

SENATE BILL REPORT

ESSB 6123

AS PASSED SENATE, FEBRUARY 10, 1994

Brief Description: Modifying provisions of the model toxics control act.

SPONSORS: Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Deccio, Amondson, Loveland, Snyder, Sellar, Skratek, Pelz and Winsley)

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 6123 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chairman; Deccio, Moore, Morton, Sutherland and Talmadge.

Staff: Kari Guy (786-7464)

Hearing Dates: January 19, 1994; January 26, 1994

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

BACKGROUND:

The Model Toxics Control Act (MTCA) requires the Department of Ecology to conduct or require remedial action to remedy releases of hazardous substances. Under the act, the current owner of the site, the owner at the time of waste disposal, and those generating or transporting the waste, are jointly and severally liable for the costs of site cleanup.

Uncertainty over future liability can be a deterrent to purchase and redevelopment of industrial lands. Under MTCA, the Attorney General may agree to a settlement with any potentially liable person if the agreement would lead to a more expeditious cleanup. In September 1993, Ecology entered into a consent decree to allow a prospective purchaser to commit to a defined cleanup liability. However, the Model Toxics Control Act is silent on criteria or procedures for prospective purchaser agreements.

Minimum cleanup standards for remedial actions have been established by rule by the Department of Ecology. In 1991, Ecology adopted rules to establish cleanup standards for industrial sites, to be used only on existing industrial sites where the cleanup action provides for institutional controls. The rules specified the standards would likely be used only at large industrial areas. These standards have thus far been applied only in the Commencement Bay and Duwamish areas.

Extremely hazardous and dangerous wastes are designated by rule by the Department of Ecology. These designations may be

more stringent than those wastes designated as hazardous wastes by the federal government. In hazardous waste site cleanups, soils excavated at the site may be subject not only to the cleanup standards and procedures under MTCA, but also to the management and standards of the state's hazardous waste laws developed primarily to address current hazardous waste generation by ongoing businesses.

SUMMARY:

Legislative findings are made it is in the public's interest to integrate land use policies with cleanup policies, and to clean up and reuse contaminated industrial properties.

In addition to other types of enforcement orders and settlements, Ecology is authorized to enter "agreed orders" with which the potentially liable parties agree to comply. Such orders are not a settlement under MTCA, and do not provide contribution protection or provide eligibility for public funding of cleanup.

Industrial properties are defined as any properties zoned as manufacturing or industrial areas by a city or county planning under the Growth Management Act (GMA), or are zoned for industrial use by cities or counties not planning under the GMA, and are adjacent to existing industrial areas.

The powers of the Department of Ecology are amended to allow the department to enter into consent decrees or agreed orders including deed restrictions limiting future uses to industrial use at sites where industrial cleanup standards are employed. The local planning authority must be given the opportunity to comment on any proposed deed restrictions.

The Department of Ecology is granted the authority to enforce permanent institutional controls implemented during remedial action.

The department must adopt rules providing for the application of industrial cleanup standards at industrial properties, and adopt rules prohibiting the conversion of industrial properties to other uses on properties where these standards have been applied. Industrial standards may not be applied to industrial properties where hazardous substances would pose a threat to persons residing in adjacent, non-industrial areas.

In addition to any other settlement powers, the Attorney General may enter into prospective purchaser settlements with persons not currently liable for remedial action at a facility, who propose to purchase and redevelop a facility. Criteria are given for qualification for a prospective purchaser agreement, including that the settlement must provide a cleanup plan, the settlement is in the public interest and will not increase health risks to people in the vicinity of the site, and the settlement will expedite remedial action. The settlement may be transferred.

No solid waste generated during site cleanup pursuant to an agreed order or consent decree shall be subject to designation as a dangerous waste or extremely dangerous waste, unless the waste would qualify as a hazardous waste under federal law. This exclusion shall apply only to solid wastes disposed of at a facility designated in a consent decree or agreed order by the department.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

This will encourage cleanup and redevelopment of existing industrial lands, and will help harmonize toxics cleanup laws with the goals of the Growth Management Act.

TESTIMONY AGAINST:

Industrial cleanup standards may not be adequate to protect human health and the environment; industrial properties are defined too broadly.

TESTIFIED: Eric Johnson, Washington Public Ports Association (pro); Chris Parsons, Washington Environmental Council (con); Bruce Wishart, Sierra Club (con); Kevin Godbout, Weyerhaeuser (pro); Larry Peterson, Washington Association of Counties (pro); Kris Backes, Association of Washington Business (pro); Carol Fleskes, Department of Ecology

HOUSE AMENDMENT(S):

Language allowing the transfer of a prospective purchaser settlement agreement to a third party is deleted.

Language is added to ensure that waste treated on site will be managed in a manner to be protective of human health and the environment as determined by the Department of Ecology.

A new section is added to clarify that nothing in the act will affect the authority of a county or city to condition the acceptance of hazardous waste in a municipal landfill.