

SENATE BILL REPORT

ESHB 1810

As Reported By Senate Committee On:
Ecology & Parks, March 30, 1995
Ways & Means, April 12, 1995

Title: An act relating to the authority of the state for cleanup standards under the model toxics control act.

Brief Description: Creating a legislative task force to review the model toxics control act.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Honeyford, Thompson and L. Thomas).

Brief History:

Committee Activity: Ecology & Parks: 3/22/95, 3/30/95 [DPA].
Ways & Means: 4/12/95 [DPA].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; C. Anderson, Vice Chair; McAuliffe, McDonald, Spanel and Swecker.

Staff: Gary Wilburn (786-7453)

Background: The Model Toxics Control Act (MTCA), adopted through the initiative process in 1987, does not establish specific hazardous waste cleanup standards. Instead, it directs the Department of Ecology (Ecology) to establish and periodically update cleanup standards, which must be "at least as stringent" as the cleanup standards under the federal Superfund law and all other "applicable" federal and state laws, including health-based standards.

In 1991, the department adopted rules establishing general cleanup standards and methods to establish cleanup standards for specific sites. In general, the rules provide three basic methods (A, B, and C) for determining the level of cleanup at a site.

Method A establishes specific numeric cleanup standards for 25 specific contaminants. This method is used for sites that have only a few types of contaminants, and then only for sites with contaminants for which standards have been set. Method B provides a standard method for determining cleanup levels for ground water, surface water, soil, and air that is based on a site specific risk assessment. The risk assessment uses a number of assumptions that are determined by the department. Examples of these assumptions include: how much contaminant could be ingested; toxicity of the contaminant, body weight of the person ingesting a contaminant, how much risk is acceptable, etc. Method C provides a "conditional" method involving site-specific risk assessment and is used when Methods A and B may be impossible to implement or may cause greater environmental harm. Method

C is similar to Method B in that it allows a site specific risk assessment. Unlike method B, method C assumes that "acceptable risk" for cancer causing substances is one in 100,000. Method B uses an acceptable risk assumption of one in one million.

In 1991, Ecology adopted rules to establish soil cleanup standards for industrial sites. The rules allow these industrial sites to use less stringent cleanup standards if institutional controls are used (i.e., keeping the land in industrial use, fences, etc.). The rules specified the standards could be used only at large industrial areas. Legislation enacted in 1994 broadened the scope of when the industrial soil cleanup standards could be used. The department is currently writing rules to implement this legislation.

Summary of Amended Bill: A policy advisory committee is created to review the policies, procedures and practices of the department in implementing the Model Toxics Control Act. The review includes cleanup standards, the cleanup process, funding, incentives for liable parties to fund cleanup, ecologically-based cleanup standards, and independent cleanups.

The committee is composed of four legislators and up to 17 additional members with specified numbers of representatives from various interests. The Ecology and Health Department directors are nonvoting members. The nonlegislative members are selected by the Ecology Department from lists submitted by statewide organizations representing the interests of the particular category.

The committee begins meeting August 1, 1995, selects a presiding officer, and adopts operating procedures. The committee may form additional work groups and should encourage participation from the various disciplines involved with waste site cleanup. Per diem may be extended to any member applying to the department who is not able to participate fully without such per diem.

The committee must develop a preliminary report by December 15, 1995 that identifies priority issues and a work plan to address the issues. The committee must submit a final report by December 15, 1996 on the priority issues and recommend whether the committee should stay in existence to review additional issues.

By October 1, 1995 the committee recommends to the department from two to four pilot projects at complex sites with multiple parties contaminated by past industrial activities. Under the pilots, the potentially liable parties may provide additional risk assessment or other analyses which the department includes with the cleanup studies. The public participation plan for the site is designed to inform the public regarding the nature of the pilot project. The department reports to the committee on the pilot project results after the comment period ends on the draft cleanup plan. A status report with an estimated schedule for pilot reports must be provided by March 31, 1996.

Amended Bill Compared to Substitute Bill: The composition of the study group and its method of selection is modified. The subjects to be studied include a broader program focus than cleanup standards, and do not include the specific enumeration of issues on cleanup standards and the cleanup process in the engrossed House bill. The study period is extended from six months to an 18-month period. The pilot project authorization is substantially modified to require that existing laws and rules on the cleanups apply to the project sites,

and to provide a procedure for including and considering additional risk assessment and other analyses in the cleanup studies prepared for the site.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Much of the existing cleanup standards rules are outdated based upon new scientific information and methodologies, and a comprehensive review of the standards is needed. The department has been unwilling to consider site-specific risk assessment information in developing cleanup levels for a site.

Testimony Against: The existing standards and rules provide sufficient flexibility to incorporate new information. The existing advisory group to the department has worked in the past in reviewing complex cleanup issues and should be used to review cleanup standards and methodologies. Communities surrounding waste sites do not want their area as a pilot project because they do not wish to be the "guinea pigs" for testing out the effects of reduced cleanup.

Testified: Gerald Pollet, Heart of America Northwest (con); David Monthie, Dept. of Health (concerns); Betty Tabbutt; Marcia Newlands, Heller Ehrman (pro); Denny Eliason, AZCO Burlington Env. (pro); Mary Burg, Ecology; Dr. Jerry Smedes, Washington Environmental Industry Assn. (pro); Ron Shultz, National Audubon Society (con); Doris Cellarius, Sierra Club (con); Scott Merriman, Washington Environmental Council (con); Laurie Valeriano, Washington Toxics Coalition (con); Mike Sciacca, Washington Oil Marketers Assn. (pro).

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Drew, Finkbeiner, Fraser, Gaspard, Hargrove, Long, Sheldon, Spanel, Strannigan, West, Winsley and Wojahn.

Staff: Susan Lucas (786-7711)

Ways & Means Amended Bill Compared to Substitute Bill: The Ways & Means amendment incorporates the changes by the Ecology & Parks Committee amendment with the following additional changes: (1) A member from environmental consulting firms is added to the study committee; (2) a provision is added for disclosure of potential conflicts of interest by study committee members; (3) the department is to prepare case studies of site cleanups to assist in the study; (4) two pilots are to be selected by the committee from a list provided by the department; (5) criteria for selecting the pilot sites are provided, including the degree of community support for the pilot; (6) the study committee terminates January 15, 1997; and (7) a null and void clause is added, requiring specific funding in the operating budget.

Testimony For: The proposed striking amendment is a constructive process for the review of MTCA. It was derived through extensive collaboration and discussion.

Testimony Against: None.

Testified: Mary Burg, Department of Ecology; Denny Eliason, ARCO Burlington Env.; Scott Merriman, Washington Environmental Council.