

SENATE BILL REPORT

SB 5829

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 12, 2015

Title: An act relating to conducting remedial actions under the model toxics control act.

Brief Description: Conducting remedial actions under the model toxics control act.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/11/15, 2/12/15 [DPS].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5829 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; McCoy, Ranking Minority Member; Braun, Brown, Cleveland, Habib, Honeyford and Ranker.

Staff: Jan Odano (786-7486)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (Ecology) to ensure that the vast majority of sites at which hazardous substances were released are cleaned up. Ecology is responsible to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. Ecology must prioritize funding to clean up hazardous waste sites and prevent future hazardous waste sites. Hazardous waste sites are ranked by considering the amount and type of contamination, the risk that contamination will spread, and routes of exposure. Sites are considered a higher priority when the contamination threatens drinking water supplies, exists in high quantity or over a large area, is toxic to animals or fish, may affect a body of water, or affects public health. Liable parties must clean up sites contaminated with hazardous materials.

Ecology uses several methods to assist potentially liable persons to clean up hazardous waste sites such as the voluntary clean-up program, consent decrees, and agreed orders.

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.

Consent Decrees. A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology, and the state Attorney General's Office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

Agreed Orders. An agreed order is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. It is not filed in court and is not a settlement. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. Agreed orders are subject to public review, and clean-up work is exempt from obtaining certain state and local permits.

Order. Ecology may issue an administrative order to require clean-up activities without an agreement with a potentially liable person. These orders are usually issued to a potentially liable person when a clean-up solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person or persons at up to three times the amount spent.

Permitting. When Ecology conducts a remedial action or a person conducts a remedial action under a consent decree, agreed order, or order, they are exempt from procedural requirements for permits. They are also exempt from local government procedural requirements for permits or approvals for the remedial actions. Ecology must ensure that the substantive provisions and requirements of the permits are met. However, Ecology may not approve an exemption if it determines that it would result in a loss of approval from the federal government for the state to administer federal law, such as the Resource Conservation and Recovery Act, Clean Water Act, and Coastal Zone Management Act.

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

Summary of Bill (Recommended Substitute): Ecology must ensure to the greatest extent possible, that when a challenge or appeal to a remedial action or any permit, certification, or approval obtained for the remedial action, the aspects of the remedial action not challenged or appealed proceeds on schedule. This applies only to remedial actions conducted by Ecology or by a person conducting a remedial action under a consent decree, agreed order, or order.

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: This bill ensures expediting cleanups under remedial actions. It will help to keep the money and projects moving. It will help to remove barriers and hurdles.

Persons Testifying: PRO: Jim Pendowski, Ecology.