

SENATE BILL REPORT

SB 6288

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 6, 2014

Title: An act relating to water quality determinations made by the department of ecology.

Brief Description: Concerning water quality determinations made by the department of ecology.

Sponsors: Senator Dandel.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/05/14, 2/06/14 [DP, DNP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Brown, Honeyford and Ranker.

Minority Report: Do not pass.

Signed by Senators McCoy, Ranking Member; Billig, Chase and Litzow.

Staff: Jan Odano (786-7486)

Background: The Water Pollution Control Act (WPCA) provides the Department of Ecology (Ecology) with the jurisdiction to control and prevent pollution in fresh, surface, underground, and marine waters of the state. Under the WPCA, discharging any organic or inorganic matter that causes or tends to cause water pollution is prohibited.

Whenever, in the opinion of Ecology, a person violates or creates a substantial potential to violate the WPCA or the Oil and Hazardous Substance Spill Prevention and Response laws, or fails to control pollution from being discharged or to be discharged into any waters of the state, Ecology must notify the person of its determination. A person receiving notice has 30 days to file with Ecology a report stating actions taken or actions that will be taken to comply with the determination. Ecology may issue an order or directive, without first providing notice, when it determines immediate action is needed to meet the purposes of WPCA or Oil and Hazardous Substance Spill Prevention and Response laws.

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.

There has been ongoing litigation, *Joseph Lemire v Ecology*, regarding Ecology's application of the WPCA with respect to the pollution prevention purpose of the WPCA. Ecology issued an order requiring Lemire to come into compliance with the WPCA, which was appealed to the Pollution Control Hearings Board (PCHB). The PCHB concluded that the order was within Ecology's statutory authority. The decision by the PCHB was appealed to superior court, where Ecology's order was invalidated, and the court held that the order was unsubstantiated by the record and effected an unconstitutional taking. Ecology then appealed to the Washington State Supreme Court. The Supreme Court reinstated the PCHB decision and reversed the superior court decision.

Summary of Bill: Ecology must base all determinations regarding whether a person has violated or created a substantial potential to pollute under the WPCA or the Oil and Hazardous Substance Spill Prevention and Response laws on a preponderance of actual site-based, source-specific environmental testing.

Appropriation: None.

Fiscal Note: Available.

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: We need to adhere to innocent before proven guilty. A determination should not be based in Ecology's opinion but in actual science-based determination. We need surety of what is going on on the ground. A science-based approach is what should be occurring. Citizens deserve due process and evidence. Determinations should be made on source-specific environmental testing. The meaning of substantial potential is unclear. Ecology has clear authority to enforce and should have evidence to support enforcement actions.

CON: This would reduce and eliminate Ecology's ability to administer the WPCA with respect to non-point source pollution. Where there is clear evidence, we need the ability to take action before pollution occurs. We do not have access to sites and sources at times. Where there is no access, you may be able to see the problem, but no monitoring will occur.

Persons Testifying: PRO: Wes McCart, Stevens County Commissioner; Jim DeTro, Okanogan County Commissioner; Karen Skoog, Pend Oreille County Commissioner; Jack Field, WA Cattlemen Assn.; Jim Halstrom, WA State Horticultural Assn.; Evan Sheffels, WA Farm Bureau; Julie Loveall, Alayna Loveall, citizens.

CON: Kelly Susewind, Ecology; Bruce Wishart, Puget Soundkeeper, Sierra Club, Center for Environmental Law and Policy.