

the county following a reasonable period of good faith negotiations, including mediation where appropriate, the matter shall be resolved by a board of arbitrators, to be convened at the request of either party, such board of arbitrators to consist of a representative from the city or town involved, a representative of the county, and a third representative to be appointed by the other two representatives. If no agreement can be reached with regard to said third representative, the third representative shall be appointed by a judge of the superior court of the county of the jurisdiction owning the solid waste facility. The determination by the board of arbitrators of the sum to be paid by the county shall be binding on all parties. Each party shall pay the costs of their individual representatives on the board of arbitrators and they shall pay one-half of the cost of the third representative.

Passed the House April 22, 1983.

Passed the Senate April 15, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

CHAPTER 172

[Substitute House Bill No. 64]

HAZARDOUS WASTE DISPOSAL—VIOLATIONS—CIVIL ACTIONS FOR DAMAGES—ATTORNEY FEES—PENALTIES

AN ACT Relating to hazardous waste disposal; amending section 8, chapter 101, Laws of 1975-'76 2nd ex. sess. and RCW 70.105.080; amending section 9, chapter 101, Laws of 1975-'76 2nd ex. sess. and RCW 70.105.090; and adding new sections to chapter 70.105 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. There is added to chapter 70.105 RCW a new section to read as follows:

A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section.

Sec. 2. Section 8, chapter 101, Laws of 1975-'76 2nd ex. sess. and RCW 70.105.080 are each amended to read as follows:

(1) Every person who fails to comply with any provision of (~~RCW 70-105-010 through 70.105.090~~) this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than (~~one~~) ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids,

or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of ecology shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper. Any penalty imposed by the provisions of this section shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the hearings board shall become due and payable thirty days after receipt of the notice setting forth the decision.

(4) If the amount of any penalty is not paid to the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided.

Sec. 3. Section 9, chapter 101, Laws of 1975-'76 2nd ex. sess. and RCW 70.105.090 are each amended to read as follows:

In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of (~~RCW 70.105.010 through 70.105.090~~) this chapter, or of the rules implementing (~~RCW 70.105.010 through 70.105.090~~) this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of (~~RCW 70.105.010 through 70.105.090~~) this chapter, or of the rules implementing (~~RCW 70.105.010 through 70.105.090~~) this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine

of not less than one hundred dollars nor more than ~~((one))~~ ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense.

NEW SECTION. Sec. 4. There is added to chapter 70.105 RCW a new section to read as follows which shall be codified as RCW 70.105.095:

(1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order shall become final unless, no later than thirty days after the order is served, the person or persons named in the order request a public hearing. The request shall be delivered either by registered mail or personally to the department. Upon receiving a request for a hearing, the department shall promptly conduct a public hearing to consider testimony and new information regarding the order. The department may, at its discretion, either modify the order or maintain it unchanged. The order shall become effective immediately after the department reaches a final decision, unless the department modifies the order to specify another compliance date.

(4) Any person directly affected by a compliance order or by any decision of the department regarding a compliance order may appeal the order or decision to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 19, 1983.

Passed the Senate April 14, 1983.

Approved by the Governor May 16, 1983.

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