

CHAPTER 1

[Initiative 297]

"MIXED" RADIOACTIVE AND NONRADIOACTIVE HAZARDOUS WASTE REGULATIONS

AN ACT Relating to protection of public health, safety, and the environment at sites with wastes composed of radioactive and nonradioactive hazardous substances, including the Hanford Nuclear Reservation; and adding a new chapter to Title 70 RCW.

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

NEW SECTION. Sec. 1. INTENT. The purpose of this act is to prohibit sites at which mixed radioactive and hazardous wastes have contaminated or threaten to contaminate the environment, such as at the Hanford Nuclear Reservation, from adding more waste that is not generated from the cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws.

NEW SECTION. Sec. 2. DECLARATION OF POLICY. (1) The Hanford Nuclear Reservation, through which the Columbia river flows for fifty miles, is the most contaminated area in North America. Use of Hanford as a national waste dump for radioactive and/or hazardous or toxic wastes will increase contamination and risks.

(2) Cleanup is the state of Washington's top priority at sites with hazardous waste contamination that threatens our rivers, ground water, environment, and health. Adding more waste to contaminated sites undermines the cleanup of those sites. Cleanup is delayed and funds and resources diverted if facilities needed to treat or clean up existing waste are used for imported waste, and if larger facilities must be built to accommodate off-site wastes.

(3) The fundamental and inalienable right of each person residing in Washington state to a healthy environment has been jeopardized by pollution of air and water spreading from Hanford.

(4) The economy of Washington state, from agriculture to tourism, to fisheries, could be irreparably harmed from any accident releasing radiation or mixed radioactive and hazardous wastes.

(5) It is Washington state policy to prohibit adding more waste to a site where mixed radioactive and hazardous wastes (a) are not stored or monitored in compliance with state and federal hazardous waste laws and (b) have been dumped in unlined soil trenches which threaten to contaminate our state's resources.

(6) It is state policy to protect Washington's current and future residents, particularly children and other sensitive individuals, from the cumulative risks of cancer caused by all cancer-causing hazardous substances, including radionuclides, by ensuring that hazardous substance release and disposal sites meet the standards established pursuant to chapter 70.105D RCW.

(7) Effective public and tribal involvement is necessary for government agencies to make sound decisions that will protect human health and the environment for thousands of years. It is Washington state policy to encourage and enhance effective public and tribal involvement in the complex decisions relating to cleanup, closure, permitting, and transportation of mixed waste; and to provide effective assistance to the public and local governments in reviewing and commenting upon complex decision documents. It is appropriate that the

polluter pay for necessary public participation for decisions relating to waste releases and risks from mixed waste sites.

(8) The transport of mixed radioactive and hazardous wastes, is inherently dangerous, and should be minimized. Decisions involving transportation of these wastes must be made with full involvement of the potentially affected public through whose communities these wastes will pass.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

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

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford Nuclear Reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9) "Mixed waste" or "mixed radioactive and hazardous waste" means any hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component, including any such substances that have been released to the environment, or pose a threat of future release, in a manner that may expose persons or the environment to either the nonradioactive or radioactive hazardous substances.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities: Added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes; or against facilities at which mixed wastes have been released, or which are undergoing closure pursuant to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter.

NEW SECTION. Sec. 4. DUTIES OF THE DEPARTMENT OF ECOLOGY TO REGULATE MIXED WASTES. (1) The department of ecology shall regulate mixed wastes to the fullest extent it is not preempted by federal law, pursuant to chapter 70.105 RCW and the further provisions of this chapter.

(2) Any facility owner or operator of a site storing, managing, processing, transferring, treating, or disposing of mixed wastes shall apply for and obtain a final facility permit under chapter 70.105 RCW, this chapter, and the federal resource, conservation, and recovery act (RCRA), 42 U.S.C. Sec. 6901 et seq., as amended, before transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility. At any facility granted a sitewide permit, under which permits for individual units are appended or become individual chapters, final facility permits must be applied for and obtained, for each unit or facility within the site where mixed wastes are, or will be, stored or disposed, prior to transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility.

(3) The department shall not issue any permit requested under subsection (2) of this section unless the facility owner or operator is in compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a final facility permit for existing mixed wastes stored, treated, or disposed of at the facility.

(4) If any sites, units, or facilities have interim status or an interim status permit, but fail to meet requirements for maintaining interim status under chapter 70.105 RCW, this chapter, or RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, including but not limited to ground water monitoring and compliance requirements, the department shall find that the applicant for a final facility permit for mixed wastes under this section has failed to demonstrate compliance for purposes of obtaining such a permit pursuant to subsection (2) or (3) of this section.

(5) The addition of new trenches or cells, or widening or deepening of trenches, at a site with existing trenches containing mixed wastes shall be considered an expansion of the existing facilities for purposes of compliance with RCW Chapter 70.105 or this chapter, and any permit or permit modification for such expansion shall be subject to the requirements of this section.

(6)(a) The department shall not issue a permit, or modify any existing permit, allowing for the treatment, storage, or disposal of any additional mixed wastes not generated at the site or facility as part of a remedial or corrective action, until:

(i) The site or facility is in full compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a closure permit for any facility or unit from which a release of hazardous substances has occurred or is threatened to occur, after characterization and corrective action; or

(ii) The department has issued a formal determination that no further remedial action is necessary to remedy such a release pursuant to chapter 70.105D RCW.

(b) The prohibitions of this subsection (6) against granting or modifying a permit apply whenever a release of a hazardous substance, including but not limited to releases of radionuclides and any other carcinogenic substances, has occurred at a site or facility, and such release, or the cumulative impact of all releases at the site, are projected by the department to have the potential to exceed the following standards:

(i) Surface or ground water standards established pursuant to federal or state laws, including but not limited to maximum concentration limits, drinking water, or other standards; or

(ii) Cleanup or other standards adopted to protect human health or the environment pursuant to RCW 70.105D.030.

(7) Until all the requirements of subsection (6) have been met, the department shall, by permit condition, limit any new construction of, expansion of, or final facility permit for, a facility for treating, storing or disposing of mixed waste to the capacity or size necessary for investigation, characterization, remediation, or corrective action of facilities or units undergoing closure, or remedial or corrective action at the site.

(8) The department may grant or modify permits pursuant to RCW Chapter 70.105 solely for the purpose of remediating or closing existing facilities or units where there has been a release or threatened release of mixed wastes, if the permit expressly bars the storage or disposal of wastes that are not generated onsite pursuant to a remedial action, closure or corrective action approved by the department pursuant to this chapter or RCW Chapter 70.105D.

(9) The department may permit specific treatment capacity at sites subject to the limitations of this section to be utilized for remediation or cleanup wastes from other sites, consistent with a site treatment plan approved by the department pursuant to RCRA, 42 USC 6901 et seq., as amended; provided that the department determines, after public notice and comment and consideration of impacts and alternatives in an environmental impact statement prepared pursuant to RCW Chapter 43.21C, that use of such capacity will not: (i) significantly increase any emissions, discharges, risks or consequences of potential accidents; (ii) result in permanent disposal of imported offsite wastes in the soil at the site; (iii) be stored in excess of any applicable time limits, or any applicable requirement; or, (iv) impact funding for cleanup and corrective actions at the site or, result in delay of treatment or remediation of wastes at the site.

NEW SECTION. Sec. 5. RELEASES OF RADIOACTIVE SUBSTANCES; CLEAN-UP STANDARDS. (1) The department shall consider releases, or potential releases, of radioactive substances or radionuclides as hazardous substances if the radioactive substance poses a risk of a carcinogenic, toxic, or any other adverse health or environmental effect. The department shall require corrective action for, or remediation of, such releases to meet the same health risk based minimum clean-up standards as adopted for other carcinogenic, toxic, or other hazardous substances posing similar health risks pursuant to RCW 70.105D.030.

(2) The department shall include all known or suspected human carcinogens, including radionuclides and radioactive substances, in calculating the applicable clean-up standard, corrective action level, or maximum allowable projected release from a landfill or other facility or unit at which mixed wastes

are stored, disposed, or are reasonably believed by the department to be present, for purposes of chapter 70.105 RCW, this chapter, or chapter 70.105D RCW. In making any permit decision pursuant to chapter 70.105 RCW or this chapter, or in reviewing the adequacy of any environmental document prepared by another state, local, or federal agency, relating to mixed waste sites or facilities, the department shall ensure that the cumulative risk from all such carcinogens does not exceed the maximum acceptable carcinogen risk established by the department for purposes of determining clean-up standards pursuant to RCW 70.105D.030, or one additional cancer caused from exposure to all potential releases of hazardous substances at the site per one hundred thousand exposed individuals, whichever is more protective.

NEW SECTION. Sec. 6. DISPOSAL OF WASTE IN UNLINED TRENCHES TO END; INVESTIGATION AND CLEANUP OF UNLINED TRENCHES; CLOSURE OF MIXED WASTE TANK SYSTEMS. (1)(a) The department, within sixty days after the effective date of this act, shall order any site owner or operator utilizing landfills or burial grounds containing unlined soil trenches in which mixed wastes are reasonably believed by the department to have been disposed to:

(i) Cease disposal of all further wastes in unlined soil trenches or facilities within thirty days of the order;

(ii) Initiate an investigation to provide the department with an inventory based on actual characterization of all hazardous substances potentially disposed in unlined trenches;

(iii) Initiate an investigation of releases or potential releases of any hazardous substances that were potentially disposed in unlined trenches;

(iv) Prepare, or pay the costs of the department to prepare, pursuant to the provisions of chapters 70.105 and 70.105D RCW, a plan for waste retrieval, treatment, closure, and monitoring for the unlined soil trenches, which may include temporary caps pending full characterization and remediation, the schedule for which shall be based upon determination of requirements to prevent migration of wastes; and

(v) Install and maintain a ground water and soil column monitoring system, within two years, which is in compliance with all requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended.

(b) The department shall provide, by rule, for public notice, hearings, and comment on the scope of investigations and all actions necessary to fulfill the purposes of this section. Notice to the public for purposes of this section shall include a description of potential impacts to health or the environment from the facilities, and the potential for any state resources, or land areas, to be restricted from future use due to potential releases of hazardous substances from the site or facility.

(2) At any site with one or more land disposal facilities or units containing unlined trenches or pits, at which mixed wastes are stored or were disposed, any proposed expansion of such land disposal facility or unit, or application to permit new land disposal facilities at the same site, shall be considered to be an impermissible expansion of the existing units or facilities where:

(a) There is a reasonable basis to believe mixed or hazardous wastes are buried or stored that have not been fully characterized to conclusively determine that no mixed or hazardous wastes are present;

(b) A release of a hazardous substance has occurred, including but not limited to releases of radioactive or mixed wastes; or

(c) The department has information to indicate that there is a significant potential for a release of hazardous substances.

(3) Determinations and permit actions, pursuant to chapter 70.105 RCW or this chapter, relating to the closure of tank systems consisting of one or more interconnected tanks in which mixed wastes are currently, or were, stored, shall be made by the department only after consideration of the cumulative impacts of all tank residuals and leaks from such systems at the site pursuant to chapter 43.21C RCW. Actions may not be taken to close individual tanks, or which may prevent the retrieval of residual mixed wastes remaining in a tank, in any element of the tank system, or in the soil due to leaks from the tank system, prior to compliance with this section and determination of the quantity, nature, and potential impacts from such residuals or releases. In no event may the department allow the use of a landfill closure for mixed waste tank systems prior to all potentially effective and practicable actions having been taken to characterize, and remediate, releases and potential releases. The department may require research and development of technologies for characterization or retrieval pursuant to this section.

NEW SECTION. Sec. 7. DISCLOSURE OF COSTS AND CLEAN-UP BUDGETS. The department shall require, as a condition for any permit issued pursuant to the provisions of chapter 70.105 RCW or this chapter for facilities storing, treating, or disposing of mixed wastes, and at which hazardous substance releases to the environment have occurred, and remedial or corrective action has not been completed, that the site owner or operator disclose annually to the department the projected total and annual cost of each project or action required to meet the provisions of each applicable federal or state law governing investigation, cleanup, corrective action, closure, or health and safety of facilities at the site; and, if the owner or operator is a state or federal agency, the budgets or budget requests for such purposes for the owner's current fiscal year and each of the upcoming three fiscal years. Where the owner of the site is a federal agency, the annual disclosure shall be provided to the department within fourteen days of: Submission of the agency's budget request to Congress; final appropriation of funds; and at the time any field request is submitted to the agency's headquarters for funding in fiscal years beyond the current fiscal year. The disclosures to the department required by this section shall include, at a minimum, a comparison of the cost estimate for all activity required by compliance orders, decrees, schedules, or agreements, with the funds requested and with the funds appropriated. The owner or operator shall provide additional detail on projected costs and budgets, at the request of the department. Every year, the department shall hold public hearings, and seek advice from the site advisory board, on the disclosures required by this section and funding priorities.

NEW SECTION. Sec. 8. EXEMPTIONS: NAVAL REACTOR DISPOSAL AT HANFORD; LOW-LEVEL WASTE COMPACT. (1) Intent. The state of Washington has previously permitted, and committed to assist in the national need for, disposal of sealed nuclear reactor vessels and compartments from submarines and other vessels of the United States Navy; and to operate a regional disposal site for low-level waste with no hazardous waste pursuant to an

interstate compact. The U.S. Navy reactor vessels or compartments are sealed in a manner estimated to prevent release of hazardous or radioactive wastes for hundreds of years, exceeding the performance of a liner system while disposal trenches are operating. Therefore, the state of Washington accepts the burden and risks of continued disposal of retired U.S. Navy reactor vessels and low-level waste pursuant to the Compact, recognizing that this disposal will cause future impacts to the soil, environment, and ground water.

(2) Nothing in this act shall affect existing permits for, or in any manner prohibit, the storage or disposal of sealed nuclear reactor vessels or compartments from retired United States Navy submarines or surface ships at the existing disposal facility at Hanford, or affect existing permits for the operation of any facility by the federal government at which United States Navy reactors are decommissioned or refueled.

(3) Obligations of the state pursuant to the Northwest Interstate Compact on Low-Level Radioactive Waste Management and agreements made by the compact shall not be interfered with or affected by any provision of this act. If hazardous or mixed wastes have been disposed or released at any facility operated pursuant to the Compact, the relevant provisions of this chapter apply.

NEW SECTION. **Sec. 9. PUBLIC INVOLVEMENT.** (1) At any site or facility at which there has been a release of mixed wastes, permits issued under chapter 70.105 RCW for mixed waste facilities shall provide for the operation and funding of a broadly representative advisory board. The board shall be composed of representatives chosen by: potentially affected tribes; regional and statewide citizen groups with an established record of concern regarding human health or the environment impacted, or potentially impacted by releases from the site; local groups concerned with health and resource impacts; local governments; and the state of Oregon if that state may be, or has been, impacted by the release or threatened release of waste. Such permits shall specify that the advisory board be continued with adequate funding, provided by the owner or operator of the site, to perform its chartered functions until final closure or certification of the completion of remedial or corrective action.

(2) The department shall request the advisory board created or maintained at a facility pursuant to this section to advise it on procedural and substantive matters necessary for informed public comment. The department shall formally consider and respond to any comments from the advisory board regarding exposure scenarios prior to issuing any decision on a remedial, corrective or closure action.

(3) The department shall base planning for its own oversight and permitting functions utilizing an assumption that mixed waste facility service charges established pursuant to RCW 70.105.280 should not be less than one percent of the first two hundred million dollars of the estimated annual site clean-up budget for the coming year, and one half of one percent of the estimated annual site clean-up budget above that level. If the department determines that a lower or higher level of service charges is necessary to support its oversight and public involvement functions, then it shall seek comment from any advisory committee established for the site, and from the public, regarding the appropriate level of support.

(4) (a) Due to the complexity of issues involving mixed waste storage, treatment and disposal facilities, at such facilities, the department shall make

available annual local government and public participation grants for both: (i) assistance in public review of mixed waste permit, closure, and cleanup decisions; and, (ii) review of, and public comment on, site budgets, compliance costs and funding priorities. Public participation grants pursuant to this section shall be provided as determined by the criteria adopted by the department pursuant to RCW 70.105D.070(5). Local government grants pursuant to this section shall be made available to either a local government or a coalition of local governments. Grants under this section may be renewed annually at a level two times that permitted under RCW 70.105D.070(5), and shall not be subject to annual appropriation by the Legislature.

(b) Local government and public participation grants established under this chapter shall be funded through the state toxics control account, by charging an applicant or permit holder a mixed waste surcharge added to the service charge established by RCW 70.105.280. This surcharge shall be collected and administered consistent with the procedures and requirements established in this section and RCW 70.105.280 to ensure adequate public and local government involvement. This mixed waste surcharge shall be no less than fifteen one-hundredths of one percent of the first two hundred million dollars of annual site budget for all related clean-up activities, of which five one-hundredths of one percent shall be available for grants to local government. The mixed waste surcharge for public and local government participation grants shall be five one-hundredths of one percent of the portion of any estimated annual site clean-up budget exceeding two hundred million dollars. Any unused mixed waste surcharges assessed under this section shall remain in the state toxics control account established pursuant to chapter 70.105D RCW, and shall be utilized to reduce the mixed waste surcharge assessed the owner or operator of the facility in future years.

(5) For federal facilities with releases of mixed wastes or hazardous substances owned or operated a federal agency, such as Hanford, the annual site clean-up budget shall be determined by the department, for purposes of this section, based upon the greater of the congressional budget request or appropriations of the federal government for activities at the site related to cleanup or waste management. If the appropriation amount for a fiscal year exceeds the congressional budget request, the department shall adjust the assessment of the mixed waste surcharge within thirty days of final enactment of the appropriation.

NEW SECTION. Sec. 10. ENFORCEMENT AND APPEALS. (1) Any person may bring a civil action to compel the owner or operator of a mixed waste facility to comply with the requirements of this chapter or any permit or order issued by the department pursuant to this chapter; or to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give written notice to the department of intent to sue, unless a substantial endangerment exists. The court may award attorney fees and other costs to a prevailing plaintiff in the action.

(2) Orders of the department relating to mixed waste facilities under this chapter may be appealed to the pollution control hearings board, by any person whose interests in natural resources or health may be adversely affected by the action or inaction of the department.

(3) Civil actions under this section may be brought in superior court of Thurston county or of the county in which the release or threatened release of a hazardous substance occurs, or where mixed wastes that are the subject of the action may be transported, stored, treated, or disposed.

(4) Any violation of this chapter shall be considered a violation of chapter 70.105 RCW, and subject to all enforcement actions by the department or attorney general for violations of that chapter, including imposition of civil or criminal penalties.

NEW SECTION. Sec. 11. CONSTRUCTION. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

NEW SECTION. Sec. 12. SHORT TITLE. This act shall be known as the Cleanup Priority Act.

NEW SECTION. Sec. 13. CAPTIONS NOT PART OF LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act constitute a new chapter in Title 70 RCW.

Originally filed in Office of Secretary of State January 8, 2004.

Approved by the People of the State of Washington in the General Election on November 2, 2004.

CHAPTER 2

[Initiative 872]

THE PEOPLE'S CHOICE INITIATIVE

AN ACT Relating to elections and primaries; amending RCW 29A.04.127, 29A.36.170, 29A.04.310, 29A.24.030, 29A.24.210, 29A.36.010, 29A.52.010, 29A.80.010, and 42.12.040; adding a new section to chapter 29A.04 RCW; adding a new section to chapter 29A.52 RCW; adding a new section to chapter 29A.32 RCW; creating new sections; repealing RCW 29A.04.157, 29A.28.010, 29A.28.020, and 29A.36.190; and providing for contingent effect.

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

TITLE

NEW SECTION. Sec. 1. This act may be known and cited as the People's Choice Initiative of 2004.

LEGISLATIVE INTENT: PROTECTING VOTERS' RIGHTS AND CHOICE

NEW SECTION. Sec. 2. The Washington Constitution and laws protect each voter's right to vote for any candidate for any office. The Washington State Supreme Court has upheld the blanket primary as protecting compelling state interests "allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary election; and giving each voter a free choice among all candidates in the primary." *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of Appeals has threatened this system through a decision, that, if not overturned