

The Firehouse Lawyer

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1. Model Toxic Controls Act

Rarely Discussed Law: The Model Toxic Controls Act

Various municipal corporations are not aware of the Model Toxic Controls Act ("MTCA"), which provides any "person" with the ability to seek financial compensation, in addition to reasonable attorney fees and costs, for the remediation of discharges of hazardous substances:

"Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other *person* liable under RCW 70.105D.040¹ for the recovery of remedial action costs."

RCW 70.105D.080 (emphasis added).

A "person" includes but is not limited to any "unit of local government." RCW 70.105D.020 (24).

"Remedial action costs" include but are not limited to investigation costs. *See Douglass v. Shamrock Paving, Inc.*, No. 94087-8 (2017). A person may not recover

¹ These liable "persons" may include those who own, possess, sell or transport hazardous substances, or own a facility within which such hazardous substances are contained or transported from. *See* RCW 70.105D.040.

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"remedial action costs" under the MTCA unless the person took actions that are the "substantial equivalent" to remedial action taken by the Department of Ecology. *See Id.* To recover remedial action costs, the person must prove that a particular "hazardous substance" located on the investigated property poses a threat or potential threat to human health or the environment. *See* 70.105D.020 (33).

Based on the MTCA and *Shamrock*, cited above, a municipal corporation may recover remedial action costs for investigating a scene in which hazardous substances have been spilled and/or discharged.

Take note that a "hazardous substance" *does not* include crude oil, petroleum or fraction thereof, when such oil etc. is contained in an *underground storage tank from which there has been no release*. *See* 70.105D.020 (13) (definition of "hazardous substances").

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