

(2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

(3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(4) Not more than ten percent for activities which control nonpoint source water pollution;

(5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and

(6) ~~((Not more than))~~ Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section from February 21, 1986, until December 31, 1995, ~~((may))~~ shall be ~~((transferred by the department))~~ appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Passed the House March 11, 1987.

Passed the Senate April 10, 1987.

Approved by the Governor May 19, 1987.

Filed in Office of Secretary of State May 19, 1987.

CHAPTER 528

[Engrossed Substitute Senate Bill No. 5570]

SOLID WASTE INCINERATOR ASH RESIDUE DISPOSAL—PREFERRED SOLID WASTE MANAGEMENT JOINT SELECT COMMITTEE

AN ACT Relating to disposal of incinerator ash residues; adding a new section to chapter 70.105 RCW; adding a new chapter to Title 70 RCW; creating new sections; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting

requirements of chapter 70.105 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70.95 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the hazardous waste management act.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.

(4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.

(5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.

(6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facilities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.

NEW SECTION. Sec. 3. (1) Prior to managing special incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets the requirements of chapter 70.95 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator ash to be disposed at facilities that are operating in compliance with this chapter.

NEW SECTION. Sec. 4. (1) Any person who violates any provision of a department regulation or regulatory order relating to the management of

special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. If 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 shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(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.

(4) If the amount of any penalty is not paid to the department 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 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 provided in this chapter.

NEW SECTION. Sec. 5. Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by registered mail upon any person to whom it is directed.

NEW SECTION. Sec. 6. The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder.

NEW SECTION. Sec. 7. Any person found guilty of willfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation.

***NEW SECTION.** Sec. 8. *Any person aggrieved by an action taken under this chapter, or the failure of another to take an action under this chapter when required to do so, may bring an appropriate action in law or equity to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW, except that such action shall be expedited by the board to the maximum extent possible. In any appeal of the board's decision, the court may award reasonable costs and attorneys' fees to the prevailing party.*

*Sec. 8 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 9. A new section is added to chapter 70.105 RCW to read as follows:

This chapter does not apply to special incinerator ash regulated under chapter 70.— (sections 1 through 8, 11, and 12 of this act) except that, for purposes of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste.

NEW SECTION. Sec. 10. The department shall submit draft rules required by section 3 of this act to the appropriate standing committees of the legislature for review by January 1, 1988. Final rules shall be adopted by April 1, 1988.

NEW SECTION. Sec. 11. This chapter shall be known as the special incinerator ash disposal act.

NEW SECTION. Sec. 12. Sections 1 through 10 of this act shall not apply to municipal solid waste incinerators that are in operation on the effective date of this section until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner.

NEW SECTION. Sec. 13. Sections 1 through 8, 11, and 12 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 14. 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.

NEW SECTION. Sec. 15. (1) The Washington state legislature finds that the state faces a solid waste disposal crisis. The siting of new landfills, the location and design of new solid waste incinerators, the disposal of ash residue, and compliance with the priorities of the solid waste management act and the hazardous waste management act require that an effort be made

by the state to ensure that local governments and private industry have adequate technical information, and that programs are developed to accomplish the statutory waste management priorities.

(2) A comprehensive evaluation of preferred solid waste management programs shall be undertaken by the joint select committee for preferred solid waste management. The committee shall consist of four members of the house of representatives appointed by the speaker of the house and four members of the senate appointed by the president of the senate. The committee shall involve representatives of organizations representing cities, counties, the public, the waste management industry, waste haulers, and the private recycling industry. The committee shall report its findings and recommendations to the appropriate standing committees of the legislature by January 1, 1988.

(3) The department of ecology may provide the committee with specific recommendations on waste management programs from studies the department has undertaken as required by RCW 70.95.263.

(4) The committee shall attempt to determine the reasons why higher rates of waste reduction and recycling have not been achieved in the state and develop recommendations on how to achieve higher rates.

(5) The committee's recommendations shall include (a) specific programs for waste reduction, recycling, incineration, and landfills, (b) specific goals for solid waste management, and (c) specific responsibilities for state government, local government, and the private sectors to accomplish the committee's recommendations. The committee shall also recommend specific legislation and rule-making requirements to accomplish the committee's findings.

(6) The joint select committee for preferred solid waste management shall cease to exist on July 1, 1988.

NEW SECTION. Sec. 16. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 23, 1987.

Passed the House April 16, 1987.

Approved by the Governor May 19, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 19, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 8, Engrossed Substitute Senate Bill No. 5570, entitled:

"AN ACT Relating to disposal of incinerator ash residues."

This legislation would exempt municipal solid waste incinerator ash residue from the state's hazardous waste law and create a new category of waste and a new regulatory procedure.

Section 8 of the bill would allow any aggrieved person to bring an action in law or equity to the pollution control hearings board related to this new regulatory process. Currently, the board only hears appeals from department orders, permits, penalties, and other decisions. The language of this section could potentially confer new jurisdiction by allowing persons who feel the department is not processing permits or adopting regulations pursuant to this bill as it should to seek relief from the board rather than through the state court system.

The intent of this section was to assure a route for citizen appeals. A route for citizen appeals of any department decision exists in section 10 of Senate Bill No. 5427, already signed into law. Thus, elimination of this section does not affect the ability of citizens to challenge the department's decisions. For this reason, I have vetoed section 8.

I am concerned that a wholesale exemption of a category of waste from the hazardous waste law could set a bad precedent and send an incorrect message by implying that the door is open for exempting other categories of hazardous waste. The toxicity of a waste, and thus, viable alternatives for its safe disposal should be determined on the basis of scientific tests. Because of these factors, I am signing this legislation reluctantly.

In developing the rules, regulations and policies necessary to implement Engrossed Substitute Senate Bill No. 5570, I am asking the Department of Ecology to give primary emphasis to the long-term protection of public health and environmental values. The Department also needs to develop effective disposal alternatives and address such issues as the risk of mixing fly and disposal ash, immobilizing ash and transportation.

With the exception of section 8, Engrossed Substitute Senate Bill No. 5570 is approved."