

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1810

Chapter 359, Laws of 1995

54th Legislature
1995 Regular Session

MODEL TOXICS CONTROL ACT--CLEANUP STANDARDS

EFFECTIVE DATE: 7/23/95

Passed by the House April 20, 1995
Yeas 92 Nays 2

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 14, 1995
Yeas 47 Nays 0

JOEL PRITCHARD

President of the Senate

Approved May 16, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1810** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 16, 1995 - 11:09 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1810

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

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

Read first time 03/01/95.

1 AN ACT Relating to the authority of the state for cleanup standards
2 under the model toxics control act; creating new sections; and
3 providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The department of ecology shall
6 establish a policy advisory committee to provide advice to the
7 legislature and the department on administrative and legislative
8 actions to more effectively implement the model toxics control act,
9 chapter 70.105D RCW. The committee shall consist of the following
10 members:

11 (a) Four legislative members selected as provided in subsection (2)
12 of this section;

13 (b) Four representatives of citizen and environmental
14 organizations;

15 (c) Four representatives of business, including two representatives
16 of small business and two representatives of large business;

17 (d) One representative of counties;

18 (e) One representative of cities;

19 (f) One representative of ports;

1 (g) One member of the scientific advisory board created under RCW
2 70.105D.030(4);

3 (h) One representative of an environmental consulting firm engaged
4 in the remediation of contaminated sites;

5 (i) Not more than three additional members selected by the
6 department from recommendations provided by the committee; and

7 (j) The directors of the departments of ecology and health or their
8 designees.

9 (2) The president of the senate and the speaker of the house of
10 representatives may each appoint one member from each major caucus in
11 the senate and the house of representatives, respectively, to serve as
12 members of the committee.

13 (3) In making appointments under subsection (1) (b), (c), (d), (e),
14 (f), (g), and (h) of this section, the department shall select from the
15 lists of recommendations submitted by recognized regional or state-wide
16 organizations representing the interests of that category.

17 (4) The initial meeting of the committee shall be scheduled no
18 later than August 1, 1995. At the initial meeting the members shall
19 select a presiding officer and adopt procedures for carrying out their
20 duties under sections 2 and 3 of this act. In conducting its review
21 the committee shall, wherever possible, operate on a consensus basis
22 and, when consensus is not possible to achieve, the committee should
23 encourage the development of recommendations that are broadly supported
24 within the committee. Where consensus is not achieved, other views
25 within the committee shall be included in any reports required by
26 sections 2 and 3 this act.

27 (5) The committee may divide itself into subcommittees. The
28 committee should seek input from people who are interested in its work
29 and who will, in the committee's view, bring experience or technical or
30 interdisciplinary insight to a thoughtful consideration of the issues
31 before the committee.

32 (6) The department shall provide staffing and other assistance to
33 the committee, including facilitators from within or outside of state
34 government if requested. Such assistance shall include information in
35 response to reasonable requests from the committee, provided that the
36 information is not protected by attorney-client privilege.

37 (7) Legislative members of the committee shall be reimbursed for
38 travel expenses as provided in RCW 44.04.120. If other members would
39 not be able to participate in the committee's activities because of

1 travel expenses or other financial limitations on the ability to
2 participate fully, the department shall certify the members as entitled
3 to reimbursement for travel expenses as provided in RCW 43.03.050 and
4 43.03.060.

5 (8) At the initial meeting attended by a committee member, the
6 member shall identify the nature of his or her interest in the outcome
7 of matters before the committee. This information shall include the
8 type of organization to which the member belongs and the general nature
9 of the membership and/or business interest of that organization.
10 Thereafter, a committee member shall disclose any potential conflicts
11 of interest or bias that subsequently arise or of which the committee
12 member subsequently becomes aware. A member shall refrain from
13 participating in any matter that the member for any reason cannot act
14 fairly, objectively, and in the public interest with regard to that
15 matter.

16 NEW SECTION. **Sec. 2.** (1) The policy advisory committee shall
17 review, provide advice, and develop recommendations on the following
18 subjects, at a minimum:

19 (a) Clean-up standards and clean-up levels, including the use of
20 site-specific risk assessment;

21 (b) Policies, rules, and procedures, including the use of cost,
22 current and future land use, and other criteria in the selection of
23 clean-up remedies;

24 (c) How the department carries out the clean-up program in
25 practice, including training, and accountability for clean-up decisions
26 and their implementation;

27 (d) Improving the clean-up process to provide additional incentives
28 to potentially liable parties to fully and expeditiously fund cleanups;

29 (e) The need for adoption of and recommended levels for
30 ecologically based clean-up standards; and

31 (f) A review of the effectiveness of independent cleanups.

32 (2) The committee shall begin meeting no later than August 1, 1995,
33 to review the model toxics control act and its implementation to date.
34 The committee is encouraged to submit recommendations on policies of
35 state-wide or regional significance to the department at any point
36 during its review. The committee shall submit a preliminary report not
37 later than December 15, 1995, to the appropriate legislative
38 committees, that identifies priority questions and issues that the

1 committee intends to address. The preliminary report shall identify
2 the schedule and approach planned for analyzing these priority issues.
3 The committee shall develop a procedure to allow other interested
4 parties to propose additional questions and issues for review. Any
5 questions and issues the committee chooses to address shall be of
6 regional or state-wide significance. It is not the intent that this
7 committee become engaged in site-specific clean-up decisions at pilot
8 projects or any other sites.

9 (3) The committee shall submit a final report to the department and
10 the appropriate legislative committees not later than December 15,
11 1996, on the priority issues it has identified for review. In addition
12 to action recommendations, the final report may identify issues and
13 priorities for further study, including a recommendation as to whether
14 the committee should continue in existence.

15 (4) The department shall assist the committee's review under this
16 section by preparing case studies of a variety of site cleanups
17 involving differing contaminants, quantities of contaminants, media
18 affected, populations exposed, present and future land and resource
19 uses, and other factors. The committee shall seek input from the
20 affected community, potentially liable persons involved in the cleanup
21 and other participants in the clean-up process at the site and include
22 this input in the information included on the case study. The case
23 studies, along with the other information gathered in the review, shall
24 be used by the committee to provide advice and develop recommendations
25 on the questions and issues addressed by the committee.

26 NEW SECTION. **Sec. 3.** (1) Not later than October 1, 1995, the
27 policy advisory committee shall select two pilot projects from a list
28 of proposed pilot project sites provided by the department. The
29 purpose of the pilot projects is to evaluate alternative methods for
30 accomplishing faster, less-expensive, and an equally protective degree
31 of cleanup at complex sites, within the framework provided by the model
32 toxics control act and the rules adopted under the model toxics control
33 act. Pilot projects shall comply with the model toxics control act and
34 the rules adopted under the model toxics control act. Public
35 participation in the clean-up process for these sites shall be as
36 provided in such rules. In order to be eligible for a pilot project,
37 a site shall be conducting remedial actions under an order, agreed
38 order, or consent decree under the model toxics control act and there

1 shall not be significant opposition from the public potentially
2 affected by the site. In addition, the following criteria shall be
3 used by the department and the committee when recommending and
4 selecting a site as a pilot project site:

5 (a) The presence of multiple parties at the site and the
6 willingness of these persons to participate in a pilot project;

7 (b) The source of contamination at the site. Sites contaminated as
8 a result of current or past industrial activities shall be given a
9 preference over other sites;

10 (c) The stage of cleanup at the site. Sites that are in the
11 process of preparing or for which there is recently completed a
12 remedial investigation/feasibility study shall be given preference over
13 other sites; and

14 (d) The degree of community support for selecting a site as a pilot
15 project site. To determine the degree of community support, the
16 department shall first consult with interested community and
17 environmental groups. Thereafter, before proposing a site as a pilot
18 project the department shall issue a public notice identifying the site
19 and seeking public comment on the potential for the site to be a pilot
20 project site.

21 (2) In the pilot projects the department shall include with the
22 remedial investigation/feasibility study required under the model
23 toxics control act any additional or alternative risk assessments or
24 other analyses that potentially liable persons may wish to prepare at
25 their expense for the purpose of exploration of improved methods to
26 accomplish cleanup under the model toxics control act. The department
27 shall provide technical assistance to identify an appropriate scope for
28 such supplemental analyses, so that the analyses may prove useful in
29 considering improvements to existing practices, policies, rules, and
30 procedures. The department may establish a reasonable schedule for the
31 preparation of any supplemental analyses. The preparation and
32 evaluation of any supplemental analyses shall not result in a delay in
33 remedial actions at the pilot sites. The analyses shall be included in
34 the remedial investigation/feasibility study regardless of whether the
35 department fully concurred in their scope. The department may
36 simultaneously prepare or commission its own supplemental analyses at
37 its own expense, as distinct from department-conducted or department-
38 commissioned or contracted technical review of supplemental analyses

1 prepared by potentially liable persons, which shall remain subject to
2 cost recovery under the model toxics control act.

3 (3) In consultation with the potentially liable persons and
4 affected public for each site, the department's site managers shall to
5 the fullest extent possible use the administrative principles set
6 forth, for both the clean-up process and for clean-up standards, as
7 well as other flexible tools available in the rules adopted under the
8 model toxics control act.

9 (4) In order to avoid misunderstanding and promote constructive
10 dialogue, the public participation plan for each site shall be designed
11 or revised to educate and involve the public on the nature of the pilot
12 project, the specific issues being explored at the site, and the
13 purpose and scope of any alternative or supplemental analyses.

14 (5) The department shall prepare a report on each pilot project
15 highlighting any policy issues raised as a result of the pilot project
16 and providing a copy of the remedial investigation/feasibility study
17 and any supplemental analyses and public comments received for each
18 pilot project to the policy advisory committee. The report shall be
19 submitted to the committee within ninety days after the comment period
20 ends on the remedial investigation/feasibility study for that site.
21 The department shall also keep the committee informed about decisions
22 made regarding the pilot project sites and progress made in
23 implementation of cleanup at these sites. The intent is for the
24 committee to use the information acquired from the pilot projects to
25 supplement other information used in developing policy recommendations
26 under section 2 of this act. The department shall submit a status
27 report to the policy advisory committee no later than March 31, 1996,
28 including an estimated schedule for reporting on each pilot project.

29 (6) Nothing in this act shall be construed to prevent or limit the
30 department from fully employing all procedures and standards available
31 under the model toxics control act or the rules adopted to implement
32 the model toxics control act with respect to any site, whether or not
33 it is being considered as a possible pilot project under this section.

34 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
35 act, referencing this act by bill number, is not provided by June 30,
36 1995, in the omnibus appropriations act, this act is null and void.

37 NEW SECTION. **Sec. 5.** This act shall expire January 15, 1997.

Passed the House April 20, 1995.
Passed the Senate April 14, 1995.
Approved by the Governor May 16, 1995.
Filed in Office of Secretary of State May 16, 1995.