
SENATE BILL 6213

State of Washington

66th Legislature

2020 Regular Session

By Senators Das, Carlyle, Van De Wege, Dhingra, Kuderer, Lovelett, Nguyen, Billig, Rolfes, Saldaña, Darneille, Hasegawa, Lias, Keiser, Pedersen, Stanford, Frockt, Wellman, and Wilson, C.

Prefiled 01/10/20. Read first time 01/13/20. Referred to Committee on Environment, Energy & Technology.

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:

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

8 (a) Civil penalties imposed pursuant to RCW 18.104.155,
9 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, sections 2
10 and 3 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090,
11 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

12 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
13 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
14 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

15 (c) Except as provided in RCW 90.03.210(2), the issuance,
16 modification, or termination of any permit, certificate, or license
17 by the department or any air authority in the exercise of its
18 jurisdiction, including the issuance or termination of a waste
19 disposal permit, the denial of an application for a waste disposal
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
27 70.95J.080.

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

32 (g) Decisions of local conservation districts related to the
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
36 technologies to a particular dairy farm; and failure to adhere to the
37 plan review and approval timelines in RCW 90.64.026.

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

1 (i) Decisions of the department of natural resources, the
2 department of fish and wildlife, and the department that are
3 reviewable under chapter 76.09 RCW, and the department of natural
4 resources' appeals of county, city, or town objections under RCW
5 76.09.050(7).

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

8 (k) Decisions of the department of fish and wildlife to issue,
9 deny, condition, or modify a hydraulic project approval permit under
10 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
11 comply, to issue a civil penalty, or to issue a notice of intent to
12 disapprove applications.

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

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

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

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

23 (b) Hearings conducted by the department pursuant to RCW
24 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
25 90.44.180.

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

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.

--- END ---