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## Washington Adopts Partial No Further Action Letters Giving Property Owners More Flexibility on Cleanups

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### Breaking Developments In Environmental Law

Governor Christine Gregoire signed into law on April 30, 2007, a potentially significant amendment to the Model Toxics Control Act (“MTCA”), RCW 70.105D. HB1039 permits the Department of Ecology (Ecology) to issue a No Further Action Determination for a portion of a contaminated facility or site. The amendment means that property owners may not have to await the completion of the cleanup of the entire site or neighboring properties before obtaining a regulatory closure.

Ecology currently uses three different boilerplate opinion letters for completed independent remedial actions: (1) No Further Action determination (“NFA”); (2) Partial Sufficiency and Further Action determination; and (3) Further Action determination. Property owners typically want an NFA because it means Ecology determined that the independent remedial action conducted was sufficient to meet the substantive requirements of MTCA for characterizing and addressing all of the contamination at a site. The latter two letters require more remedial activities, which could mean a continued risk of liability associated with the property, thereby affecting its marketability.

The amendment provides a fourth option for Ecology: an NFA for a portion of the facility or site. An example demonstrating the effect of the revision is the situation where a property is impacted by a contamination plume that extends across multiple contiguous parcels or into an adjacent right-of-way. Under the previous statutory and regulatory scheme, Ecology could not issue an NFA even if a remedial action is carried out on the single parcel, the single parcel is in compliance with all MTCA requirements, but related contamination remains on neighboring parcels or a right-of-way. The new law gives Ecology the authority to issue an NFA for the single parcel that has reached compliance with MTCA requirements, in essence, severing it from the other adjacent properties that are still impacted by contamination.

This means a formerly contaminated property can be made marketable sooner, even if neighboring properties have not completed cleanup. It also allows property owners to be strategic in determining the scope of remedial actions and potentially staging cleanups to minimize initial costs. However, it is an open question whether Ecology will alter its existing boilerplate letters to reflect the amendment.

A copy of the final bill, as it was signed by the Governor, is available [here](#) (<http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Passed%20Legislature/1039-S.PL.pdf>).

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