

Questions and Answers on the Model Toxics Control Act (MTCA)

Q: What is the Model Toxics Control Act (MTCA)?

A: In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington State, changing the way contaminated sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. Its purpose is to identify, investigate, and clean up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision making process.

Q: What agency is responsible for implementing and enforcing the Model Toxics Control Act?

A: The Washington State Department of Ecology, working primarily through its Toxics Cleanup Program, with certain sites overseen by the Hazardous Waste and Toxics Reduction Program.

Q: Who pays for cleanups under the Model Toxics Control Act?

A: Cleanups under MTCA are paid for by persons responsible for the contamination, called “potentially liable persons.”

When the persons responsible for cleanup refuse to do the work, Ecology has the authority to do the cleanup and take court action to recover its costs. Grants are available for local governments to help pay for cleanups they are responsible for. Information on local government grants can be found at: <http://www.ecy.wa.gov/programs/swfa/grants/rag.html>

Q: Who is a “potential liable person”?

A: In general, any past or present relationship with a contaminated site may result in responsibility for cleanup. Under MTCA, a potentially liable person (PLP) can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

However, there are a number of exemptions and defenses to liability under MTCA. Persons potentially liable for cleanup are encouraged to contact an environmental attorney who is familiar with the law to determine their liability status.

Q: What if there is more than one potential liable person?

A: When there is more than one potentially liable person, each person is “jointly and severally” liable for cleanup at the site. This means that any one potentially liable person can be held liable for the entire cost of cleanup. Ecology encourages all parties involved to work together to negotiate how the cleanup costs will be shared among all potentially liable persons.

Q: How does a site get listed?

A: After learning about potential contamination on property, Ecology, or the local health department under contract to Ecology, conducts an “initial investigation” to confirm that the site requires further cleanup. This investigation typically includes a review of available records about the site, a site inspection, and sometimes limited testing to confirm contamination is present. If this investigation confirms that further action (such as testing or cleanup) may be necessary, the facility is added to Ecology’s Integrated Site Information System (ISIS) database. A notification letter is then sent to the owner and other persons Ecology is aware of, who may be potentially liable for cleanup of the site.

Q: What is the Hazardous Sites List?

A: All confirmed contaminated sites that have not already been voluntarily cleaned up undergo a more detailed evaluation. These sites are ranked according to their risk and placed on Ecology’s “Hazardous Sites List.”

Q: What are the various ways to cleanup a site?

A: Here is a summary of the most common mechanisms used by Ecology:

Voluntary Cleanup Program (VCP): Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology’s review costs. Based on the review, Ecology either issues a letter stating that the site needs “No Further Action” (NFA) or identifies what additional work is needed.

***de minimus* Consent Decree:** Landowners whose contribution to site contamination is “insignificant in amount and toxicity” may be eligible for a *de minimus* consent decree. In these decrees, landowners typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a *de minimus* settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.

Prospective Purchaser Consent Decree: A consent decree may also be available for a “prospective purchaser” of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.

Agreed Orders: Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review. They offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

Consent Decree: A consent decree is a formal legal agreement filed in court. The cleanup work to be conducted and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons who underwent cleanup expenses at the site. Consent decrees can also be used to support a claim against other potentially liable persons, requesting that they help pay for part of the cleanup costs. Sites cleaned up under a consent decree are exempt from having to obtain certain state and local permits, but they are required to comply with the technical standards typically contained in those permits.

Q: What is a Periodic Review?

A: A periodic review is conducted by Ecology at sites where contamination remains contained on-site after the cleanup. Ecology conducts a periodic review at these sites every five years to ensure the continued protection of human health and the environment. Ecology will also publish a notice of any periodic review in the Site Register and provide an opportunity for public review and comment.

Q: Where I can find information about Ecology cleanup?

A: <https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx>

Q: What are the steps to clean up a site under MTCA?

A:

Figure 2. Model Toxics Control Act Cleanup Steps.



*Comment periods can be combined when possible.

Q: How does the public stay informed about cleanups under MTCA?

A: The public is notified and given an opportunity to review and comment on all Agreed Orders, Consent Decrees, Enforcement Orders and Interim Actions that are created to achieve cleanup under MTCA.

These notices include:

- **Fact Sheet or postcard:** Ecology mails fact sheets or postcards to businesses and persons living near a site as well as interested organizations to inform them of public meetings, opportunities for comment, and important site activities. Comment periods are the primary method Ecology uses to get public feedback on proposed cleanup decisions. Comment periods usually last 30 days and are typically announced at key points in the cleanup process.
- **Site Register:** The *Site Register* is an electronic newsletter issued by Ecology that provides information on cleanups and announces public comment opportunities. To receive the *Site Register* in electronic or hard copy format, please call (360) 407-6000. The *Site Register* is also available on Ecology's website at:
http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html
- **Public Involvement Calendar:** Ecology publishes an electronic calendar to notify the public about upcoming public meetings for all agency activities. The Public Involvement Calendar is available on Ecology's website at: <http://apps.ecy.wa.gov/pubcalendar/calendar.asp>
- **Public Participation Plan:** Ecology's intent is to provide meaningful opportunities for community involvement prior to making cleanup decisions at a site. A public participation plan describes the tools that Ecology will use to inform the public about site activities and identify opportunities for the community to become involved. The plan is intended to be a flexible working document that will be updated as community concerns emerge and more information becomes available during the cleanup process.
- **Mailing List:** Ecology maintains a mailing list of interested parties, organizations, and residents living near a cleanup site. This list is used to distribute information regarding the cleanup to interested individuals and to announce public comment opportunities.
- **Information Repositories:** Information repositories are convenient places where the public can go to read and review site information. The information repositories are often at public libraries or community sites, as well as regional Ecology offices. During the comment period, site documents will be available for review at listed repository locations for the site.

Sites in Ecology's Northwest region, including Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom Counties, will have documents available at: Ecology's Northwest Regional Office, 3190 160th Ave. SE, Bellevue, WA 98008-5482. (Please call Sally Perkins at (425) 649-7190 to make an appointment.)

- **Public Meetings:** When there is a high level of public interest in a site, Ecology will often hold informal public meetings at key times during the cleanup process to keep the public informed and solicit input before Ecology makes a decision. In addition, if ten or more people request a formal public hearing/public meeting during a comment period, Ecology will hold a formal public hearing/public meeting for the purpose of taking comments on proposed actions at a site.
- **Website:** As of late 2011, every contaminated site in Ecology's Integrated Site Information System (ISIS) database has its own website. To find a cleanup site, go to: <https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx>

Q: Are grants available for local citizen groups and neighborhoods affected by contamination?

A: Citizen groups living near contaminated sites may apply for public participation grants during open application periods. These grants help citizens receive technical assistance to understand the cleanup process and create additional avenues for public participation. For more information about public participation grants, please visit Ecology's website at: <http://www.ecy.wa.gov/programs/swfa/grants/ppg.html>

Q: How do I contact the Washington State Department of Ecology office?

A: For more information about the state Model Toxics Control Act, please contact Washington State Department of Ecology office:

Northwest Regional Office: (425) 649-7000

Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom counties

Q: Who is the site manager for Boeing Fabrication Auburn Site?

A: Robin Harrover, LHG

Department of Ecology Northwest Regional Office (NWRO) - Hazardous Waste

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Special accommodations

If you need this document in an alternative format, call (425) 649-7117. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call (877) 833-6341.