

SENATE BILL REPORT

SB 6123

AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, JANUARY 26, 1994

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

SPONSORS: 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

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, as well as 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 that 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 that were developed primarily to address current hazardous waste generation by ongoing businesses.

SUMMARY:

Legislative findings are made that 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 through a local comprehensive plan, and that are marked by traditional industrial activities.

The powers of the Department of Ecology are amended to allow the department to enter into consent decrees or agreed orders that include deed restrictions to limit future uses to industrial use at sites where industrial cleanup standards are employed.

The department must adopt rules that provide for the application of industrial cleanup standards at industrial properties, and adopt rules that prohibit 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.

EFFECT OF PROPOSED SUBSTITUTE:

The definition of "industrial properties" is changed to include reference to zoning under the Growth Management Act.

The local county or city land use planning authority must be notified and given an 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.

Provisions for prospective purchaser agreements are moved to RCW 70.105D.040 to ensure settlements will have the contribution protection of that section. The requirement for substantial public benefit is expanded to include the reuse of a vacant or abandoned industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

A new section is added to clarify the disposal requirements for wastes generated during a remedial action.

Appropriation: none

Revenue: none

Fiscal Note: requested

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.