
SENATE BILL 5310

State of Washington

64th Legislature

2015 Regular Session

By Senators Ericksen, McCoy, Sheldon, Honeyford, Ranker, and Cleveland; by request of Energy Facilities Siting and Evaluation Council

Read first time 01/19/15. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to enforcement actions at facilities sited by the
2 energy facility site evaluation council; amending RCW 80.50.150 and
3 90.56.330; adding a new section to chapter 80.50 RCW; creating a new
4 section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the energy
7 facility site evaluation council is responsible for enforcing
8 compliance with this chapter, rules adopted pursuant to this chapter,
9 and site certification agreements and any permits it issues to energy
10 facilities under its jurisdiction. The statutes related to
11 enforcement by the energy facility site evaluation council have not
12 been amended to reflect the increased penalty amounts that both the
13 department of ecology and local air pollution control authorities may
14 impose for similar violations of environmental laws. In addition, it
15 is not altogether clear whether the department of ecology has
16 authority to issue additional penalties under RCW 90.56.330 for oil
17 spills at facilities under the jurisdiction of the energy facility
18 site evaluation council. Furthermore, the legislature recently
19 eliminated the mitigation process from certain environmental appeals
20 because it represented an unnecessary step in the penalty process.
21 The legislature did not amend the enforcement statutes of the energy

1 facility site evaluation council to eliminate the mitigation process
2 for penalties issued by the council.

3 The legislature intends to amend the energy facility site
4 evaluation council's enforcement statutes to make them more
5 consistent with similar enforcement statutes of the department of
6 ecology and local air pollution control authorities, and to clarify
7 the appeal process. The legislature also intends to clarify that
8 additional penalties under RCW 90.56.330 for oil spills may be
9 imposed by the department of ecology at energy facilities under the
10 jurisdiction of the energy facility site evaluation council. Nothing
11 in RCW 80.50.150 and section 3 of this act limits the department of
12 ecology's ability to impose natural resource damage assessments
13 pursuant to RCW 90.56.370, regardless of whether or not the energy
14 facility is under the jurisdiction of the energy facility site
15 evaluation council.

16 **Sec. 2.** RCW 80.50.150 and 2013 c 23 s 283 are each amended to
17 read as follows:

18 (1) The courts are authorized to grant such restraining orders,
19 and such temporary and permanent injunctive relief as is necessary to
20 secure compliance with this chapter (~~(and/or with)~~), rules adopted
21 under this chapter, a site certification agreement issued pursuant to
22 this chapter (~~(or)~~), a national pollutant discharge elimination
23 system (hereafter in this section, NPDES) permit or waste discharge
24 permit issued by the council (~~(pursuant to)~~) under chapter 90.48 RCW
25 (~~(or)~~), any air permit issued (~~(pursuant to)~~) under RCW
26 80.50.040(~~(+14)~~) (12), or any other permit issued by the council.

27 (2) The court may assess civil penalties in an amount not less
28 than one thousand dollars per day nor more than twenty-five thousand
29 dollars per day for each day of construction or operation in material
30 violation of this chapter, or in violation of any rules adopted under
31 this chapter, or in material violation of any site certification
32 agreement issued pursuant to this chapter, or in violation of any
33 NPDES permit or waste discharge permit issued by the council pursuant
34 to chapter 90.48 RCW, or in violation of any air permit issued
35 pursuant to RCW 80.50.040(~~(+14)~~) (12), or in violation of any other
36 permit issued by the council. (~~(The court may charge the expenses of~~
37 ~~an enforcement action relating to a site certification agreement~~
38 ~~under this section, including, but not limited to, expenses incurred~~
39 ~~for legal services and expert testimony, against any person found to~~

1 ~~be in material violation of the provisions of such certification.~~
2 ~~PROVIDED, That the expenses of a person found not to be in material~~
3 ~~violation of the provisions of such certification, including, but not~~
4 ~~limited to, expenses incurred for legal services and expert~~
5 ~~testimony, may be charged against the person or persons bringing an~~
6 ~~enforcement action or other action under this section.~~

7 ~~(2))~~ (3) Willful violation of any provision of this chapter
8 ~~((shall be))~~ is a gross misdemeanor.

9 ~~((3))~~ (4) Willful or criminally negligent, as defined in RCW
10 9A.08.010(1)(d), violation of any provision of ~~((an))~~ a NPDES permit
11 or waste discharge permit issued by the council pursuant to chapter
12 90.48 RCW, or any air permit issued by the council pursuant to RCW
13 80.50.040~~((14))~~ (12) or any emission standards promulgated by the
14 council in order to implement the federal clean air act and the state
15 implementation plan with respect to energy facilities under the
16 jurisdiction provisions of this chapter ~~((shall be deemed))~~, or any
17 other permit issued by the council, is a ~~((crime))~~ gross misdemeanor,
18 and upon conviction thereof shall be punished by a fine of up to
19 twenty-five thousand dollars per day and costs of prosecution. ~~((Any~~
20 ~~violation of this subsection shall be a gross misdemeanor.~~

21 ~~(4))~~ (5) Any person knowingly making any false statement,
22 representation, or certification in any document in any ~~((NPDES))~~
23 form, notice, or report required by ~~((an))~~ a NPDES or waste discharge
24 permit, or in any form, notice, or report required for or by any air
25 permit issued pursuant to RCW ~~((80.50.090(14) shall be deemed))~~
26 80.50.040(12), or any other permit issued by the council, is guilty
27 of a ~~((crime))~~ gross misdemeanor, and upon conviction thereof shall
28 be punished by a fine of up to ten thousand dollars and costs of
29 prosecution.

30 ~~((5) Every person who violates the provisions of certificates~~
31 ~~and permits issued or administered by the council shall incur, in~~
32 ~~addition to any other penalty as provided by law, a penalty in an~~
33 ~~amount of up to five thousand dollars a day for every such violation.~~
34 ~~Each and every such violation shall be a separate and distinct~~
35 ~~offense, and in case of a continuing violation, every day's~~
36 ~~continuance shall be and be deemed to be a separate and distinct~~
37 ~~violation. Every act of commission or omission which procures, aids,~~
38 ~~or abets in the violation shall be considered a violation under the~~
39 ~~provisions of this section and subject to the penalty provided in~~
40 ~~this section. The penalty provided in this section shall be imposed~~

1 by a notice in writing, either by certified mail with return receipt
2 requested or by personal service, to the person incurring the same
3 from the council describing such violation with reasonable
4 particularity. The council may, upon written application therefor
5 received within fifteen days after notice imposing any penalty is
6 received by the person incurring the penalty, and when deemed in the
7 best interest to carry out the purposes of this chapter, remit or
8 mitigate any penalty provided in this section upon such terms as the
9 council shall deem proper, and shall have authority to ascertain the
10 facts upon all such applications in such manner and under such
11 regulations as it may deem proper. Any person incurring any penalty
12 under this section may appeal the same to the council. Such appeals
13 shall be filed within thirty days of receipt of notice imposing any
14 penalty unless an application for remission or mitigation is made to
15 the council. When an application for remission or mitigation is made,
16 such appeals shall be filed within thirty days of receipt of notice
17 from the council setting forth the disposition of the application.
18 Any penalty imposed under this section shall become due and payable
19 thirty days after receipt of a notice imposing the same unless
20 application for remission or mitigation is made or an appeal is
21 filed. When an application for remission or mitigation is made, any
22 penalty incurred hereunder shall become due and payable thirty days
23 after receipt of notice setting forth the disposition of the
24 application unless an appeal is filed from such disposition. Whenever
25 an appeal of any penalty incurred hereunder is filed, the penalty
26 shall become due and payable only upon completion of all review
27 proceedings and the issuance of a final order confirming the penalty
28 in whole or in part. If the amount of any penalty is not paid to the
29 council within thirty days after it becomes due and payable, the
30 attorney general, upon the request of the council, shall bring an
31 action in the name of the state of Washington in the superior court
32 of Thurston county or of any county in which such violator may do
33 business, to recover such penalty. In all such actions, the procedure
34 and rules of evidence shall be the same as an ordinary civil action
35 except as otherwise provided in this chapter. All penalties recovered
36 under this section shall be paid into the state treasury and credited
37 to the general fund.))

38 (6) Civil proceedings to enforce this chapter may be brought by
39 the attorney general or the prosecuting attorney of any county
40 affected by the violation on his or her own motion or at the request

1 of the council. Criminal proceedings to enforce this chapter may be
2 brought by the prosecuting attorney of any county affected by the
3 violation on his or her own motion or at the request of the council.

4 (7) The remedies and penalties in this (~~section~~) chapter, both
5 civil and criminal, (~~shall be~~) are cumulative and (~~shall be~~) are
6 in addition to any other penalties and remedies available at law, or
7 in equity, to any person.

8 NEW SECTION. Sec. 3. A new section is added to chapter 80.50
9 RCW to read as follows:

10 (1) Every person who violates the provisions of site
11 certification agreements or permits issued or administered by the
12 council shall incur, in addition to any other penalty as provided by
13 law, a penalty in an amount of up to ten thousand dollars a day for
14 every such violation. Each and every such violation is a separate and
15 distinct offense, and in case of a continuing violation, every day's
16 continuance is deemed to be a separate and distinct violation. Every
17 act of commission or omission which procures, aids, or abets in the
18 violation is considered a violation under the provisions of this
19 section and subject to the penalty provided in this section. The
20 penalty provided in this section shall be imposed by a notice in
21 writing, either by certified mail with return receipt requested or by
22 personal service, to the person incurring the same from the council
23 describing such violation with reasonable particularity.

24 (2) Any person incurring any penalty under this section must
25 appeal the same to the council before the person may appeal the
26 penalty to superior court. Such appeals with the council shall be
27 filed within thirty days of the date of receipt of notice imposing
28 any penalty. Any penalty imposed under this section shall become due
29 and payable thirty days after the date of receipt of a notice
30 imposing the same unless an appeal is filed with the council.
31 Whenever an appeal of any penalty incurred hereunder is filed with
32 the council, the penalty shall become due and payable only upon
33 completion of all review proceedings and the issuance of a final
34 order confirming the penalty in whole or in part. Judicial review of
35 any final decision of the council is governed by chapter 34.05 RCW.
36 All penalties recovered under this section shall be paid into the
37 state treasury and credited to the general fund.

38 (3) For purposes of this subsection, "date of receipt" means:

39 (a) Five business days after the date of mailing; or

1 (b) The date of actual receipt, when the actual receipt date can
2 be proven by a preponderance of the evidence. The date of actual
3 receipt, however, may not exceed forty-five days from the date of
4 mailing.

5 **Sec. 4.** RCW 90.56.330 and 2007 c 347 s 3 are each amended to
6 read as follows:

7 (1) Except as otherwise provided in RCW 90.56.390, any person who
8 negligently discharges oil, or causes or permits the entry of the
9 same, shall incur, in addition to any other penalty as provided by
10 law, a penalty in an amount of up to one hundred thousand dollars for
11 every such violation, and for each day the spill poses risks to the
12 environment as determined by the director. Any person who
13 intentionally or recklessly discharges or causes or permits the entry
14 of oil into the waters of the state shall incur, in addition to any
15 other penalty authorized by law, a penalty of up to five hundred
16 thousand dollars for every such violation and for each day the spill
17 poses risks to the environment as determined by the director. The
18 amount of the penalty shall be determined by the director after
19 taking into consideration the size of the business of the violator,
20 the gravity of the violation, the previous record of the violator in
21 complying, or failing to comply, with the provisions of chapter 90.48
22 RCW, the speed and thoroughness of the collection and removal of the
23 oil, and such other considerations as the director deems appropriate.
24 Every act of commission or omission which procures, aids or abets in
25 the violation shall be considered a violation under the provisions of
26 this section and subject to the penalty herein provided for. The
27 penalty provided for in this section shall be imposed pursuant to RCW
28 43.21B.300.

29 (2) The director may impose the penalty authorized under
30 subsection (1) of this section, in addition to any other assessment
31 for damages the director is authorized to impose pursuant to law, if
32 the discharge of oil is at an energy facility regulated by the energy
33 facility site evaluation council.

34 (3) Any penalty recovered pursuant to this section shall be
35 credited to the coastal protection fund created in RCW 90.48.390.

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