

2013 Legislative Implementation Plan

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL 5296 and HOUSE BILL 2079

Concerning the Model Toxics Control Act and Environmental Legacy Stewardship Account

PROGRAM IMPACTS

In 1988, Washington voters approved creation of the Model Toxics Control Act (MTCA). SB 5296, passed by the Legislature in 2013, made several significant changes to MTCA. HB 2079 made some technical corrections to Section 10 of SB 5296.

Brownfield Cleanups

The legislation introduces the concept of “brownfields” into MTCA. These are previously developed properties that are currently abandoned or underused because of historic contamination. The legislation makes several changes to facilitate the cleanup and redevelopment of brownfields.

- Ecology is directed to consider land reuse potential of contaminated sites, in addition to the degree of hazard, when allocating staff and financial assistance.
- Ecology is authorized to make several changes to its remedial action grant program to expand local government access to funds for brownfield investigations and cleanups.
- Local governments are authorized to establish “redevelopment opportunity zones” to focus state and local resources. The legislation provides additional tools to local governments and Ecology to facilitate cleanup within these zones.

Model Remedies

The legislation authorizes Ecology to establish standardized cleanup methods for lower-risk sites, called “model remedies.” At sites where they are used, feasibility studies of cleanup alternatives are not required. This helps speed up cleanup. Ecology must identify under what conditions model remedies may be used at a site. Model remedies and their use at specific sites are subject to public review and comment. Ecology may waive its costs of reviewing independent cleanups using model remedies.

Stormwater Funding

The legislation creates a more stable and effective stormwater funding program for local governments. In addition to funding cleanup-related source control projects, the legislation also establishes a competitive grant program to address impacts from existing development.

Reporting and Accountability

The legislation expands Ecology's reporting requirements to increase transparency and accountability in the use of public funds and the achievement of MTCA's purposes.

- **MTCA Biennial Report:** Ecology must submit a report to the Legislature on use of public funds in the MTCA accounts every two years, instead of the current annual report. For sites cleaned up using public funds (whether by Ecology or local governments), the report must now include more detailed information on the status of cleanups, the amount of public funds expended, and the recovery of such funds from potentially liable persons. The next report is due December 1, 2013.
- **MTCA Ten-Year Financing Report:** Ecology must submit a report to the Legislature every two years on its 10-year projections of cleanup expenditures funded under the MTCA accounts. The report must now include cost estimates for large cleanup projects (over \$10 million) that are anticipated to take several years to complete. The next report is due September 20, 2014.
- **Brownfield Redevelopment Trust Fund Account:** Ecology must track funds deposited in this new account and provide a biennial report to the Legislature on activity for each subaccount. The Legislature did not deposit any funds into the account. The first report is due October 31, 2015.
- **Voluntary Cleanup Program Report:** Ecology must establish performance measures to track how quickly it is able to respond to requests for reviews of independent remedial action plans and reports. By November 1, 2015, Ecology also must report to the Legislature on its performance and provide recommendations for improving this performance.
- **Model Remedy Report:** By November 1, 2016, Ecology is required to report to the Legislature on the development and use of model remedies.

Changes to Toxics Accounts

Since Washington voters created MTCA in 1988, core environmental work at the state and local levels has been funded through two accounts – the State Toxics Control Account (STCA) and the Local Toxics Control Account (LTCA). Those accounts are funded by revenue from a tax on hazardous substances, such as petroleum and pesticides. The legislation makes several changes to the funding provisions in MTCA. Those changes include changing the split of tax revenues between STCA and LTCA and capping these accounts and moving tax revenues above this cap to a new account called the Environmental Legacy Stewardship Account (ELSA). The authorized uses of the STCA and LTCA are changed to reflect uses historically authorized by the legislature through budget provisions and various bills. HB 2079 made technical changes to the provisions describing authorized uses of ELSA.

RESOURCE IMPACTS

Implementation of the legislation will require amendments to both the Remedial Action Grant rule (chapter 173-340 WAC) and the MTCA rule (chapter 173-340 WAC) and several related policies and guidelines. It will also require some changes to Ecology's contaminated site database, related support materials and web pages. It will also require changes to Ecology's Water Quality Grant program and supporting documents and web pages.

The fiscal note estimated that implementation of the legislation would require additional staff in Ecology and the Attorney General Office, but no additional staff have been provided. Ecology will start implementation of the legislation to the extent we can using existing resources and will request additional funding and hiring authority in the 2014 supplemental budget.

WORK PLAN

Remedial Action Grants

As authorized by the statute, Ecology will implement the first round of remedial action grants through interpretive guidance. Current guidelines will be updated by December 2013. We intend to proceed with rule making early in 2014. We intend to consult with local governments responsible for large cleanups to determine which sites would be good candidates for extended grant agreements. As directed by the legislation, we will manage remedial action grants more closely to help ensure budgeted funds are put to work each biennium (spent as they are needed).

Redevelopment Opportunity Zones

The legislation authorizes local governments to establish “redevelopment opportunity zones” and “brownfield renewal authorities” to guide the cleanup and reuse of properties within those zones. Cleanup sites within these zones are provided priority for certain remedial action grants and Ecology has broader legal authority to provide incentives for redevelopment within these zones. We intend to consult with local governments to determine which communities plan to establish redevelopment opportunity zones. We will consider entering into agreed orders and mixed funding agreements with prospective purchasers after zones are established. We plan to update our guidelines and rules governing the use of such instruments. In the interim, we will process requests on a case-by-case basis.

Model Remedies

The legislation authorizes Ecology to establish model remedies for lower-risk sites and provides direction on their development. Ecology already has model remedies under development and plans to intensify this work over the next year. We plan to solicit and consider proposals for additional model remedies later in 2014, pending legislative authorization for an additional position to coordinate this effort.

Stormwater Funding

The legislation establishes a competitive grant program to address impacts from existing development. Ecology intends to implement the program as follows:

- August 2013 – Provide \$120,000 to each city and county with Municipal Stormwater permits to examine stormwater facility needs and prepare preliminary designs for priority projects. These projects will be eligible for the 2014 competitive stormwater grant program.
- August 2013 through August 2014 – Convene stakeholder workgroup to develop criteria for the competitive stormwater grant program.
- September 2014 – Open the application period for the competitive stormwater grant program, as part of Ecology’s integrated water quality financial assistance program application cycle.

Reporting and Accountability

As discussed above, the legislation expands Ecology's reporting requirements. We intend to produce these reports as specified:

- MTCA Biennial Report – due December 1, 2013
- MTCA Ten-Year Financing Report – due September 20, 2014
- Brownfield Redevelopment Trust Account Report – due October 31, 2015
- Voluntary Cleanup Program Report – due November 1, 2015
- Model Remedy Report – due November 1, 2016

Implementing these provisions will require changes to Ecology's current systems for tracking expenditures and work at contaminated sites. Ecology plans to begin to make these changes over the next few months before the first MTCA Biennial Report is due.

Changes to the Toxics Accounts

The legislation makes significant changes to the current distribution of tax revenue and uses of MTCA funds. This has created some uncertainty related to the sustainability of core work moving forward. For example, there are no fiscal growth factor increases for STCA and LTCA. Ecology is working closely with the Office of Financial Management (OFM) and the Legislature to better understand the implications of these changes and whether further changes are needed. By October 1, 2013, OFM must submit a report to the Legislature on these uncertainties and any needed clarification.

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MORE INFORMATION

For additional information on implementation of SB 5296 and HB 2079 go to:

<http://www.ecy.wa.gov/programs/tcp/regs/legislation-2013.html>

For information on stormwater grants go to:

<http://www.ecy.wa.gov/programs/wq/funding/funding.html>