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**HOUSE BILL 2486**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Fitzgibbon, Tharinger, Ryu, Van De Wege, and McBride; by request of Department of Ecology

AN ACT Relating to updating specified environmental statutes of the department of ecology to improve efficiency and provide for increased flexibility for local governments; amending RCW 43.21B.305, 43.21B.110, 43.21B.110, 70.95.240, 70.95.300, 70.95M.080, 70.105.095, 70.107.010, 70.107.030, 70.107.060, 70.240.050, 86.16.081, 90.56.060, and 90.58.190; reenacting and amending RCW 43.21B.300 and 90.58.090; reenacting RCW 43.21B.005; creating a new section; repealing RCW 43.21A.610, 43.21A.612, 43.21A.614, 43.21A.616, 43.21A.618, 43.21A.620, 43.21A.622, 43.21A.624, 43.21A.626, 43.21A.628, 43.21A.630, 43.21A.632, 43.21A.634, 43.21A.636, 43.21A.638, 43.21A.640, 43.21A.642, 70.95.205, 70.95.700, 70.107.040, 70.107.050, and 90.56.335; repealing 2010 1st sp.s. c 7 s 39 and 2010 c 84 s 4; providing an effective date; and providing an expiration date.

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

**Sec.**  RCW 43.21B.005 and 2010 c 210 s 4 are each reenacted to read as follows:

(1) There is created an environmental and land use hearings office of the state of Washington. The environmental and land use hearings office consists of the pollution control hearings board created in RCW 43.21B.010, the shorelines hearings board created in RCW 90.58.170, and the growth management hearings board created in RCW 36.70A.250. The governor shall designate one of the members of the pollution control hearings board or growth management hearings board to be the director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, the shorelines hearings board, and the growth management hearings board shall be as provided by law.

(2) The director of the environmental and land use hearings office may appoint one or more administrative appeals judges in cases before the environmental boards and, with the consent of the chair of the growth management hearings board, one or more hearing examiners in cases before the land use board comprising the office. The administrative appeals judges shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. The hearing examiners possess the powers and duties provided for in RCW 36.70A.270.

(3) Administrative appeals judges are not subject to chapter 41.06 RCW. The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the director of the environmental and land use hearings office. Upon written request by the person so disciplined or terminated, the director of the environmental and land use hearings office shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The director of the environmental and land use hearings office may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The director of the environmental and land use hearings office may also contract for required services.

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

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.95M.080, 70.95N.260, 70.105.080, ((~~70.107.050,~~)) 70.105.095(2), 70.240.050, 70.275.100, 70.275.110, 86.16.081, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ((~~and~~)) 90.56.330, and 90.64.102 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

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

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

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

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

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.95M.080, which shall be deposited in the state toxics control account created in RCW 70.105D.070, RCW 70.95N.260, which shall be deposited into the electronic products recycling account created in RCW 70.95N.130, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 70.240.050, which shall be credited to the state toxics control account created in RCW 70.105D.070, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

**Sec.**  RCW 43.21B.305 and 2013 c 291 s 44 are each amended to read as follows:

((~~(1)~~)) In an appeal that involves a penalty of fifteen thousand dollars or less, or that involves a derelict or abandoned vessel under RCW 79.100.120, or an appeal of a corrective action order issued pursuant to RCW 70.94.211, the appeal may be heard by one member of the board or by an administrative appeals judge employed by the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less ((~~or~~)), involving a derelict or abandoned vessel, or involving an appeal of a corrective action order issued pursuant to RCW 70.94.211. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

((~~(2) For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative law judge employed by the board may be substituted for a board member under this section.~~))

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 33 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to chapter 70.95M RCW and RCW 18.104.155, 70.94.431, 70.95.315, 70.95N.260, 70.105.080, ((~~70.107.050,~~)) 70.105.095(2), 70.240.050, 70.275.100, 70.275.110, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, ((~~and~~)) 90.64.102, and 90.76.080.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.94.640, 70.94.715, 70.95.315, 70.95C.230, 70.105.095, 86.16.020, 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((~~and~~)) 90.48.240, 90.56.330, and 90.64.040.

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

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, ((~~or~~)) a decision to approve or deny a solid waste management plan under RCW 70.95.094, approval or denial of an application for a ((~~solid waste permit exemption~~)) beneficial use determination under RCW 70.95.300, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(e) Decisions of local health departments regarding the ((~~grant~~)) granting or denial of solid waste permits pursuant to chapter 70.95 RCW, including appeals by the department as provided in RCW 70.95.185.

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

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

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

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

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

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

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

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

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

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

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 34 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to chapter 70.95M RCW and RCW 18.104.155, 70.94.431, 70.95.315, 70.95N.260, 70.105.080, ((~~70.107.050,~~)) 70.105.095(2), 70.240.050, 70.275.100, 70.275.110, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, ((~~and~~)) 90.64.102, and 90.76.080.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.95C.230, 70.105.095, 86.16.020, 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((~~and~~)) 90.48.240, 90.56.330, and 90.64.040.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, ((~~or~~)) a decision to approve or deny a solid waste management plan under RCW 70.95.094, an application for a ((~~solid waste permit exemption~~)) beneficial use determination under RCW 70.95.300, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(d) Decisions of local health departments regarding the ((~~grant~~)) granting or denial of solid waste permits pursuant to chapter 70.95 RCW, including appeals by the department as provided in RCW 70.95.185.

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

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

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

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

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

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

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

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

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

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

**Sec.**  RCW 70.95.240 and 2011 c 279 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this section or at a solid waste disposal site for which there is a valid permit, after the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state.

(2) This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a ((~~waste-derived soil amendment~~)) solid waste that has been approved by the department under RCW ((~~70.95.205~~)) 70.95.300; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(3)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b)(i) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

(ii) A person found to have littered in an amount greater than one cubic foot, but less than one cubic yard, shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or fifty dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(c)(i) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

(ii) A person found to have littered in an amount greater than one cubic yard shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or one hundred dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(4) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(5) When enforcing this section, the enforcing authority must take reasonable action to determine and identify the person responsible for illegally dumping solid waste before requiring the owner or lessee of the property where illegal dumping of solid waste has occurred to remove and properly dispose of the litter on the site.

**Sec.**  RCW 70.95.300 and 1998 c 156 s 2 are each amended to read as follows:

(1) The department may by rule ((~~exempt~~)) establish administrative procedures governing the process for the department to propose and approve exempting a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In ((~~adopting such rules~~)) exempting such uses, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The department shall consider: (a) Whether the ((~~material~~)) solid waste will be beneficially used or reused; and (b) whether the beneficial use or reuse of the ((~~material~~)) solid waste will present threats to human health or the environment.

(2) When the department proposes to exempt from the permitting requirements of this chapter one or more beneficial uses of a solid waste, the department shall forward a copy of the complete proposal to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision whether or not to adopt the proposal. If the proposal is adopted by the department, use of the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste changes, or the management, storage, or end use constitutes a threat to human health or the environment, the exemption may be terminated and use of the solid waste remains subject to the permitting requirements of this chapter.

(3) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The ((~~material~~)) solid waste will be beneficially used or reused; ((~~and~~)) (b) the beneficial use or reuse of the material will not present threats to human health or the environment; and (c) for solid waste to be applied to the land as a soil amendment, analytical data showing that the solid waste meets standards established under RCW 15.54.800(3). Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

((~~(3)~~)) (4) After receipt of an application filed under rules adopted under ((~~subsection (2) of~~)) this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste ((~~is not consistent with the terms and conditions of the department's approval of the application,~~)) changes, or the management, storage, or end use constitutes a threat to human health or the environment, the exemption may be terminated and the use of the solid waste remains subject to the permitting requirements of this chapter.

((~~(4)~~)) (5) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application or proposal for an exemption under ((~~subsection (2) of~~)) this section.

((~~(5) Any jurisdictional health department or applicant~~)) (6) Any aggrieved party may appeal the decision of the department to approve or disapprove an application or adopt a proposal under ((~~subsection (3) of~~)) this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

((~~(6)~~)) (7) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule.

(8) Nothing in this section applies to biosolids or sewage sludge as defined under this chapter and chapter 70.95J RCW or the rules adopted under this chapter and chapter 70.95J RCW.

**Sec.**  RCW 70.95M.080 and 2003 c 260 s 9 are each amended to read as follows:

A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. The penalties provided in this section must be imposed pursuant to RCW 43.21B.300 and may be appealed to the pollution control hearings board.

**Sec.**  RCW 70.105.095 and 2012 c 117 s 417 are each amended to read as follows:

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

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

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

**Sec.**  RCW 70.107.010 and 1974 ex.s. c 183 s 1 are each amended to read as follows:

The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. ((~~Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts statewide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state.~~)) The purpose of this chapter is to provide authority for ((~~such an expansion of efforts, supplementing existing programs in the field~~)) local governments to adopt and enforce regulations on noise.

**Sec.**  RCW 70.107.030 and 2011 c 171 s 107 are each amended to read as follows:

The department ((~~is empowered as follows:~~

~~(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible~~)) shall adopt rules setting model standards for noise control regulation by local governments in identified environments in order to protect against adverse ((~~affects~~)) effects of noise on the health, safety, and welfare of the people, the value of property, and the quality of environment((~~: PROVIDED, That in so doing~~)). The department shall take ((~~also~~)) into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

((~~(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:~~

~~(a) Performance standards setting allowable noise limits for the operation of products which produce noise;~~

~~(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and~~

~~(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.~~

~~(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.~~

~~(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.~~

~~(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.310 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.~~

~~(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975.~~))

**Sec.**  RCW 70.107.060 and 1987 c 103 s 1 are each amended to read as follows:

(1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties, and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in workplaces of the state, as now or hereafter vested in the department of labor and industries.

(3) ((~~Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided.~~)) A local government may impose limits or control sources differing from those adopted ((~~or controlled~~)) by the department ((~~upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries~~)) pursuant to RCW 70.107.030.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law.

**Sec.**  RCW 70.240.050 and 2008 c 288 s 7 are each amended to read as follows:

(1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070. The penalties provided in this section must be imposed pursuant to RCW 43.21B.300 and may be appealed to the pollution control hearings board.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

**Sec.**  RCW 86.16.081 and 1995 c 403 s 634 are each amended to read as follows:

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section ((~~shall~~)) must be imposed by a notice in writing((~~, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering~~)) and must be imposed consistent with the procedures of RCW 43.21B.300. The notice in writing must also order the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, ((~~requiring~~)) must require necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board under chapter 43.21B RCW. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board under chapter 43.21B RCW.

**Sec.**  RCW 90.56.060 and 2010 1st sp.s. c 7 s 73 are each amended to read as follows:

(1) The department shall prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, and hazardous substance manufacturers.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to this chapter and chapter 88.46 RCW and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment, and cleanup of a worst case spill of oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of spills of oil and hazardous substances;

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills;

(f) Establish an incident command system for responding to oil and hazardous substances spills; and

(g) Establish a process for immediately notifying affected tribes of any oil spill.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment; and

(c) ((~~Submit to the appropriate standing committees of the legislature for review, not later than November 1st of each year, the plan and any annual revision of the plan; and~~

~~(d)~~)) Require or schedule unannounced oil spill drills as required by RCW 90.56.260 to test the sufficiency of oil spill contingency plans approved under RCW 90.56.210.

((~~(4) The department shall evaluate the functions of advisory committees created by the department regarding oil spill prevention, preparedness, and response programs, and shall revise or eliminate those functions which are no longer necessary.~~))

**Sec.**  RCW 90.58.090 and 2011 c 353 s 14 and 2011 c 277 s 2 are each reenacted and amended to read as follows:

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

The department shall strive to achieve final action on a submitted master program within one hundred eighty days of receipt and shall post an annual assessment related to this performance benchmark on the agency web site.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 ((~~and~~)), applicable shoreline guidelines, and ((~~if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2)~~)) RCW 36.70A.480.

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

(a) Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date.

(b) The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

(8) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments. If the notice is for a local government that does not plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

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

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

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

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

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

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

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

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

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

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

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act. The appellant shall have the burden of proof in all such reviews.

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

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

NEW SECTION. **Sec.**  Section 4 of this act expires June 30, 2019.

NEW SECTION. **Sec.**  Section 5 of this act takes effect June 30, 2019.

NEW SECTION. **Sec.**  On the effective date of this section, the state treasurer shall transfer any money remaining in the vessel response account to the coastal protection fund created in RCW 90.48.390.

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

(1)RCW 43.21A.610 (Steam electric generating plant—Study—Construction) and 2009 c 549 s 5088, 1988 c 127 s 10, & 1965 c 8 s 43.21.250;

(2)RCW 43.21A.612 (Steam electric generating plant—Statement of intention—Construction by public utility, operating agency, or the department, procedure—Powers of director of community, trade, and economic development) and 1995 c 399 s 68, 1988 c 127 s 11, 1985 c 466 s 49, & 1965 c 8 s 43.21.260;

(3)RCW 43.21A.614 (Steam electric generating plant—Powers of director in constructing, operating and maintaining) and 1988 c 127 s 12 & 1965 c 8 s 43.21.270;

(4)RCW 43.21A.616 (Steam electric generating plant—Eminent domain) and 1988 c 127 s 13 & 1965 c 8 s 43.21.280;

(5)RCW 43.21A.618 (Steam electric generating plant—State not financially obligated—Separation and expenditure of funds) and 1988 c 127 s 14 & 1965 c 8 s 43.21.290;

(6)RCW 43.21A.620 (Steam electric generating plant—Revenue bonds and warrants) and 2009 c 549 s 5089, 1988 c 127 s 15, & 1965 c 8 s 43.21.300;

(7)RCW 43.21A.622 (Steam electric generating plant—Special funds—Payment of bonds, interest) and 1988 c 127 s 16 & 1965 c 8 s 43.21.310;

(8)RCW 43.21A.624 (Steam electric generating plant—Considerations in issuance of bonds, limitations) and 1988 c 127 s 17 & 1965 c 8 s 43.21.320;

(9)RCW 43.21A.626 (Steam electric generating plant—Resolution authorizing issuance of bonds, contents, covenants) and 1988 c 127 s 18 & 1965 c 8 s 43.21.330;

(10)RCW 43.21A.628 (Steam electric generating plant—Sale of bonds) and 1988 c 127 s 19, 1970 ex.s. c 56 s 61, 1969 ex.s. c 232 s 32, & 1965 c 8 s 43.21.340;

(11)RCW 43.21A.630 (Steam electric generating plant—Examination, registration of bonds by state auditor—Defects, irregularities) and 2009 c 549 s 5090 & 1965 c 8 s 43.21.350;

(12)RCW 43.21A.632 (Steam electric generating plant—Rates or charges) and 1988 c 127 s 20 & 1965 c 8 s 43.21.360;

(13)RCW 43.21A.634 (Steam electric generating plant—Refunding revenue bonds) and 1988 c 127 s 21 & 1965 c 8 s 43.21.370;

(14)RCW 43.21A.636 (Steam electric generating plant—Signatures on bonds) and 1965 c 8 s 43.21.380;

(15)RCW 43.21A.638 (Steam electric generating plant—Provisions of law, resolution, a contract with bondholder—Enforcement) and 1988 c 127 s 22 & 1965 c 8 s 43.21.390;

(16)RCW 43.21A.640 (Steam electric generating plant—Bonds are legal security, investment, negotiable) and 1965 c 8 s 43.21.400;

(17)RCW 43.21A.642 (Steam electric generating plant—Director not authorized to acquire other facilities or engage in retail distribution) and 1988 c 127 s 23 & 1965 c 8 s 43.21.410;

(18)RCW 70.95.205 (Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal) and 1998 c 36 s 18;

(19)RCW 70.95.700 (Solid waste incineration or energy recovery facility—Environmental impact statement requirements) and 1989 c 431 s 55;

(20)RCW 70.107.040 (Technical advisory committee) and 1975-'76 2nd ex.s. c 34 s 164 & 1974 ex.s. c 183 s 4;

(21)RCW 70.107.050 (Civil penalties) and 1987 c 103 s 2 & 1974 ex.s. c 183 s 5;

(22)RCW 90.56.335 (Vessel response account—Dedicated rescue tug) and 2003 c 264 s 3;

(23)2010 1st sp.s. c 7 s 39; and

(24)2010 c 84 s 4.

**--- END ---**