall provide on its web site a list of
4 authorized waste tire storage sites and transporters.

5 **Sec. 14.** RCW 70.95C.220 and 2005 c 274 s 338 are each amended to
6 read as follows:

7 (1) The department may review a plan, executive summary, or an
8 annual progress report to determine whether the plan, executive
9 summary, or annual progress report is adequate pursuant to the rules
10 developed under this section and with the provisions of RCW 70.95C.200.
11 In determining the adequacy of any plan, executive summary, or annual
12 progress report, the department shall base its determination solely on
13 whether the plan, executive summary, or annual progress report is
14 complete and prepared in accordance with the provisions of RCW
15 70.95C.200.

16 (2) Plans developed under RCW 70.95C.200 shall be retained at the
17 facility of the hazardous substance user or hazardous waste generator
18 preparing a plan. The plan is not a public record under the public
19 records act, chapter 42.56 RCW. A user or generator required to
20 prepare a plan shall permit the director or a representative of the
21 director to review the plan to determine its adequacy. No visit made
22 by the director or a representative of the director to a facility for
23 the purposes of this subsection may be regarded as an inspection or
24 investigation, and no notices or citations may be issued, nor any civil
25 penalty assessed, upon such a visit.

26 (3) If a hazardous substance user or hazardous waste generator
27 fails to complete an adequate plan, executive summary, or annual
28 progress report, the department shall notify the user or generator of
29 the inadequacy, identifying specific deficiencies. For the purposes of
30 this section, a deficiency may include failure to develop a plan,
31 failure to submit an executive summary pursuant to the schedule
32 provided in RCW 70.95C.200(5), and failure to submit an annual progress
33 report pursuant to the rules developed under RCW 70.95C.200(6). The
34 department shall specify a reasonable time frame, of not less than
35 ninety days, within which the user or generator shall complete a
36 modified plan, executive summary, or annual progress report addressing
37 the specified deficiencies.

1 (4) If the department determines that a modified plan, executive
2 summary, or annual progress report is inadequate, the department may,
3 within its discretion, either require further modification or enter an
4 order pursuant to subsection (5)(a) of this section.

5 (5)(a) If, after having received a list of specified deficiencies
6 from the department, a hazardous substance user or hazardous waste
7 generator required to prepare a plan fails to complete modification of
8 a plan, executive summary, or annual progress report within the time
9 period specified by the department, the department may enter an order
10 pursuant to chapter 34.05 RCW finding the user or generator not in
11 compliance with the requirements of RCW 70.95C.200. When the order is
12 final, the department shall (~~notify the department of revenue to~~)
13 charge a penalty fee. The penalty fee shall be the greater of one
14 thousand dollars or three times the amount of the user's or generator's
15 previous year's fee, in addition to the current year's fee. If no fee
16 was assessed the previous year, the penalty shall be the greater of one
17 thousand dollars or three times the amount of the current year's fee.
18 The penalty assessed under this subsection shall be collected each year
19 after the year for which the penalty was assessed until an adequate
20 plan or executive summary is completed.

21 (b) If a hazardous substance user or hazardous waste generator
22 required to prepare a plan fails to complete an adequate plan,
23 executive summary, or annual progress report after the department has
24 levied against the user or generator the penalty provided in (a) of
25 this subsection, the user or generator shall be required to pay a
26 surcharge to the department whenever the user or generator disposes of
27 a hazardous waste at any hazardous waste incinerator or hazardous waste
28 landfill facility located in Washington state, until a plan, executive
29 summary, or annual progress report is completed and determined to be
30 adequate by the department. The surcharge shall be equal to three
31 times the fee charged for disposal. The department shall furnish the
32 incinerator and landfill facilities in this state with a list of
33 environmental protection agency/state identification numbers of the
34 hazardous waste generators that are not in compliance with the
35 requirements of RCW 70.95C.200.

36 **Sec. 15.** RCW 70.95E.010 and 1995 c 207 s 1 are each amended to
37 read as follows:

1 ((As used in this chapter, the following terms have the meanings
2 indicated)) The definitions in this section apply throughout this
3 chapter unless the context clearly requires otherwise.

4 (1) "Dangerous waste" shall have the same definition as set forth
5 in RCW 70.105.010(~~(+5)~~) (1) and shall include those wastes designated
6 as dangerous by rules adopted pursuant to chapter 70.105 RCW.

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

8 (3) "EPA/state identification number" means the number assigned by
9 the EPA (environmental protection agency) or by the department (~~(of~~
10 ~~ecology)~~) to each generator and/or transporter and treatment, storage,
11 and/or disposal facility.

12 (4) "Extremely hazardous waste" (~~(shall have)~~) has the same
13 definition as (~~(set forth)~~) that term is defined in RCW
14 70.105.010(~~(+6)~~) and shall specifically include those wastes
15 designated as extremely hazardous by rules adopted pursuant to chapter
16 70.105 RCW.

17 (5) "Fee" means the annual fees imposed under this chapter.

18 (6) "Generate" means any act or process which produces hazardous
19 waste or first causes a hazardous waste to become subject to
20 regulation.

21 (7) "Hazardous waste" means and includes all dangerous and
22 extremely hazardous wastes but for the purposes of this chapter
23 excludes all radioactive wastes or substances composed of both
24 radioactive and hazardous components.

25 (8) "Hazardous waste generator" means all persons whose primary
26 business activities are identified by the department to generate any
27 quantity of hazardous waste in the calendar year for which the fee is
28 imposed.

29 (9) "Person" means an individual, trust, firm, joint stock company,
30 partnership, association, state, public or private or municipal
31 corporation, commission, political subdivision of a state, interstate
32 body, the federal government including any agency or officer thereof,
33 and any Indian tribe or authorized tribal organization.

34 (10) "Price deflator" means the figures reported by the United
35 States department of commerce bureau of economic analysis(~~(7)~~) on the
36 table for "Implicit Price Deflator for Gross ((National)) Domestic
37 Product." (~~(for "Government Purchases of Goods and Services,")~~) The
38 department must use a price deflator for "State and Local Government."

1 If a "State and Local Government" figure is not included on the table,
2 the department must use a price deflator figure applicable to general
3 government.

4 (11) "Recycled for beneficial use" means the use of hazardous
5 waste, either before or after reclamation, as a substitute for a
6 commercial product or raw material, but does not include: (a) Use
7 constituting disposal; (b) incineration; or (c) use as a fuel.

8 (12) "Waste generation site" means any geographical area that has
9 been assigned an EPA/state identification number.

10 **Sec. 16.** RCW 70.95E.040 and 1990 c 114 s 14 are each amended to
11 read as follows:

12 On an annual basis, the department shall adjust the fees provided
13 for in RCW 70.95E.020 and 70.95E.030, including the maximum annual fee,
14 and maximum total fees, by conducting the calculation in subsection (1)
15 of this section and taking the actions set forth in subsection (2) of
16 this section:

17 (1) In (~~November~~) March of each year, the fees, annual fee, and
18 maximum total fees imposed in RCW 70.95E.020 and 70.95E.030, or as
19 subsequently adjusted by this section, shall be multiplied by a factor
20 equal to the (~~most current quarterly~~) "price deflator" for the most
21 recently completed calendar year available, divided by the "price
22 deflator" used in the numerator the (~~previous~~) preceding year.
23 (~~However, the "price deflator" used in the denominator for the first~~
24 ~~adjustment shall be defined by the second quarter "price deflator" for~~
25 ~~1990.~~)

26 (2) Each year by (~~March~~) April 1st the fee schedule, as adjusted
27 in subsection (1) of this section, will be published. The department
28 will round the published fees to the nearest dollar.

29 **Sec. 17.** RCW 70.95I.080 and 1986 c 37 s 1 are each amended to read
30 as follows:

31 (~~By January 1, 1987, the state fire protection board, in~~
32 ~~cooperation with~~) The department (~~of ecology,~~) shall (~~develop~~)
33 maintain, as necessary, a statewide standard for the placement of
34 above-ground tanks to collect used oil from private individuals for
35 recycling purposes.

1 **Sec. 18.** RCW 70.95J.025 and 1997 c 398 s 1 are each amended to
2 read as follows:

3 (1) The department shall establish annual fees to collect expenses
4 for issuing and administering biosolids permits under this chapter. An
5 initial fee schedule shall be established by rule and shall be adjusted
6 no more often than once every two years. This fee schedule applies to
7 all permits, regardless of date of issuance, and fees shall be assessed
8 prospectively. Fees shall be established in amounts to recover
9 expenses incurred by the department in processing permit applications
10 and modifications, reviewing related plans and documents, monitoring,
11 evaluating, conducting inspections, overseeing performance of delegated
12 program elements, providing technical assistance and supporting
13 overhead expenses that are directly related to these activities.

14 (2) The annual fee paid by a permittee for any permit issued under
15 this chapter shall be determined by the number of residences or
16 residential equivalents contributing to the permittee's biosolids
17 management system. If residences or residential equivalents cannot be
18 determined or reasonably estimated, fees shall be based on other
19 appropriate criteria.

20 (3) The biosolids permit account is created in the state treasury.
21 All receipts from fees under this section must be deposited into the
22 account. Moneys in the account may be spent only after appropriation.
23 Expenditures from the account may be used only for the purposes of
24 administering permits under this chapter.

25 (4) ~~((The department shall present a biennial progress report on
26 the use of moneys from the biosolids permit account to the legislature.
27 The first report is due on or before December 31, 1998, and thereafter
28 on or before December 31st of odd-numbered years. The report shall
29 consist of information on fees collected, actual expenses incurred, and
30 anticipated expenses for the current and following fiscal years.~~

31 (5)) The department shall work with the regulated community and
32 local health departments to study the feasibility of modifying the fee
33 schedule to support delegated local health departments and reduce local
34 health department fees paid by biosolids permittees.

35 **Sec. 19.** RCW 70.105.160 and 2010 1st sp.s. c 7 s 89 are each
36 amended to read as follows:

37 The department shall conduct a study to determine the best

1 management practices for categories of waste for the priority waste
2 management methods established in RCW 70.105.150, with due
3 consideration in the course of the study to sound environmental
4 management and available technology. As an element of the study, the
5 department shall review methods that will help achieve the priority of
6 RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed
7 rules, the department shall conduct public hearings regarding the best
8 management practices for the various waste categories studied by the
9 department. After conducting the study, the department shall prepare
10 new rules or modify existing rules as appropriate to promote
11 implementation of the priorities established in RCW 70.105.150 for
12 management practices which assure use of sound environmental management
13 techniques and available technology. The preliminary study shall be
14 completed by July 1, 1986, and the rules shall be adopted by July 1,
15 1987.

16 The studies shall be updated at least once every five years. The
17 funding for these studies shall be from the (~~hazardous waste control~~
18 ~~and elimination~~) state toxics control account, subject to legislative
19 appropriation.

20 **Sec. 20.** RCW 70.105.180 and 1985 c 57 s 70 are each amended to
21 read as follows:

22 All fines and penalties collected under this chapter shall be
23 deposited in the (~~hazardous waste control and elimination~~) state
24 toxics control account(~~(, which is hereby created in the state~~
25 ~~treasury. Moneys in the account collected from fines and penalties~~
26 ~~shall be expended exclusively by the department of ecology for the~~
27 ~~purposes of chapter 70, Laws of 1983 1st ex. sess., subject to~~
28 ~~legislative appropriation. Other sources of funds deposited in this~~
29 ~~account may also be used for the purposes of chapter 70, Laws of 1983~~
30 ~~1st ex. sess. All earnings of investments of balances in the hazardous~~
31 ~~waste control and elimination account shall be credited to the general~~
32 ~~fund)).~~

33 **Sec. 21.** RCW 70.105.210 and 1989 1st ex.s. c 13 s 2 are each
34 amended to read as follows:

35 (~~By May 31, 1990,~~) The department shall (~~develop and adopt~~)
36 maintain criteria for the siting of hazardous waste management

1 facilities. These criteria will be part of the state hazardous waste
2 management plan as described in RCW 70.105.200. To the extent
3 practical, these criteria shall be designed to minimize the short-term
4 and long-term risks and costs that may result from hazardous waste
5 management facilities. These criteria may vary by type of facilities
6 and may consider natural site characteristics and engineered
7 protection. Criteria may be established for:

- 8 (1) Geology;
- 9 (2) Surface and groundwater hydrology;
- 10 (3) Soils;
- 11 (4) Flooding;
- 12 (5) Climatic factors;
- 13 (6) Unique or endangered flora and fauna;
- 14 (7) Transportation routes;
- 15 (8) Site access;
- 16 (9) Buffer zones;
- 17 (10) Availability of utilities and public services;
- 18 (11) Compatibility with existing uses of land;
- 19 (12) Shorelines and wetlands;
- 20 (13) Sole-source aquifers;
- 21 (14) Natural hazards; and
- 22 (15) Other factors as determined by the department.

23 **Sec. 22.** RCW 90.58.190 and 2012 c 172 s 1 are each amended to read
24 as follows:

25 (1) The appeal of the department's decision to adopt a master
26 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is
27 governed by RCW 34.05.510 through 34.05.598.

28 (2)(a) The department's final decision to approve or reject a
29 proposed master program or master program amendment by a local
30 government planning under RCW 36.70A.040 shall be appealed to the
31 growth management hearings board by filing a petition as provided in
32 RCW 36.70A.290.

33 (b) If the appeal to the growth management hearings board concerns
34 shorelines, the growth management hearings board shall review the
35 proposed master program or amendment solely for compliance with the
36 requirements of this chapter, the policy of RCW 90.58.020 and the
37 applicable guidelines, the internal consistency provisions of RCW

1 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter
2 43.21C RCW as it relates to the adoption of master programs and
3 amendments under chapter 90.58 RCW.

4 (c) If the appeal to the growth management hearings board concerns
5 a shoreline of statewide significance, the board shall uphold the
6 decision by the department unless the board, by clear and convincing
7 evidence, determines that the decision of the department is
8 noncompliant with the policy of RCW 90.58.020 or the applicable
9 guidelines, or chapter 43.21C RCW as it relates to the adoption of
10 master programs and amendments under this chapter.

11 (d) The appellant has the burden of proof in all appeals to the
12 growth management hearings board under this subsection.

13 (e) Any party aggrieved by a final decision of the growth
14 management hearings board under this subsection may appeal the decision
15 to superior court as provided in RCW 36.70A.300.

16 (3)(a) The department's final decision to approve or reject a
17 proposed master program or master program amendment by a local
18 government not planning under RCW 36.70A.040 shall be appealed to the
19 shorelines hearings board by filing a petition within thirty days of
20 the date that the department publishes notice of its final decision
21 under RCW 90.58.090(8).

22 (b) In an appeal relating to shorelines, the shorelines hearings
23 board shall review the proposed master program or master program
24 amendment and, after full consideration of the presentations of the
25 parties, shall determine the validity of the local government's master
26 program or amendment in light of the policy of RCW 90.58.020 and the
27 applicable guidelines, and chapter 43.21C RCW as it relates to the
28 adoption of master programs and amendments under this chapter.

29 (c) In an appeal relating to shorelines of statewide significance,
30 the shorelines hearings board shall uphold the decision by the
31 department unless the board determines, by clear and convincing
32 evidence that the decision of the department is noncompliant with the
33 policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C
34 RCW as it relates to the adoption of master programs and amendments
35 under this chapter.

36 (d) Review by the shorelines hearings board shall be considered an
37 adjudicative proceeding under chapter 34.05 RCW, the administrative

1 procedure act. The appellant shall have the burden of proof in all
2 such reviews.

3 (e) Whenever possible, the review by the shorelines hearings board
4 shall be heard within the county where the land subject to the proposed
5 master program or master program amendment is primarily located. The
6 department and any party aggrieved by a final decision of the hearings
7 board may appeal the decision to superior court as provided in chapter
8 34.05 RCW.

9 ~~((4) A master program amendment shall become effective after the
10 approval of the department or after the decision of the growth
11 management hearings board or shorelines hearings board to uphold the
12 master program or master program amendment, provided that either the
13 growth management hearings board or the shorelines hearings board may
14 remand the master program or master program amendment to the local
15 government or the department for modification prior to the final
16 adoption of the master program or master program amendment.))~~

17 NEW SECTION. **Sec. 23.** Section 1 of this act expires June 30,
18 2019.

19 NEW SECTION. **Sec. 24.** Section 2 of this act takes effect June 30,
20 2019.

21 NEW SECTION. **Sec. 25.** The following acts or parts of acts are
22 each repealed:

23 (1) RCW 70.93.090 (Litter receptacles--Use of anti-litter symbol--
24 Distribution--Placement--Violations--Penalties) and 1998 c 257 s 4,
25 1979 c 94 s 5, & 1971 ex.s. c 307 s 9;

26 (2) RCW 70.94.505 (Woodsmoke emissions--Work group) and 2007 c 339
27 s 3; and

28 (3) RCW 70.95.545 (Tire recycling--Report) and 2002 c 299 s 9.

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