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HOUSE BILL 1423

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State of Washington

67th Legislature

2021 Regular Session

By Representative Fitzgibbon; by request of Department of Natural Resources

1 AN ACT Relating to smoke management civil enforcement; amending  
2 RCW 70A.15.3160; and prescribing penalties.

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

4 **Sec. 1.** RCW 70A.15.3160 and 2020 c 20 s 1112 are each amended to  
5 read as follows:

6 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and  
7 43.05.150, and in addition to or as an alternate to any other penalty  
8 provided by law, any person who violates any of the provisions of  
9 this chapter, chapter 70A.25 or 70A.450 RCW, RCW 70A.45.080 or  
10 76.04.205, or any of the rules in force under such chapters or  
11 section may incur a civil penalty in an amount not to exceed ten  
12 thousand dollars per day for each violation. Each such violation  
13 shall be a separate and distinct offense, and in case of a continuing  
14 violation, each day's continuance shall be a separate and distinct  
15 violation.

16 (b) Any person who fails to take action as specified by an order  
17 issued pursuant to this chapter shall be liable for a civil penalty  
18 of not more than ten thousand dollars for each day of continued  
19 noncompliance.

20 (2)(a) Penalties incurred but not paid shall accrue interest,  
21 beginning on the ninety-first day following the date that the penalty

1 becomes due and payable, at the highest rate allowed by RCW 19.52.020  
2 on the date that the penalty becomes due and payable. If violations  
3 or penalties are appealed, interest shall not begin to accrue until  
4 the thirty-first day following final resolution of the appeal.

5 (b) The maximum penalty amounts established in this section may  
6 be increased annually to account for inflation as determined by the  
7 state office of the economic and revenue forecast council.

8 (3) Each act of commission or omission which procures, aids or  
9 abets in the violation shall be considered a violation under the  
10 provisions of this section and subject to the same penalty. The  
11 penalties provided in this section shall be imposed pursuant to RCW  
12 43.21B.300.

13 (4) All penalties recovered under this section by the department  
14 or the department of natural resources shall be paid into the state  
15 treasury and credited to the air pollution control account  
16 established in RCW 70A.15.1010 or, if recovered by the authority,  
17 shall be paid into the treasury of the authority and credited to its  
18 funds. If a prior penalty for the same violation has been paid to a  
19 local authority, the penalty imposed by the department under  
20 subsection (1) of this section shall be reduced by the amount of the  
21 payment.

22 (5) To secure the penalty incurred under this section, the state  
23 or the authority shall have a lien on any vessel used or operated in  
24 violation of this chapter which shall be enforced as provided in RCW  
25 60.36.050.

26 (6) Public or private entities that are recipients or potential  
27 recipients of department grants, whether for air quality related  
28 activities or not, may have such grants rescinded or withheld by the  
29 department for failure to comply with provisions of this chapter.

30 (7) In addition to other penalties provided by this chapter,  
31 persons knowingly under-reporting emissions or other information used  
32 to set fees, or persons required to pay emission or permit fees who  
33 are more than ninety days late with such payments may be subject to a  
34 penalty equal to three times the amount of the original fee owed.

35 (8) The department shall develop rules for excusing excess  
36 emissions from enforcement action if such excess emissions are  
37 unavoidable. The rules shall specify the criteria and procedures for  
38 the department and local air authorities to determine whether a

1 period of excess emissions is excusable in accordance with the state  
2 implementation plan.

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