

# SENATE BILL REPORT

## SB 5170

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As Reported by Senate Committee On:  
Energy, Environment & Telecommunications, February 9, 2017

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

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

**Sponsors:** Senator Ericksen.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/08/17, 2/09/17 [DPS, DNP].

**Brief Summary of Substitute Bill**

- Exempts independent remedial actions from procedural requirements from certain permits and local government permits or approvals.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5170 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Carlyle, Ranking Minority Member; Ranker and Wellman.

**Staff:** Jan Odano (786-7486)

**Background:** The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (Ecology) to ensure cleanup of sites where hazardous substances have been released. MTCA is funded by a 0.7 percent tax on the wholesale value of hazardous substances, cost recovery from remedial actions, mixed waste fees, and to a lesser extent fines, penalties, and other charges.

Under MTCA, Ecology is directed to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. Hazardous

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waste sites are ranked by considering the amount and type of contamination, the risk the contamination will spread, and routes of exposure. Liable parties must clean up sites contaminated with hazardous materials. A potentially liable person includes: a current or past facility owner or operator; or someone who owned the hazardous substance and arranged for its disposal or treatment or transport. When there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site.

In general, a person may cleanup a site with or without supervision by Ecology. Ecology supervises remedial actions under a formal cleanup process for consent decrees with settlement of liability, agreed orders, and enforcement orders. In addition, a property owner may choose to independently cleanup.

Ecology-Supervised Cleanups. *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. Consent decrees protect the potentially liable person from being sued for contribution by other persons that incur cleanup expenses at the site.

*Agreed Orders.* An agreed order includes the site activities that must occur for Ecology to not take enforcement action. Agreed orders are most often used for remedial investigations and feasibility studies. The schedule is negotiated by the potentially liable person and Ecology. An agreed order is not filed in court nor does it settle liability with the state or third-party contribution.

*Enforcement Orders.* Ecology may issue an administrative order when a cleanup solution cannot be achieved expeditiously or if there is an emergency. If the responsible person does not comply with the order, Ecology may cleanup the site and recover costs at three times the amount spent. In addition, the person in violation of the order may be subject to a fine of up to \$25,000 per day.

Ecology-supervised or -conducted cleanups are exempt from certain permits such as those required under the Clean Air Act, solid waste management, hazardous waste management, construction projects in state waters, water pollution control, and the Shoreline Management Act. However, Ecology must ensure that the substantive permit requirements are met for the cleanup activities. Public notices are required on all Ecology-supervised or -conducted remedial actions.

Independent Cleanups. A property owner may cleanup without any supervision or consultation by Ecology. The property owner determines the clean up schedule, as well as the scope and extent of the cleanup. However, Ecology will not provide an opinion on the sufficiency of the clean up. Independent cleanups do not require public notice.

*Voluntary Cleanup Program.* As with an independent cleanup, the property owner determines the clean up schedule, as well as the scope and extent of the cleanup. However, through the 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.

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

**Summary of Bill (First Substitute):** An independent remedial action is exempt from procedural requirements from certain permits and from local government permits or approvals. Ecology is not required to ensure that the substantive permit requirements are met for independent remedial actions.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2017.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on First Substitute:** PRO: This will incentivize more clean ups.

CON: Because neither Ecology nor other state and local permitting agencies could ensure appropriate regulatory oversight, public involvement, and environmental review, we cannot support the bill.

**Persons Testifying:** PRO: Senator Doug Ericksen, Prime Sponsor.

CON: Jim Pendowski, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** No one.