

Environmental Law Update

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Washington Adopts Measure to Speed Environmental Cleanups

In the space of only 36 hours, the Washington Legislature resurrected, and the governor signed into law, a bill that changes the way the Washington Model Toxics Control Act (“MTCA”) provides funding for cleanups at contaminated sites. The goals of this legislation are to make sure that money in the state’s Toxic Cleanup Account is used for cleanups and also to hasten the cleanup of sites. While the measure had bipartisan legislative support, its passage was not without controversy. The environmental community has expressed concern that the provisions shift the costs of cleaning up contaminated sites from the responsible parties to the taxpayers.

Sen. Doug Ericksen (R-Ferndale) first introduced the measure last January. Although it passed the Senate during the regular session, the bill appeared to have died in the state House. But, in the waning hours of the legislature’s first special session, the bill was revived and put on a fast-track to passage and signing.

This new legislation accomplishes the following:

- Increases the percentage of Hazardous Substance Tax revenues deposited into the State Toxic Control Account. The legislation provides for additional uses such as state agriculture and health programs for pesticide disposal, recycling and reduction; stormwater pollution control projects and activities; cleanup of petroleum-based plastic and Styrofoam debris in fresh and marine waters; and air quality programs;
- Creates an Environmental Legacy Stewardship Account, funded from the Hazardous Substances Account. The newly created account is to be used for performance and outcome-based projects, model remedies and procedures that result in less time to complete cleanups;
- Directs the Washington Department of Ecology (“Ecology”) to establish model remedies for common categories of sites, hazardous substances, media or geographic regions. This would streamline and accelerate the cleanup process and would, in some cases, do away with the need for a feasibility study of alternative remedies;

- Allows a city, county or port district to establish a Brownfield Renewal Authority to implement cleanup and reuse of properties in newly-authorized Redevelopment Opportunity Zones. This would be funded from a Brownfield Redevelopment Trust Fund, to be used only for remediation and cleanup activities within that zone; and
- Permits a prospective purchaser of contaminated property to either enter into a settlement with Ecology (so long as it expedites remedial action at the site and provides a substantial public benefit) or an agreed order for a property in a designated redevelopment opportunity zone. The agreed order would suspend enforcement by Ecology so long as the prospective purchaser complies with the requirements of the order.

Although MTCA has always required collection of the Hazardous Substances Tax, frequently the legislature and governor have taken funds from that account to make up for shortfalls in the state's general fund. The new MTCA provisions require that money in the State Toxics Control Account be used only to carry out the purposes of the statute.

The changes take effect July 1, although it will take some time for Ecology to develop the model remedies and usage.

**For more information, please contact the Environmental Practice Group at
Lane Powell: environs@lanepowell.com**

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