

FINAL BILL REPORT

ESB 7900

C 406 L 97

Synopsis as Enacted

Brief Description: Implementing the model toxics control act policy advisory committee recommendations

Sponsors: Senators Swecker, Fraser, Anderson, Rasmussen, Zarelli, Oke, Goings, Morton, Haugen, Hale, Spanel, Rossi, Johnson, Schow, Kohl, Sellar, Franklin, Horn, Kline, McAuliffe and Winsley.

Representatives Sheahan, Ballasiotes, Schoesler, Bush, Honeyford, Carrell, Chandler, Mitchell, Clements, Huff, Thompson, Hankins, Mulliken, Koster, Carlson, Cairnes, Cooke, Johnson, Skinner, Mastin, Smith, Crouse, Benson, Alexander, Talcott, Robertson, Lisk, Zellinsky, Boldt, Delvin, Sterk, Lambert, Hickel, Backlund and Pennington

Senate Committee on Agriculture & Environment

Senate Committee on Ways & Means

House Committee on Agriculture & Ecology

Background: The Model Toxics Control Act (MTCA) was adopted through the initiative process in 1988. In 1995, the Legislature created the MTCA Policy Advisory Committee to review implementation of MTCA and make recommendations to the Department of Ecology and to the Legislature. The legislative recommendations address a number of provisions in the Model Toxics Control Act.

Liability. Under MTCA, the owner of a contaminated site, the owner at the time of waste disposal, and any person generating or transporting the hazardous waste may be jointly or severally liable for the costs of site cleanup. The Department of Ecology currently has a policy of nonenforcement against owners of a property that overlies a contaminated ground-water plume, if the property is not a source of contamination and the property owner has not contributed to the contamination. However, there is no exemption from liability in the statute.

Settlement Agreements. Potentially liable persons may settle their liability with the state if their contribution to the site contamination is insignificant in amount and toxicity, or if the persons are not currently liable and are proposing to purchase or redevelop a contaminated site. The settlement agreement may include a covenant not to sue, which precludes future enforcement of MTCA against the settling party. If the property is subsequently transferred, the covenant not to sue is not automatically transferred to the new owner. This may create a disincentive for the sale or redevelopment of a site which has been subject to a remedial action.

In addition, settlement with a person proposing to purchase or redevelop a contaminated site must provide a "substantial public benefit." The Policy Advisory Committee found that this

requirement may unreasonably limit the availability of prospective purchaser agreements, and discourage brownfields redevelopment.

Independent Remedial Action. Approximately 90 percent of sites are currently cleaned up independent of Department of Ecology oversight. The majority of these cleanups are underground storage tank removals. If a property owner chooses to do an independent cleanup, the results of the cleanup must be reported to the Department of Ecology within 90 days. Ecology may require further remedial action if the cleanup is found to be inadequate. Under the Independent Remedial Action Program, the Department of Ecology will review the results of an independent cleanup for a fee. Once the review is complete, if the cleanup is satisfactory, the department provides the owner with a written determination of no further action, which can benefit the owners at the time of property transfer or redevelopment. The Policy Advisory Committee found that all owners conducting independent cleanups would benefit from technical assistance and guidance from an experienced Department of Ecology site manager. This technical assistance is not currently authorized in statute.

Public Participation. One percent of the money deposited in the state and local toxics control accounts is allocated for public participation grants. The grants are limited to \$50,000.

Summary: *Liability.* The owner of a site that overlies a plume of contaminated groundwater is not held liable for the contamination. To be eligible for this exemption, an owner must demonstrate that hazardous substances used on the site have not contributed to the contamination, and agree to allow access to the property and not to interfere with cleanup of the contaminated groundwater.

Settlement Agreements. A consent decree, such as a covenant not to sue, may be transferred to a subsequent owner of the property unless the consent decree is based on circumstances unique to the settling party. For consent decrees entered before the date of the act, the settling party may request an opinion from the Attorney General on whether unique circumstances exist which would limit the transferability of the consent decree.

The purpose of allowing a settlement agreement with a person proposing to purchase or redevelop a contaminated property is to promote the cleanup and reuse of vacant commercial or industrial property. Since the state does not have adequate resources to participate in all property transactions involving contaminated property, the Attorney General may give priority to settlements that provide a substantial public benefit.

Independent Remedial Action. The Department of Ecology is directed to provide advice and assistance to persons conducting independent remedial actions. Assistance may include opinions on whether remedial action is necessary. The Department of Ecology may collect the costs incurred in providing advice and assistance. Where appropriate, costs may be waived to support public participation.

Public Participation. Grants for public participation are not to exceed \$60,000.

A public hearing is required prior to entering a settlement agreement with a potentially liable person if at least ten people request one, or the Department of Ecology determines a hearing is necessary.

Votes on Final Passage:

Senate	46	0	
House	94	0	(House amended)
Senate	43	1	(Senate concurred)

Effective: July 27, 1997