

Implementing 2013 Changes to Model Toxics Control Act

In 2013, the Washington Legislature adopted Senate Bill 5296 and House Bill 2079, which made significant changes to the Model Toxics Control Act (MTCA). This focus sheet highlights those changes, their implications, and Ecology's preliminary schedule for implementing the changes. We look forward to working with interested parties to implement this legislation.

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.

Prioritization

The legislation directs Ecology to consider both the risks posed by and land reuse potential of contaminated sites when allocating staff and financial assistance.

Remedial Action Grants

The legislation authorizes Ecology to make several changes to its remedial action grant program for local governments, including the authority to:

- Enter into "extended grant agreements" at sites where the cleanup project exceeds \$20 million and occurs over multiple budget cycles. These projects would receive priority for grant funds, enabling local governments to commit to long-term cleanups while not tying up large amounts of grant funds.
- Provide funding for integrated planning grants to fund studies necessary to facilitate the cleanup and the adaptive reuse of Brownfield properties following remediation. The legislation clarifies what types of studies are eligible for funding.
- Provide funding for area-wide groundwater remedial actions without requiring the local government to be a potentially liable person (PLP) or seek reimbursement of grant funds from a PLP. This should help facilitate redevelopment of properties in these areas by identifying which are likely sources of groundwater contamination and which are not.

WHY IT MATTERS

In 1988, Washington voters approved creation of the Model Toxics Control Act (MTCA). In 2013, the Legislature made significant changes to MTCA. The changes are intended to speed up cleanup work and reduce the impacts caused by stormwater.

The legislation also alters how MTCA funds are distributed and used. MTCA now supports core work at the state and local government level for:

- Cleaning up contaminated land, air, and water.
- Reducing the number and severity of toxic releases.
- Managing solid and hazardous wastes.
- Water and environmental health protection and monitoring.
- Advising people about toxic threats and ways to reduce their exposure to toxics.

We are working to better understand the changes and implement them to the extent feasible with existing resources.

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Special accommodations

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- Enter into a grant agreement with a local government before it acquires or secures access to a property, provided the agreement includes a schedule to do so. This should facilitate integrated planning and area-wide groundwater remedial actions.
- Provide for periodic reimbursement of remedial action costs as they are incurred by the local government. This should facilitate more independent remedial actions by local governments, which were previously reimbursed only upon completion of the cleanup.

Ecology intends to move forward aggressively to revise the grant guidelines and then proceed with rule making in 2014. We also intend to consult with local governments responsible for large cleanups to determine which sites would be good candidates for extended grant agreements. We will manage remedial action grants more closely to help ensure budgeted funds are put to work.

Redevelopment Opportunity Zones

The legislation authorizes local governments to establish “redevelopment opportunity zones.” Within these zones, local governments are authorized to:

- Create a “brownfield renewal authority” with broad powers to facilitate cleanup and redevelopment.
- Access a “brownfield redevelopment trust fund account,” created within the state’s budget, which can be used to secure long-term funding for cleanup.

Within these zones, Ecology is also authorized to:

- Enter into agreed orders with prospective purchasers to accelerate the study of sites with redevelopment potential.
- Enter into mixed funding settlement agreements with prospective purchasers where public funding is commensurate with a public benefit other than cleanup. This should help leverage the cleanup of properties with marginal redevelopment potential. This authority does not alter the liability of any potentially liable person or the authority of the department to recover costs from such persons.
- Prioritize grants for integrated planning and area-wide groundwater remedial actions within these zones. This should help focus limited funds in areas with the greatest potential for redevelopment.

We intend to consult with local governments to determine which communities plan to establish redevelopment opportunity zones within their jurisdictions. 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 standardized cleanup methods for lower-risk sites, called “model remedies.” At sites where model remedies 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.

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 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. Ecology intends to implement that program in accordance with the following schedule:

- 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.

Accountability

The legislation expands Ecology’s reporting requirements to improve 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.

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

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).

STCA has primarily been used to fund operating expenses for several state agencies and programs, including Ecology, Agriculture, Natural Resources, Emergency Management, and Revenue. LTCA has primarily been used to fund grants to local governments for cleanup of sites where they are a potentially liable person or prospective purchaser, for solid waste and hazardous waste management regulatory programs, and for stormwater.

The legislation makes significant changes to these funding provisions:

- The revenue from the hazardous substance tax is currently split between the STCA (47%) and LTCA (53%). The legislation changes the split to 56% for STCA and 44% for LTCA.
- The total tax revenue deposited into STCA and LTCA is capped at \$140 million for each fiscal year. Revenues above that amount are deposited in a new account called the “Environmental Legacy Stewardship Account” (ELSA).
- For the 2013-15 budget cycle, a total of \$90 million is transferred from STCA and LTCA (\$45 million from each account) to ELSA.
- The allowed uses of STCA funds are amended to reflect activities funded by the Legislature on an ongoing basis.
- The allowed uses of LTCA funds are amended to make extended grant agreements the highest priority for funding. Grants for stormwater projects that work in conjunction with cleanup are a new authorized use of LTCA funds.
- ELSA funds may be used for any purposes authorized under STCA and LTCA. They may also be used for projects that significantly reduce the time to complete cleanups, that reduce stormwater pollution from existing development, or that remove hazardous substances from derelict vessels.
- Ecology is directed to manage these accounts more closely to help ensure budgeted funds are put to work, and not tied up on projects and unspent over long time periods.
- Mixed waste fees for the Hanford Site are removed from the MTCA account and placed into a new, separate account.

Changes to the current distribution of tax revenue and uses of MTCA funds have 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.