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HOUSE BILL 2429

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Duerr, Kloba, Ramel, Fitzgibbon, Gregerson,  
Peterson, Macri, and Pollet

Read first time 01/14/20. Referred to Committee on Environment &  
Energy.

1 AN ACT Relating to certain expanded polystyrene products;  
2 reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new  
3 chapter to Title 70 RCW; providing an effective date; and providing  
4 an expiration date.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires  
8 otherwise.

9 (1) "Department" means the department of ecology.

10 (2) "Expanded polystyrene" means blown polystyrene and expanded  
11 and extruded foams that are thermoplastic petrochemical materials  
12 utilizing a styrene monomer and processed by any number of techniques  
13 including, but not limited to, fusion of polymer spheres (expandable  
14 bead polystyrene), injection molding, foam molding, and extrusion-  
15 blow molding (extruded foam polystyrene).

16 (3) "Expanded polystyrene cooler" means a portable container used  
17 for cold storage made of expanded polystyrene, except for expanded  
18 polystyrene containers used for drugs or medical devices as defined  
19 in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et  
20 seq.).

1 (4) (a) "Expanded polystyrene food service products" includes food  
2 containers, plates, clamshell-style containers, hot and cold beverage  
3 cups, meat and vegetable trays, egg cartons, products used to package  
4 raw, uncooked, or butchered meat, fish, poultry, or seafood for off-  
5 premises consumption, and other products made of expanded polystyrene  
6 and used for selling or providing food and beverages for consumption  
7 on or off the premises.

8 (b) "Expanded polystyrene food service product" does not include:  
9 (i) Prepackaged soup or other food that a food service establishment  
10 sells or otherwise provides to its customers in expanded polystyrene  
11 containers that have been filled and sealed before receipt by the  
12 food service establishment; and (ii) food that has been filled and  
13 sealed in expanded polystyrene containers outside of the state before  
14 receipt by the food service establishment.

15 (5) "Food packager" means any person located in Washington who  
16 places meat, fish, eggs, bakery products, or other food in packaging  
17 materials, for the purpose of retail sale of those products.

18 (6) "Food service establishment" means establishments that  
19 provide, serve, or deliver food, beverages, or prepared food for  
20 consumption including establishments:

21 (a) With the primary business purpose of serving food to be  
22 consumed on the premises or providing prepared meals or other food or  
23 beverage items that a consumer purchases and intends to eat  
24 elsewhere, including home delivery; or

25 (b) That serve food, beverages, and prepackaged food and  
26 beverages: (i) Via a drive through; (ii) in a packaged form for  
27 takeout or takeaway; or (iii) from food trucks, stands, or kiosks  
28 that may or may not provide shelter or seating for consumers.

29 (7) "Local health jurisdiction" or "jurisdictional health  
30 department" means an administrative agency organized under chapter  
31 70.05 RCW, a health district organized under chapter 70.46 RCW, or a  
32 combined city-county health department organized under chapter 70.08  
33 RCW that administers public health and safety regulations and codes,  
34 including food safety and restaurant inspections.

35 (8) "Manufacturer" includes any person, firm, association,  
36 partnership, corporation, governmental entity, organization, or joint  
37 venture that produces expanded polystyrene food service products,  
38 polystyrene packaging materials, or expanded polystyrene coolers.

1 (9) "Polystyrene packaging material" means void-filling packaging  
2 products made of expanded polystyrene, including rigid and loose fill  
3 packaging material, also referred to as packing peanuts.

4 NEW SECTION. **Sec. 2.** Beginning January 1, 2022, the  
5 manufacture, sale, and distribution of expanded polystyrene food  
6 service products, expanded polystyrene packaging material, and  
7 expanded polystyrene coolers in or into the state is prohibited.  
8 Packages sent into the state filled with expanded polystyrene  
9 packaging material are exempt from this section.

10 NEW SECTION. **Sec. 3.** Beginning July 1, 2022:

11 (1) Except as provided for in subsection (2) of this section,  
12 food service establishments in the state may not sell or provide  
13 expanded polystyrene food service products to a customer, or serve  
14 food or beverages for consumption on or off the premises using  
15 expanded polystyrene food service products.

16 (2) Beginning January 1, 2025, food packagers in the state and  
17 food service establishments may not package raw, uncooked, or  
18 butchered meat, fish, poultry, or seafood in expanded polystyrene  
19 food service products.

20 (3) The department may grant a waiver to a food service  
21 establishment from the restrictions established in subsections (1)  
22 and (2) of this section, for a period of up to one year, if the  
23 department determines that achieving compliance would present an  
24 undue hardship or practical difficulty not generally applicable to  
25 other food service establishments in similar circumstances.

26 NEW SECTION. **Sec. 4.** (1)(a) An owner or operator of a food  
27 service establishment or food packager violating the provisions of  
28 section 3 of this act must be provided a notice of violation for the  
29 first and second violation of section 3 of this act.

30 (b) For the third and subsequent violations of section 3 of this  
31 act, an owner or operator of a food service establishment or food  
32 packager is subject to a civil penalty of two hundred fifty dollars  
33 for each day.

34 (2) Penalties issued under this section are appealable to the  
35 pollution control hearings board established in chapter 43.21B RCW.

1        NEW SECTION.    **Sec. 5.**    (1) The department must enforce this act  
2 through notification and information regarding the prohibition on  
3 expanded polystyrene food service products provided to manufacturers,  
4 distributors, food service establishments, food packagers, interested  
5 parties, local solid waste and sustainability programs, and local  
6 health jurisdictions. The department must:

7        (a) Prepare and distribute information regarding the prohibitions  
8 on the use of expanded polystyrene to manufacturers, distributors,  
9 food service establishments, food packagers, and local health  
10 jurisdictions;

11        (b) Provide to local health jurisdictions information and notice  
12 to inform food service establishments and their customers about the  
13 requirements of this chapter;

14        (c) Establish an internet-based forum to receive complaints  
15 regarding violations of this chapter; and

16        (d) Develop and provide outreach and educational resources for  
17 the state's diverse ethnic populations, through translated and  
18 culturally appropriate materials, and targeted outreach in  
19 appropriate languages.

20        (2) A local health jurisdiction conducting inspections of food  
21 service establishments must ensure the notice:

22        (a) And information provided by the department regarding the  
23 restrictions on the use of expanded polystyrene food service products  
24 are received by inspected food service establishments; and

25        (b) Regarding the restrictions on the use of expanded polystyrene  
26 food service products and information regarding the complaint forum  
27 is posted in a conspicuous area in food service establishments.

28        NEW SECTION.    **Sec. 6.**    Beginning July 1, 2022:

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

33        (2) A manufacturer of products in violation of this chapter is  
34 subject to a civil penalty not to exceed five thousand dollars for  
35 each violation in the case of a first offense. Manufacturers who are  
36 repeat violators are subject to a civil penalty not to exceed ten  
37 thousand dollars for each repeat offense. Penalties collected under  
38 this section must be deposited in the model toxics control operating  
39 account created in RCW 70.105D.190.

1       **Sec. 7.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and  
2 2019 c 290 s 12 are each reenacted and amended to read as follows:

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

10       (a) Civil penalties imposed pursuant to RCW 18.104.155,  
11 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, sections 2  
12 and 3 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090,  
13 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

14       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,  
16 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

19       (d) Except as provided in RCW 90.03.210(2), the issuance,  
20 modification, or termination of any permit, certificate, or license  
21 by the department or any air authority in the exercise of its  
22 jurisdiction, including the issuance or termination of a waste  
23 disposal permit, the denial of an application for a waste disposal  
24 permit, the modification of the conditions or the terms of a waste  
25 disposal permit, or a decision to approve or deny an application for  
26 a solid waste permit exemption under RCW 70.95.300.

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

29       (f) Decisions of local health departments regarding the issuance  
30 and enforcement of permits to use or dispose of biosolids under RCW  
31 70.95J.080.

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

36       (h) Decisions of local conservation districts related to the  
37 denial of approval or denial of certification of a dairy nutrient  
38 management plan; conditions contained in a plan; application of any  
39 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the  
2 plan review and approval timelines in RCW 90.64.026.

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

6 (j) Decisions of the department of natural resources, the  
7 department of fish and wildlife, and the department that are  
8 reviewable under chapter 76.09 RCW, and the department of natural  
9 resources' appeals of county, city, or town objections under RCW  
10 76.09.050(7).

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

13 (l) Decisions of the department of fish and wildlife to issue,  
14 deny, condition, or modify a hydraulic project approval permit under  
15 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
16 comply, to issue a civil penalty, or to issue a notice of intent to  
17 disapprove applications.

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

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

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

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

28 (b) Hearings conducted by the department pursuant to RCW  
29 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
30 90.44.180.

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

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

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

38 **Sec. 8.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and  
39 2019 c 290 s 12 are each reenacted and amended to read as follows:

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2 decide appeals from the following decisions of the department, the  
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7 and authorized public entities described in chapter 79.100 RCW:

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11 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

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17 by the department or any air authority in the exercise of its  
18 jurisdiction, including the issuance or termination of a waste  
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20 permit, the modification of the conditions or the terms of a waste  
21 disposal permit, or a decision to approve or deny an application for  
22 a solid waste permit exemption under RCW 70.95.300.

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

25 (e) Decisions of local health departments regarding the issuance  
26 and enforcement of permits to use or dispose of biosolids under RCW  
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29 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
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33 denial of approval or denial of certification of a dairy nutrient  
34 management plan; conditions contained in a plan; application of any  
35 dairy nutrient management practices, standards, methods, and  
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28 (d) Hearings conducted by the department to adopt, modify, or  
29 repeal rules.

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

33 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act  
34 constitute a new chapter in Title 70 RCW.

35 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,  
36 2021.



1        NEW SECTION.    **Sec. 11.**    Section 8 of this act takes effect June  
2    30, 2021.

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