SENATE BILL REPORT

SB 5754

AS OF FEBRUARY 23, 1993

Brief Description: Providing for the cleanup of sites contaminated by storm water discharges.

SPONSORS: Senators Fraser, Barr and Haugen

SENATE COMMITTEE ON ECOLOGY & PARKS

Staff: Cathy Baker (786-7708)

Hearing Dates: February 24, 1993

BACKGROUND:

Stormwater. Stormwater runoff from highways, municipalities, and industries in urban areas can contribute varying amounts of pollutants to marine and freshwater sediments. The Department of Ecology estimates that 27 percent of water quality impacts statewide are due to stormwater runoff. Contaminated sediments have been found to have both adverse environmental effects and human health risks. Under existing federal and state laws, such contaminated sediments present cleanup costs of great magnitude and involve complex issues regarding liability for such cleanups.

The federal Clean Water Act requires persons who discharge pollution into the nation's waters to obtain a National Pollutant Discharge Elimination System (NPDES) permit. In Washington State, administration of the NPDES program is delegated to the Department of Ecology. Initially, NPDES permits were required of industrial and municipal point source discharges, and the applicability of the NPDES system to stormwater discharges was not clear. Recent amendments to the Clean Water Act expressly include requirements for permitting stormwater discharges. The NPDES regulations adopted by the U.S. Environmental Protection Agency require permits for both industrial and municipal stormwater discharges and specify use of best management practices and source control mechanisms. The Puget Sound Water Quality Authority's Management Plan also establishes requirements for local stormwater management programs.

Cleanup Programs. The state Model Toxics Control Act (MTCA) and the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) establish cleanup programs for hazardous substances which represent a threat to human health or the environment. Under MTCA, sediment contamination can result in cleanup liability for aquatic landowners. In Washington State this affects both private and public landowners, including the state of Washington, which owns approximately 2 million acres of aquatic lands.

Both MTCA and CERCLA laws provide for strict, joint and several liability for the cleanup of hazardous wastes at certain facilities. The liability standard in MTCA applies to all "owners and operators" of a contaminated site, including the owner of the land, as well as generators and certain transporters of the substances released at the site. Past or present owners or operators of a contaminated site may be liable regardless of the fault or responsibility of the party for the contamination (strict liability), and may be liable for the full costs of cleanup (joint and several liability).

CERCLA allows for contributions for cleanup costs from other parties provided that the cleanup is done consistent with federal cleanup requirements. A recent state Supreme Court case ruled that there is no such right of contribution under MTCA. MTCA does include some provisions for protecting an innocent party from cleanup liability, but it can be difficult and expensive to assert these defenses.

Under MTCA, sites are selected for cleanup based, in part, on their relative hazard ranking as indicated on a Hazardous Sites List developed by the department.

Department of Ecology's Sediment Program. In 1991, the Department of Ecology adopted rules governing sediment management and cleanup. The rules establish standards for sediments, require permits if discharges will cause a degradation of sediment quality, and provide standards for cleanup of sediments.

Under the sediment management rules, a person who has a permit to discharge stormwater may be authorized to exceed sediment quality standards for a period of time.

During development of the sediment rules, the department estimated the cleanup costs for various sites containing contaminated sediments. The costs range from $250,000 for the smallest sites and up to $56 million for the largest sites. These figures suggest that cleanup costs for the dozens of potential sites within the state will be substantial.

In 1992, the department convened a Stormwater and Sediments Liability Discussion Group to study liability issues associated with sediments contaminated by stormwater discharges. The group recently released a detailed report evaluating stormwater source control and sediment cleanup programs and recommending actions to address liability issues.

SUMMARY:

A definition of stormwater is added to the model toxics control statute. Stormwater discharge is defined as discharge from a municipal or industrial separate storm sewer system to surface or ground waters of the state, or onto property not owned in fee title by the owner of the storm sewer system.

By January 1, 1994, the Department of Ecology shall adopt a schedule for assigning a hazard ranking to at least ten sites that are contaminated from stormwater. By July 1, 1995, the department shall initiate remedial investigations and feasibility studies for at least ten of these sites.

The department may adopt an enforcement policy to exclude from enforcement residential owners that were not the cause of a hazardous substance release, including owners of residential properties contaminated by stormwater discharges.

The department shall adopt rules by January 1, 1994, defining the criteria to be considered in determining whether an owner, past owner, or purchaser of land had no knowledge that a hazardous substance had been released which resulted in the need for remedial action.

By January 1, 1994, the department shall adopt rules providing procedures and criteria for recommending to the Attorney General that a settlement be entered into with persons whose contribution to the release of hazardous substance is insignificant in amount or toxicity. The rules shall include owners and past owners of contaminated property for which the contamination was caused principally by stormwater discharges.

From July 1, 1993 to June 30, 1997, 5 percent of funds in the state toxics control account shall be available for investigations and remedial actions for the highest ranked stormwater-contaminated sites identified by the department.

From July 1, 1993 to June 30, 1997, 10 percent of the funds appropriated from the local toxics control act shall be expended as grants to local governments undertaking remedial actions at sites contaminated by stormwater discharges and for providing source control and best management practices. The department shall require at least a 50 percent match from nonstate sources for any grant.

Appropriation: none

Revenue: none

Fiscal Note: requested February 11, 1993