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SENATE BILL 5798

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State of Washington

54th Legislature

1995 Regular Session

By Senators Deccio and Loveland

Read first time 02/07/95. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to the authority of the state for cleanup standards  
2 under the model toxics control act; and reenacting and amending RCW  
3 70.105D.030.

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

5 **Sec. 1.** RCW 70.105D.030 and 1994 c 257 s 11 and 1994 c 254 s 3 are  
6 each reenacted and amended to read as follows:

7 (1) The department may exercise the following powers in addition to  
8 any other powers granted by law:

9 (a) Investigate, provide for investigating, or require potentially  
10 liable persons to investigate any releases or threatened releases of  
11 hazardous substances, including but not limited to inspecting,  
12 sampling, or testing to determine the nature or extent of any release  
13 or threatened release. If there is a reasonable basis to believe that  
14 a release or threatened release of a hazardous substance may exist, the  
15 department's authorized employees, agents, or contractors may enter  
16 upon any property and conduct investigations. The department shall  
17 give reasonable notice before entering property unless an emergency  
18 prevents such notice. The department may by subpoena require the

1 attendance or testimony of witnesses and the production of documents or  
2 other information that the department deems necessary;

3 (b) Conduct, provide for conducting, or require potentially liable  
4 persons to conduct remedial actions (including investigations under (a)  
5 of this subsection) to remedy releases or threatened releases of  
6 hazardous substances. In carrying out such powers, the department's  
7 authorized employees, agents, or contractors may enter upon property.  
8 The department shall give reasonable notice before entering property  
9 unless an emergency prevents such notice. In conducting, providing for,  
10 or requiring remedial action, the department shall give preference to  
11 permanent solutions to the maximum extent practicable and shall provide  
12 for or require adequate monitoring to ensure the effectiveness of the  
13 remedial action;

14 (c) Indemnify contractors retained by the department for carrying  
15 out investigations and remedial actions, but not for any contractor's  
16 reckless or wilful misconduct;

17 (d) Carry out all state programs authorized under the federal  
18 cleanup law and the federal resource, conservation, and recovery act,  
19 42 U.S.C. Sec. 6901 et seq., as amended;

20 (e) Classify substances as hazardous substances for purposes of RCW  
21 70.105D.020(6) and classify substances and products as hazardous  
22 substances for purposes of RCW 82.21.020(1);

23 (f) Issue orders or enter into consent decrees or agreed orders  
24 that include deed restrictions where necessary to protect human health  
25 and the environment from a release or threatened release of a hazardous  
26 substance from a facility. Prior to establishing a deed restriction  
27 under this subsection, the department shall notify and seek comment  
28 from a city or county department with land use planning authority for  
29 real property subject to a deed restriction;

30 (g) Enforce the application of permanent and effective  
31 institutional controls that are necessary for a remedial action to be  
32 protective of human health and the environment; and

33 (h) Take any other actions necessary to carry out the provisions of  
34 this chapter, including the power to adopt rules under chapter 34.05  
35 RCW.

36 (2) The department shall immediately implement all provisions of  
37 this chapter to the maximum extent practicable, including investigative  
38 and remedial actions where appropriate. The department shall adopt,  
39 and thereafter enforce, rules under chapter 34.05 RCW to:

1 (a) Provide for public participation, including at least (i) the  
2 establishment of regional citizen's advisory committees, (ii) public  
3 notice of the development of investigative plans or remedial plans for  
4 releases or threatened releases, and (iii) concurrent public notice of  
5 all compliance orders, agreed orders, enforcement orders, or notices of  
6 violation;

7 (b) Establish a hazard ranking system for hazardous waste sites;

8 (c) Establish reasonable deadlines not to exceed ninety days for  
9 initiating an investigation of a hazardous waste site after the  
10 department receives information that the site may pose a threat to  
11 human health or the environment and other reasonable deadlines for  
12 remedying releases or threatened releases at the site;

13 (d) Publish and periodically update minimum cleanup standards for  
14 remedial actions (~~(at least as stringent as the cleanup standards under~~  
15 ~~section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at~~  
16 ~~least as stringent as all applicable state and federal laws, including~~  
17 ~~health-based standards under state and federal law)) that comply with  
18 the following requirements:~~

19 (i) Cleanup standards shall be protective of public health, safety,  
20 and welfare, and the environment;

21 (ii) Cleanup standards shall be based upon generally accepted and  
22 peer reviewed scientific evidence or methodologies, reasonable  
23 assumptions of exposure scenarios as to amounts of contaminants to  
24 which humans or other receptors will be exposed, when and where those  
25 exposures will occur and the amount of that exposure, and shall avoid  
26 the use of redundant conservative assumptions;

27 (iii) Cleanup standards shall be based upon site-specific risks;

28 (iv) Cleanup standards shall provide for site-specific risk  
29 reduction that is proportionate to the total cost of the remedial  
30 action;

31 (v) Cleanup standards shall require that remedial actions be  
32 selected based upon a consideration of technical practicability, and  
33 shall give equal consideration to engineering controls, institutional  
34 controls, and treatment;

35 (vi) Cleanup standards shall provide that remedial actions shall be  
36 based on current and reasonably anticipated future land and resource  
37 uses; and

38 (e) Apply industrial clean-up standards at industrial properties.  
39 Rules adopted under this subsection shall ensure that industrial

1 properties cleaned up to industrial standards cannot be converted to  
2 nonindustrial uses without approval from the department. The  
3 department may require that a property cleaned up to industrial  
4 standards is cleaned up to a more stringent applicable standard as a  
5 condition of conversion to a nonindustrial use. Industrial clean-up  
6 standards may not be applied to industrial properties where hazardous  
7 substances remaining at the property after remedial action pose a  
8 threat to human health or the environment in adjacent nonindustrial  
9 areas.

10 (3) Before November 1st of each even-numbered year, the department  
11 shall develop, with public notice and hearing, and submit to the ways  
12 and means and appropriate standing environmental committees of the  
13 senate and house of representatives a ranked list of projects and  
14 expenditures recommended for appropriation from both the state and  
15 local toxics control accounts. The department shall also provide the  
16 legislature and the public each year with an accounting of the  
17 department's activities supported by appropriations from the state  
18 toxics control account, including a list of known hazardous waste sites  
19 and their hazard rankings, actions taken and planned at each site, how  
20 the department is meeting its top two management priorities under RCW  
21 70.105.150, and all funds expended under this chapter.

22 (4) The department shall establish a scientific advisory board to  
23 render advice to the department with respect to the hazard ranking  
24 system, cleanup standards, remedial actions, deadlines for remedial  
25 actions, monitoring, the classification of substances as hazardous  
26 substances for purposes of RCW 70.105D.020(6) and the classification of  
27 substances or products as hazardous substances for purposes of RCW  
28 82.21.020(1). The board shall consist of five independent members to  
29 serve staggered three-year terms. No members may be employees of the  
30 department. Members shall be reimbursed for travel expenses as  
31 provided in RCW 43.03.050 and 43.03.060.

32 (5) The department shall establish a program to identify potential  
33 hazardous waste sites and to encourage persons to provide information  
34 about hazardous waste sites.

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