

SENATE BILL REPORT

SB 6288

As of February 4, 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.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

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.

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

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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.