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ENGROSSED SUBSTITUTE HOUSE BILL 1555

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State of Washington

54th Legislature

1995 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives McMorris, Foreman, Mastin, Chandler, Chappell, Koster, Boldt, Schoesler, Johnson, Honeyford, Clements, Regala, Basich, Hargrove, L. Thomas, Thompson, Delvin, Elliot, Goldsmith, McMahan, Mulliken, Fuhrman, Stevens and Lisk)

Read first time 03/01/95.

1 AN ACT Relating to entry for the purposes of water pollution  
2 investigations on agricultural land; amending RCW 90.48.120; adding a  
3 new section to chapter 90.48 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is a need  
6 to establish a clear process for handling complaints regarding water  
7 quality from uses of agricultural land near waters of the state.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW  
9 to read as follows:

10 (1) In exercising its authority under RCW 90.48.090, in  
11 investigating conditions on agricultural land, the department must  
12 comply with this section.

13 (2) Except in the case of an emergency, the department shall  
14 provide at least seven days' notice to a person alleged to have engaged  
15 in polluting activities before entering agricultural property to  
16 investigate conditions relating to actions causing pollution of the  
17 waters of the state. This notice must also be provided to the property

1 owner if that person is different from the person alleged to have  
2 engaged in polluting activities.

3 (3) When the department receives a complaint that pollution has  
4 occurred, the department must document the time the alleged pollution  
5 occurred, and the name and address of the person who made the  
6 complaint. In the event that the evidence was collected by a  
7 department employee, the department must document the name of the  
8 employee. Information revealing the identity of the person who made  
9 the complaint is exempt from public inspection and copying to the  
10 extent that RCW 42.17.310 applies.

11 (4) When the department has an agreement or permit with a person  
12 alleged to have engaged in polluting activities, the department shall  
13 observe the provisions of the agreement or permit.

14 (5) Nothing in this section shall preclude the department from  
15 executing a valid search warrant for legal entry onto property used for  
16 agricultural production to investigate compliance with the provisions  
17 of RCW 90.48.080 and 90.48.120.

18 **Sec. 3.** RCW 90.48.120 and 1992 c 73 s 25 are each amended to read  
19 as follows:

20 (1) Whenever, in the opinion of the department, any person shall  
21 violate or creates a substantial potential to violate the provisions of  
22 this chapter or chapter 90.56 RCW, or fails to control the polluting  
23 content of waste discharged or to be discharged into any waters of the  
24 state, the department shall notify such person of its determination by  
25 registered mail. Such determination shall not constitute an order or  
26 directive under RCW 43.21B.310. Within thirty days from the receipt of  
27 notice of such determination, such person shall file with the  
28 department a full report stating what steps have been and are being  
29 taken to control such waste or pollution or to otherwise comply with  
30 the determination of the department. Whereupon the department shall  
31 issue such order or directive as it deems appropriate under the  
32 circumstances, and shall notify such person thereof by registered mail.

33 (2) Whenever the department deems immediate action is necessary to  
34 accomplish the purposes of this chapter or chapter 90.56 RCW, it may  
35 issue such order or directive, as appropriate under the circumstances,  
36 without first issuing a notice or determination pursuant to subsection  
37 (1) of this section. An order or directive issued pursuant to this

1 subsection shall be served by registered mail or personally upon any  
2 person to whom it is directed.

3 (3) The department shall not make a determination as provided under  
4 subsection (1) of this section that a violation is occurring or is  
5 substantially likely to occur on agricultural property without cogent,  
6 site-specific scientific evidence. The department shall not deem  
7 immediate action necessary as provided under subsection (2) of this  
8 section to accomplish the purposes of this chapter or chapter 90.56 RCW  
9 on agricultural property without cogent, site-specific scientific  
10 evidence.

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