



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan

Sediment Management Standards

Chapter 173-204 WAC

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Publication and Contact Information

This report is available on the Department of Ecology's website at www.ecy.wa.gov/biblio/1309047.html

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325).

If you need this document in a version for the visually impaired, call the Toxics Cleanup Program at 360-407-7170.

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Purpose

The Department of Ecology (ECY) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

Ecology is revising the Sediment Management Standards (SMS) to clarify requirements for cleanup of contaminated sediment sites to make the cleanup process more effective. The revisions include:

- Integrating the SMS and Model Toxics Control Act (MTCA), Chapter 173-340 WAC cleanup requirements where appropriate.
- Clarifying requirements for protection of human health from sediment contamination.
- Clarifying requirements for protection of higher trophic level species from sediment contamination.
- Promulgating numeric chemical and biological criteria for freshwater sediment to protect the benthic community.
- Clarifying requirements for coordinating source control and cleanup actions at cleanup sites.

The purpose of this rule implementation plan is to inform those who must comply with the Sediment Management Standards Chapter 173-204 WAC about how Ecology intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

The goal of the Sediment Management Standards is to reduce and ultimately eliminate adverse effects on biological resources and threats to human health from surface sediment contamination.

This rule amendment clarifies requirements for cleanup of contaminated sediment sites to make the cleanup process more effective. Ecology's Toxics Cleanup Program (TCP) will take the lead in implementing the revised rule. Implementation of the rule will be incorporated into continuing program activities.

Both implementation and enforcement remain part of the existing regulatory framework. Implementation will primarily be carried out by program staff in headquarters and the four regional offices. For cleanup conducted by TCP under the Model Toxics Control Act law, site managers in headquarters and regional offices provide oversight to formal sites.

Because of the complexity and the requirements around permitting, sediment cleanup is entirely through a formal process. Cleanup of contaminated sediments typically involves Ecology, Department of Natural Resources (DNR), local governments, tribes, and may involve the Environmental Protection Agency (EPA) and the Army Corp of Engineers. The primary effort around implementation will be education. Vehicles for education will include guidance, focus sheets, seminars/webinars, and ongoing technical support.

Guidance

TCP will develop and provide written material to guide implementation and will hold technical trainings to assist staff and site managers. Webinars and video conference options will be provided as appropriate.

The primary question for implementation is education regarding the significant changes to Part V, Sediment Cleanup Standards. A Sediment Cleanup Users Manual is being developed to provide guidance to Ecology staff and the public on implementing Part V.

The guidance will address:

- Site identification
- Site screening and development of conceptual site models
- Remedial investigations
- Feasibility studies
- Source control
- Sampling and data requirements
- Setting sediment cleanup standards
- Evaluating risk to human health
- Evaluating risk to the benthic community

- Evaluating risk to higher trophic levels
- Using biological and chemical criteria
- Establishing natural and regional background
- Remedy selection
- Establishing sediment recovery zones
- Monitoring and compliance

A preliminary draft of this guidance (Publication Number 12-09-057) was posted on the Ecology website August 30, 2012 so that persons commenting on the proposed SMS rule revisions could also review Ecology's preliminary expectations for implementation.

Regulatory Framework

A primary purpose for rule revisions was to integrate the SMS and MTCA provisions for sediment cleanup. Implementing the rule changes will not require any added staff since changes do not substantively change the existing regulatory framework for managing the cleanup of toxic wastes.

Informing and Educating Persons Affected by the Rule

Throughout the rule-making project, Ecology has focused on outreach to stakeholders. Persons interested in and affected by revisions to the rule include the public (especially people living near Puget Sound or who consume fish and shellfish from Washington waters), potentially liable persons, tribal governments, local governments, ports, state and federal agencies, consultants and persons who engage in cleanup-related activities as part of their business.

Rule Making Scoping

In 2009, Ecology began a rule scoping process by conducting meetings with interested stakeholders to understand their highest priority rule issues. Ecology carefully considered this feedback to decide which issues to include for rulemaking, developed Issue Papers that provided more details on each issue, and submitted them for informal public comment.

Rule Advisory Committees

On February 10, 2009, Ecology filed a CR-101 with the Office of the Code Reviser, a statement for proposed rulemaking that included both the SMS and MTCA rules. Ecology then formed two rule advisory groups, the MTCA/SMS Advisory Group and the Sediment Workgroup. In 2010, Ecology continued the advisory group process and held a total of 16 meetings.

These advisory groups and committees included participants from environmental organizations, tribes, state and federal agencies, municipalities, ports, businesses, attorneys, and environmental consultants. Members were selected to provide diverse and representative viewpoints. All committee and advisory group meetings were announced in advanced, open to the public and agendas and meeting materials were placed online.

In 2011, Ecology drafted rule language based on feedback from the advisory groups and the public. The advisory groups were reconvened for three meetings in fall 2011, including some new members, to discuss the informal draft rule language and provide informal public comment. Committee members remain involved. Most submitted formal comments on the proposed rule language. Several represent large stakeholder communities. After the rule is adopted and before the effective date Ecology will inform participants about planned seminars and webinars. Ecology will ask committee members to help insure the announcements reach potentially affected persons.

Sediment Management Annual Review Meetings and Conferences

Ecology presented progress on the rule issues and updates from the advisory groups at the Sediment Management Annual Review Meetings each year beginning in 2009 and solicited public comment. In addition, Ecology presented rule issues and updates at various conferences, including the Environmental Law Education Center annual sediment conferences. Ecology held additional meetings with interested stakeholders on request. We will continue to use these meetings in the future as a way to inform and educate persons affected by the rule.

Website and email lists

A dedicated website was created and is updated regularly. Ecology periodically provides announcements via the MTCA-SMS-RULE-UPDATE listserv. This listserv has over 300 subscribers. Announcements are also distributed via the Ecology Site Register.

After the rule is adopted and before the effective date Ecology will update the website and send announcements via email about planned seminars and webinars. Ecology will ask recipients to forward the message to help insure the announcements reach potentially affected persons.

Water Quality Policy Forum

TCP coordinates with Ecology's Water Quality Program (WQP) to ensure that stakeholders are aware of issues that affect both cleanup and water quality. The largest issues in this category are source control/impacts to permitted dischargers and fish consumption rates.

TCP provides, and will continue to provide, status and schedule updates at the Water Quality Policy Forums, which are scheduled approximately monthly through June 2013. Although the issues facing the programs are distinct, TCP understands that stakeholders are interested in overall approaches, including how efforts in one area affect others.

Focus Sheets, etc.

Focus sheets, Frequently Asked Questions, and other handouts will be provided to the public and available for download. Focus sheets typically do not explore technical topics in detail but instead identify key principles and offer directions on where to get further information.

Depending on the questions received, Ecology will evaluate what focus sheets we prepare based on stakeholder and site manager needs. Possible topics include:

- The Sediment Cleanup Decision Process
- Remedial Investigation and Feasibility Study Requirements for Sediment Sites
- What is “Regional Background”?
- About Freshwater Sediment Standards
- What is a “Reasonable Maximum Exposure (RME)”?

Seminars, Webinars and Conferences

Focus groups, public hearings, presentations at conferences, and regular website updates have helped to familiarize the regulated community with the proposed changes. The following seminars and webinars are being planned:

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| Sediment Seminar for Ecology Site Managers | ½ day technical workshop on the rule revisions and cleanup process |
| Public Annual Review Meetings | Provide updates on the rule, guidance topics, updates on technical protocols, and share information on latest science. |
| Briefings for Regulatory Agencies | Ecology will offer a one-to-two hour briefing to state and federal agencies. It will focus on new requirements. |
| Conferences | Ecology staff are regular contributors to several annual regional technical meetings dedicated to sediment cleanup issues. |

Outreach to Tribes

Ecology has provided updates and briefings to tribes and tribal organizations, and has offered Government-to-Government consultation. Several rule topics are of particular interest to tribes, and Ecology has made special outreach efforts.

Of particular interest to tribes is the lack of a default fish consumption rate for sediment cleanup in the revised rule. Ecology heard a number of concerns about identifying a specific default rate,

including questions about how it could impact a separate process to update water quality standards. Ecology also heard concerns regarding the need for a default rate in rule. After carefully considering these concerns, Ecology decided to specify that a “reasonable maximum exposure” scenario based on tribal exposure would be adopted into rule, rather than a specific default fish consumption rate. This protects Washingtonians on the high end of the range of fish consumers, which in turn will protect all those who eat fish from Washington waters.

Because this is a topic of considerable interest, Ecology published a Technical Support Document (TSD) with comprehensive information about fish consumers in Washington. Incorporating information from the TSD, the Sediment Cleanup Users Manual will explain how to establish an RME based on tribal exposures.

Ecology will offer to work with the Northwest Indian Fisheries Commission, the Columbia River Inter-Tribal Fish Commission, and other tribal organizations to ensure access to guidance and offer briefings or seminars.

Promoting and Assisting Voluntary Compliance

The actions listed above that inform and educate stakeholders on the changes will also help promote voluntary compliance. Guidance materials are being updated to reflect the new changes.

Ecology expects that TCP site managers will be a primary contact for the regulated community as rule implementation takes effect. To ensure that site managers have knowledge regarding relevant changes TCP will host educational seminars and webinars to ensure staff have knowledge and training.

One question we anticipate relates to upland cleanup standards. How do you calculate soil, surface water, or groundwater cleanup standards so that nearby sediments are protected? TCP expects that guidance addressed specifically to upland cleanups will assist in promoting voluntary compliance. This is a technically complicated issue that can be addressed either by rough “attenuation assumptions” or by more sophisticated modeling efforts. Ecology will explore the extent to which this needs to be addressed in guidance.

TCP staff will present updates about guidance at conferences and workshops. Part of our message is that we continue to invite and welcome public participation in evaluating scientifically accurate and technically feasible ways to reach cleanup goals.

Evaluating the Rule

Ecology will rely on environmental objectives that are currently built into the program’s performance measures aimed at satisfying the Government Management Accountability and Performance goals.

The primary objective is cleaning up all sites that are contaminated with hazardous substances in Washington State. The goals and mission of TCP are to get contaminants out of the environment, keep them out, and continue to work towards supporting sustainable communities and economic development. TCP performance measures track environmental results by way of the number of sites that have been cleaned up.

Sediment-related TCP performance measures include:

- Number of known contaminated sites with cleanup actions completed.
- Number of contaminated sites in Puget Sound that have begun cleanup.
- Estimated sediment acreage evaluated with cleanup actions in process.
- Estimated sediment acreage evaluated of any interim/emergency actions completed.

The objective of updating the rule has been to establish a workable and practical mechanism for sediment cleanups that takes into account the reality of widespread, ubiquitous, anthropogenic contamination. This rule resolves existing ambiguities over setting sediment cleanup levels that protect human health and aquatic life. Ecology expects that certain aspects of the cleanup process will take less time. Having realistic targets for immediate cleanup actions will speed up removal of bioaccumulative chemicals in sediment, an important step needed to restore and protect our valuable natural resources and critical habitat.

Training and Informing Ecology Staff

Ecology has included staff at all stages of the rule making process. TCP site managers are a valuable source of technical information, and a key interface with the regulated community.

Training materials and seminars will focus specifically on the needs and concerns of site managers. Opportunity to ask detailed questions will be provided. Ecology will begin scheduling seminars and video conferences as soon as the rule is adopted. Initial training will be complete before the rule goes into effect. TCP anticipates training will continue after the effective date of the rule to keep the program up to date on latest science and new protocols. Rulemaking staff will ask site managers for input and feedback on the Sediment Cleanup Users Manual. Training for Ecology staff will be conducted using the following methods:

- Guidance posted on SharePoint with a mechanism for input identified
- Informational presentations and Q&A sessions
- Rule making staff available to answer questions
- Presentations at each Regional Office (either at regularly scheduled staff meetings or at special seminars)
- We will query interest in a one or two day in-depth workshop for technical staff who will need more focused instruction

List of Supporting Documents that May Need to be Written or Revised

Sediment Cleanup Users Manual

Policy 1-11 “Ensuring Credible Water Quality Data for Management and Assessment Report “ regarding adding contaminated sediment to the 303(d) list.

Depending on the questions received, Ecology will evaluate the need for focus sheets and prepare them according to stakeholder and site manager needs. Possible topics include:

- The Sediment Cleanup Decision Process
- Remedial Investigation and Feasibility Study Requirements for Sediment Sites
- What is “Regional Background”?
- About Freshwater Sediment Standards
- What is a “Reasonable Maximum Exposure”?

More Information

<http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html>

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