



# Focus on Ensuring Settlements are Spent on Cleanup Sites

from Ecology's Toxics Cleanup Program

## The Problem

Under the Model Toxics Cleanup Act (MTCA), the Washington Department of Ecology oversees cleanup work performed by liable parties or conducts cleanups and recovers its costs for the work. However, that is not feasible when a company declares bankruptcy or does not have the financial means to pay the full cleanup cost. Working with the Attorney General's Office, Ecology can agree to a settlement in which the liable party contributes money for future cleanup work in exchange for settling its liability. Cleanup settlements may also contribute money for future natural resource restoration work at a particular site. For example, Ecology and the Attorney General's Office recently negotiated a cleanup settlement with the Burlington Northern Santa Fe Railway Company that included an additional \$5 million for future natural resource restoration work in and around Skykomish, Washington. Ecology anticipates there may be a similar, larger settlement or court order associated with the Asarco bankruptcy proceedings currently under way.

Although these kinds of settlements and court orders are rare, they do pose a unique problem for the state. The state is agreeing to accept the funds and use them as intended in the settlement agreement or court order. But since the actual amount of funds recovered from a bankrupt party or a party with a limited ability to pay is not likely to be enough to pay for the entire cleanup, it is important to set aside the funds from the settlement for that particular cleanup, even if it could take several years to accomplish, and interest earned on those funds be retained in the account. Without the interest earnings, the state will not have the full amount of money required to complete the work. The State Toxics Control Account does not retain interest earnings and there is no other appropriate interest-bearing account into which these funds can be deposited. Also, there is no assurance that funds deposited in the State Toxics Control Account will be retained for use at the specific site subject to the settlement.

## The Solution

### Ecology's proposal

It is important that the full amount of funds received from a settlement for a polluted site is deposited and used to clean up that site. This ensures that MTCA's fundamental principle of "the polluter pays" is carried out to the maximum extent possible.

Ecology proposes that the 2008 Washington Legislature adopt legislation to create an interest-bearing account in the state treasury to manage money from settlements or court orders in cases of bankruptcy, limited ability to pay, or natural resource damages. This Cleanup Settlement Account would be subject to normal state oversight and controls.

### How it would work

The proposed legislation would:

- Facilitate cleanup settlements at sites when a company has gone bankrupt or has limited means to pay. When a settlement is reached for less than the full cleanup cost, the interest earnings will help pay for the full cost of the site cleanup. The account also would facilitate the restoration of natural resource damages at specific sites.
- Specify that the account would receive money only from settlement agreements and court orders that direct payment to the state to resolve a company's liability or potential liability for polluting a specific site.
- Limit spending of Cleanup Settlement Account money to state-conducted cleanup work at a specific site, or to assessing or addressing damage to natural resources caused by pollution at that site.
- Require Ecology to track funds received, interest earned, and funds spent separately for each site. Funds from a settlement agreement or other court order linked to a specific site would only be used for that specific site.
- Direct that any money specific to a site remaining in the account after all work is done at the site would be transferred to the State Toxics Control Account.

### **How it would benefit Washington**

Creating the Cleanup Settlement Account would ensure that settlement money linked to a specific site would go to clean up pollution at that site or to repair the damage done to natural resources.

### **For more information**

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