# SENATE BILL REPORT

# SB 6011

## AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, JANUARY 28, 1994

**Brief Description:** Providing for high-priority ranking of toxic sites where drinking water wells have been closed or contaminated.

**SPONSORS:** Senators Fraser, Winsley and Franklin

**SENATE COMMITTEE ON ECOLOGY & PARKS**

**Majority Report:** That Substitute Senate Bill No. 6011 be substituted therefor, and the substitute bill do pass.
Signed by Senators Fraser, Chairman; Moore, Sutherland and Talmadge.

**Staff:** Gary Wilburn (786-7453)

**Hearing Dates:** January 17, 1994; January 28, 1994

**BACKGROUND:**

Pursuant to the Model Toxics Control Act (MTCA), the Department of Ecology administers a comprehensive program to conduct and supervise the cleanup of hazardous waste sites. Under the act, the current owner of the site, the owner at the time of waste disposal, as well as those generating the waste, and certain transporters of the waste to the site, are jointly and severally liable for all of the costs of site cleanup. For many sites following its entry on the site list and preparation of a site hazard assessment, the department will notify those it has credible evidence to believe are potentially liable parties (PLPs) under the act. The department may then take enforcement action to order the PLPs to take cleanup action at the site, or it may conduct the cleanup itself and seek to recover its costs of cleanup. The act allows the department to recover up to three times its costs when the PLPs refuse to conduct the cleanup.

The intent of MTCA is that PLPs be responsible for the site cleanup, and joint and several liability is intended to provide an incentive for all PLPs to negotiate their respective responsibilities for the costs of site cleanup. However, in many cases not all of the PLPs are willing to participate in such negotiations, and under current law the only remedy of the remaining PLPs is to conduct the cleanup and seek cost recovery. While Ecology may take enforcement steps against such "recalcitrant" PLPs, its resources are limited and many of the lower-ranked sites will not receive substantial state involvement. The act does not grant treble cost recovery authority to PLPs, as it does to the state.

Many hazardous waste sites have contaminated or threaten to contaminate drinking water supplies of nearby communities. MTCA directs Ecology to adopt a hazard ranking system, but is silent as to the criteria which should be used in the system. The system adopted by rule by the department ranks sites with multiple pathways of potential public health harm higher than sites with a single pathway, even in the case where a single pathway may be drinking water contamination.

The act is silent on the provision of alternative water supplies in the case of site contamination of drinking water, but a provision in the 1991-1993 capital budget directed the department to undertake a pilot program of grants from the local toxics account to address drinking water needs related to waste sites. Since that time the department has proposed rules to allow such grants in limited circumstances.

Many businesses and property owners contract with cleanup firms for the study and cleanup of sites contaminated by hazardous substances. There are a growing number of such cleanup firms doing business in the state, with varying levels of competence in the work conducted. Except for the licensing of supervisors of underground storage tank work, there is no state oversight of the professional competence of cleanup contractors.

**SUMMARY:**

The provision of drinking water, including construction of delivery systems, is expressly included within the definition of "remedial action" under MTCA. In conducting cleanups, enforcement against potentially liable parties (PLPs), and in making cleanup grants, the department is to give a high priority to sites which have caused the closure of drinking water wells or contaminated a drinking water supply, or pose a threat of closure or contamination.

A person may recover contribution from other PLPs of up to treble his or her costs of: (1) site studies; (2) determining the identity and waste contribution of PLPs at the site; and (3) taking interim cleanup actions at the site. To be eligible for such enhanced cost recovery, the person must have provided prior notice to the defendants and an opportunity to participate in the funding of the remedial actions. Ecology is to adopt rules on the procedures and limitations of these cost recovery provisions.

Ecology shall conduct a report to the Legislature on state oversight of cleanup contractor competence. The report shall include a review of the practices and standards of firms providing services in all types of cleanups, and advise whether state certification is needed. The views of interested parties are to be obtained in preparing the report.

**EFFECT OF PROPOSED SUBSTITUTE:**

The cost recovery provisions are modified to allow up to double damages, instead of treble damages as under the original bill. A person seeking recovery must establish that the defendant without good cause refused to participate in negotiations for cleanup of the facility. Factors to be considered by the reviewing court are enumerated.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested January 7, 1994

**TESTIMONY FOR:**

Will provide a useful incentive for all liable parties to participate in funding the cleanup.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Chris Parsons, WA Env. Council; Carol Fleskes, Dept. of Ecology; Pat McElroy, Dept. of Natural Resources; Bruce Wishart, Sierra Club