
Environment Committee

SSB 5170

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

Sponsors: Senate Committee on Energy, Environment & Telecommunications (originally sponsored by Senator Ericksen).

Brief Summary of Substitute Bill

- Exempts a person conducting an independent remedial action under the Model Toxics Control Act (MTCA) from the procedural and permitting requirements of the following state environmental laws: the Washington Clean Air Act, the Solid Waste Management—Reduction and Recycling Act, the Hazardous Waste Management Act, Construction Projects in State Waters, the Water Pollution Control Act, and the Shoreline Management Act.
- Exempts a person conducting an independent remedial action under the MTCA from the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action.

Hearing Date: 3/20/17

Staff: Robert Hatfield (786-7117).

Background:

The Model Toxics Control Act.

The Model Toxics Control Act (MTCA) was enacted as a result of the passage of Initiative 97 in 1988. The stated primary purpose of the MTCA is raising "sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's lands and waters." The MTCA also grants the Department of Ecology (Ecology) authority to develop rules and oversee the cleanups done by public and private entities throughout the state.

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.

Ecology's work under MTCA is funded primarily by revenue from the Hazardous Substances Tax, which is imposed on the first possession in the state of petroleum products, pesticides, and certain chemicals. These substances are taxed at the rate of 0.70 percent of the wholesale value. Funding is also provided by cost recovery from remedial actions conducted by Ecology, and to a lesser extent, mixed waste fees, fines, penalties, and other charges.

Hazardous Waste Sites.

A hazardous waste site under MTCA is any site where Ecology has confirmed a release or a threatened release of a hazardous substance that requires remedial action. A site is defined by the nature and extent of contamination associated with one or more releases of hazardous substances. Contaminated sites on land are known as upland sites, and contaminated sites along waterways are known as sediment sites.

Remedial Actions.

Remedial actions are the collective planning, investigative, and technical work needed to cleanup hazardous waste sites. Remedial actions include actions such as excavation and removal of contaminated soils, or in-place treatment of contaminated soil and groundwater.

Independent Remedial Actions.

Independent remedial actions, also referred to as independent cleanups, are remedial actions conducted without Ecology oversight or approval, and not under an order, agreed order, or consent decree.

The MTCA Site Cleanup Process.

Since MTCA's inception, Ecology has identified more than 12,000 sites in Washington as having suspected or confirmed contamination, which are referred to as hazardous waste sites under MTCA. Of these, approximately 6,300 sites have been determined to require no further action, and approximately 5,700 sites have suspected or confirmed contamination and have not yet been cleaned up. Ecology maintains a database of all of these sites in its Integrated Site Information System (ISIS) database. On average, between 200 and 300 sites are added to the list each year, and cleanups are completed at a rate of approximately 200 sites per year.

Cleanups of hazardous waste sites under MTCA can be conducted in one of three general ways:

- independent cleanups, in which the property owner cleans up the property independently, either with or without Ecology consultation;
- Ecology-supervised cleanups, in which Ecology supervises a cleanup conducted by a potentially liable person under either an administrative order or a court-approved consent decree;
- Ecology-conducted cleanups, in which Ecology conducts the cleanup under a state contract, such as when no potentially liable person can be identified, or when such persons are unable or unwilling to pay for the cleanup.

Independent Cleanups.

Under an independent cleanup, also referred to as independent remedial actions, a property owner may cleanup either with or without any consultation by Ecology.

- Cleanup without Ecology consultation—Under a cleanup conducted without Ecology consultation, the property owner determines the cleanup schedule, as well as the scope

and extent of the cleanup. However, Ecology will not provide an opinion on the sufficiency of the cleanup. Independent cleanups do not require public notice.

- Cleanup with Ecology consultation—As with a cleanup without Ecology consultation, the property owner determines the cleanup schedule, as well as the scope and extent of the cleanup. However, through MTCA's Voluntary Cleanup Program, a property owner may request technical assistance and an opinion on the sufficiency of the cleanup from Ecology. The property owner must cover the costs of the reviews and technical assistance provided by Ecology. Based on the review, Ecology either issues a letter stating that the site needs no further action, or identifies what additional work is needed.

Ecology-Supervised Cleanups.

Cleanup of a hazardous waste site may proceed under Ecology supervision in one of three different ways.

- Ecology-supervised cleanup under an agreed order—Under this option, cleanup is supervised by Ecology under an agreed order. Schedules are negotiated with Ecology and cleanup plans are subject to public review and Ecology approval. Cleanups under an agreed order do not resolve questions of liability or provide protection against third-party contribution claims.
- Ecology-supervised cleanups under a consent decree—Under this option, cleanup is supervised by both Ecology and the Attorney General under a consent decree filed in court. Schedules are negotiated with Ecology and the Attorney General, and cleanup plans are subject to public review and Ecology approval. The consent decree process allows for resolution of questions of liability, and provides protection from third-party claims for contribution.
- Ecology-supervised cleanup under an enforcement order—Under this option, Ecology has the authority to issue an enforcement order to compel cleanup.

Ecology-Conducted Cleanups.

In addition to the cleanup options described above, the MTCA also authorizes Ecology to conduct cleanup activities. Ecology typically conducts and pays for cleanups when liable persons are unwilling or unable to pay to conduct the cleanup, or when no liable person can be identified.

Compliance With Other Environmental Laws.

Cleanups conducted by or supervised by Ecology are exempt from the procedural requirements, including permitting requirements, of other state environmental laws, including the Washington Clean Air Act, the Solid Waste Management - Reduction and Recycling Act, the Hazardous Waste Management Act, Construction Projects in State Waters, the Water Pollution Control Act, and the Shoreline Management Act. Ecology still must ensure that Ecology-conducted and Ecology-supervised cleanups meet the substantive requirements of these other environmental laws. Ecology must also ensure that such cleanups comply with the substantive provisions of any laws requiring or authorizing local government permits or approvals.

Summary of Bill:

A person conducting an independent remedial action under the Model Toxics Control Act (MTCA) is exempt from the procedural requirements of the following state environmental laws: the Washington Clean Air Act, the Solid Waste Management—Reduction and Recycling Act, the

Hazardous Waste Management Act, Construction Projects in State Waters, the Water Pollution Control Act, and the Shoreline Management Act.

The Department of Ecology's (Ecology) responsibility to ensure that remedial actions comply with the substantive provisions of the state environmental laws listed above is modified to exclude independent remedial actions.

Ecology's responsibility to establish procedures to ensure that remedial actions comply with the substantive requirements adopted pursuant to the state environmental laws listed above is modified to exclude independent remedial actions.

The scope of informal advice and assistance that Ecology is authorized to offer to persons conducting independent remedial actions is expanded, to include advice and assistance relating to the substantive requirements of the state environmental laws listed above, and with the substantive provisions of any laws requiring or authorizing local government permits or approvals.

The state environmental laws listed above are modified to provide that their procedural requirements do not apply to any person conducting an independent remedial action. Each of these state environmental laws is also modified to provide that Ecology is not required to ensure that independent remedial actions comply with their substantive requirements.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.