

SENATE BILL REPORT

ESHB 1721

As of March 22, 2011

Title: An act relating to preventing storm water pollution from coal tar sealants.

Brief Description: Preventing storm water pollution from coal tar sealants.

Sponsors: House Committee on Environment (originally sponsored by Representatives Frockt, Kenney, Roberts, Fitzgibbon and Stanford).

Brief History: Passed House: 2/28/11, 67-30.

Committee Activity: Environment, Water & Energy: 3/22/11.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Jan Odano (786-7486)

Background: Sealcoats, or sealants are used to protect and beautify driveways and parking lots. Over time, the sealants wear off and small particles are washed from roads, driveways, and parking lots into streams, lakes, and Puget Sound accumulating in the sediment. There are two primary types of sealcoat material used: coal-tar-pitch based emulsion and asphalt-based emulsion. Coal tar sealants have a coal tar pitch base, which is 50 percent or more polycyclic aromatic hydrocarbons (PAHs) by weight, and contain concentrations of PAHs approximately 1000 times higher than asphalt-based products.

PAHs are a group of chemicals formed during the incomplete burning of coal, oil, gas, wood, garbage, or other organic substances. There are more than 100 different PAHs, some of which are known human and animal carcinogens. PAHs are suspected to cause cancer, reproductive problems, and weakened immune systems in aquatic organisms such as oysters, amphibians, and fish inhabiting areas where PAHs accumulate in the sediment.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Amendment): After January 1, 2012, no person may sell at wholesale or retail a coal tar pavement product that is labeled as containing coal tar. Coal tar and coal tar pavement product are defined.

After July 1, 2012, a person may not apply a coal tar pavement product on a driveway or parking area.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Ecology (DOE) may issue a notice of corrective action to a person who sells or applies a coal tar pavement product in violation of the act.

A city or county may adopt an ordinance to provide enforcement with the requirements of the act. A city or county adopting an ordinance for enforcement has jurisdiction concurrent with the DOE.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Coal-tar is noxious and there is no reason to sell it in this state. It has been shown that it causes environmental and health effects. There are alternative products that are comparable and price competitive. We would be making a strong statement to be the first state to ban the use of these products. PAHs are a mix of chemicals, many of which are carcinogenic and mutagenic. They affect the survival and growth of many aquatic species. They are persistent, bio-accumulative and toxic (PBTs). Once in the environment, PBTs are difficult to clean-up. When good alternatives are available, it makes a lot of sense to move away from these products. This bill would provide an important benefit to improving the health of aquatic lands state-wide. Eliminating a source of contamination would reduce the state's liability. Healthy aquatic lands are integral to restoring Puget Sound. This would help with dealing with storm water which is a challenge in the cities.

CON: Environmental forensic science links sources to impacts. All the likely sources need to be identified and compare the results of different methods. The data does not overlap in the samples taken at Lake Ballinger and coal-tar sealants. The data suggests that Lake Ballinger is not impacted by PAHs from coal-tar. The chemistry of coal-tar PAHs is similar to other environmental sources. The science does not show that coal-tar is a significant contributor to PAHs in sediment. Passing bills for feel good reasons rather than for cause is reckless and careless. It causes a decline in the trust of state employees. Rules need to be based in science. Banning coal-tar sealants won't reduce the amount of PAHs in sediment. We should wait until the Department of Ecology has completed its Toxic Loading Study to see if coal-tar is a problem.

OTHER: Coal-tar sealcoat is a major source of PAHs across the U.S. PAHs are toxic, mutagenic and carcinogenic, which is why we are concerned about them. Even a small amount of coal-tar can be a significant source of PAHs because it contains high concentrations of PAHs. Dust from pavement with coal-tar based sealants has elevated PAH concentrations. It is the primary cause of upward trends in PAHs in urban lake sediment. The fingerprint of the PAHs in Lake Ballinger is correlated with coal-tar sealants. House dust contaminated with PAHs is an important source of exposure to humans. Apartments and houses with coal-tar sealants had 25 times the amount of PAHs than similar homes with

parking lots with other surface types. A study of small streams in the Seattle area showed that coal-tar is an important source of PAHs in these streams. The PAHs in sediment causes a lot of concern for aquatic life and human health as well.

Persons Testifying: PRO: Representative Frock, prime sponsor; Carol Kraege, WA Department of Ecology; Kyle Murphy, WA Department of Natural Resources; Dave Williams, Association of WA Cities; Mo McBroom, WA Environmental Council.

CON: Kirk O'Reilly, Exponent; Anne LeHuray, Roman Daniels-Brown, Pavement Coatings Technology Council.

OTHER: Peter Van Metre, U.S. Geological Survey.