



## **Concise Explanatory Statement**

### **Chapter 173-340 WAC**

### **Model Toxics Control Act Cleanup Regulations**

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#### **Summary of Rulemaking and Response to Comments on:**

- **Proposed Rule Amendments**
- **Draft Site Hazard Assessment and Ranking Process Tool and User Manual**

Washington State Department of Ecology  
Olympia, Washington

August 2023 | Publication No. 23-09-078

## Publication Information

This document is available on the Department of Ecology's website at:  
<https://apps.ecology.wa.gov/publications/summarypages/2309078.html>

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<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
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<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
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DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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## Acronyms and Abbreviations

APA	Administrative Procedure Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CES	Concise Explanatory Statement
CSL	Contaminated Sites List
DCA	Disproportionate Cost Analysis
Ecology	Washington State Department of Ecology
EJ	Environmental Justice
EPA	U.S. Environmental Protection Agency
HEAL Act	Healthy Environment for All Act
MTCA	Model Toxics Control Act
PLIA	Pollution Liability Insurance Agency
RCW	Revised Code of Washington
SHARP	Site Hazard Assessment and Ranking Process
STAG	Stakeholder and Tribal Advisory Group
UST	Underground Storage Tank
VCP	Voluntary Cleanup Program
WAC	Washington Administrative Code
WARM	Washington Ranking Method

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# Chapter 1: Introduction

The purpose of a Concise Explanatory Statement (CES) is to:

- Provide reasons for adopting the rule amendments.
- Describe any differences between the proposed and adopted rule amendments.
- Provide Ecology's response to public comments on the proposed rule amendments.

The documentation is required by the Administrative Procedure Act (RCW [34.05.325](#)<sup>2</sup>).

This CES provides information on the Washington State Department of Ecology's (Ecology's) adoption of rule amendments for:

Title: Model Toxic Control Act Cleanup Regulations  
WAC Chapter: Chapter [173-340](#) WAC<sup>3</sup>  
Adopted date: August 23, 2023  
Effective date: January 1, 2024

This CES also provides Ecology's response to public comment on the draft Site Hazard Assessment and Ranking (SHARP) Tool and User Manual, which is necessary to implement the rule amendments.

For more information about this or other Ecology rulemakings, visit our [rulemaking website](#).<sup>4</sup>

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<sup>2</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.325>

<sup>3</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340>

<sup>4</sup> <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>

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## Chapter 2: Reasons for Adopting the Rule Amendments

On August 23, 2023, the Department of Ecology (Ecology) adopted amendments to Chapter [173-340](#) WAC,<sup>5</sup> the Model Toxics Control Act (MTCA) Cleanup Regulations. The regulations govern the investigation and cleanup of sites in Washington state contaminated by the release of hazardous substances.

### 2.1 Statutory authority

The rule amendments are authorized by and implement Chapter [70A.305](#) RCW,<sup>6</sup> the Model Toxics Control Act (MTCA), and Chapter [70A.355](#) RCW,<sup>7</sup> the Underground Storage Tank law.

### 2.2 Scope of the rulemaking

This rulemaking is the first of several rulemakings that Ecology plans to undertake to update the MTCA Cleanup Regulations, which have not been updated since 2001. Ecology is updating these regulations based on:

- Statutory changes to the authorizing state statute, Chapter 70A.305 RCW, enacted since the last update of the regulations.
- Ecology's experience investigating and cleaning up more than 6,000 contaminated sites since the last update of the regulations.
- Comments from practitioners and stakeholders received during the [Cleanup Rule Exploratory Rulemaking](#)<sup>8</sup> process.

Ecology is conducting this first rulemaking to update and clarify many of the administrative and procedural requirements for cleaning up contaminated sites. In particular, Ecology:

- Updated the title of the chapter.
- Updated the general provisions and defined terms in Parts 1 and 2 of the chapter.
- Updated the requirements for release reporting, initial investigation, site hazard assessment and ranking, site listing, and program planning under Part 3 of the chapter.

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<sup>5</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340>

<sup>6</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>7</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.355>

<sup>8</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking>

- Updated the requirements for conducting a remedial investigation and selecting a cleanup action for a site in Part 3 of the chapter.
- Updated the requirements in WAC 173-340-450 for investigating and cleaning up underground storage tanks regulated under Chapter [173-360A](#) WAC.<sup>9</sup>
- Updated the requirements for public participation and tribal engagement in Part 6 of the chapter.
- Incorporated requirements for cultural resource protection in WAC 173-340-815 and updated procedures for identifying appropriate sampling and analytical methods in WAC 173-340-830.
- Made other conforming and selective changes to the administrative and procedural requirements in Parts 4, 5, and 8 of the chapter.
- Made other changes in Parts 1 through 6 and Part 8 of the chapter to streamline and clarify requirements, make minor corrections, and improve consistency with other laws and rules.
- Made changes in Parts 7 and 9 of the chapter to clarify language and make corrections without changing the effect of the rule.
- Incorporated changes to the cleanup program specified in Chapter [70A.305](#) RCW, Hazardous Waste Cleanup – Model Toxics Control Act.

As part of this first rulemaking, Ecology did not change the cleanup standards in Parts 7 and 9 of the chapter.

## 2.3 Purpose of the rulemaking

The purpose of this rulemaking is to amend an existing rule. Many of the rule amendments clarify existing requirements. Other amendments either amend existing requirements or the method of achieving those requirements. The amendments are necessary to more effectively achieve the statutory goals and objectives set forth in Chapter [70A.305](#) RCW, the Model Toxics Control Act (MTCA), and Chapter [70A.355](#) RCW, the Underground Storage Tank law. In particular, the rule amendments are intended to:

- **Strengthen environmental justice principles when prioritizing and cleaning up contaminated sites.**
  - At the program level, the rule amendments strengthen our commitments by requiring Ecology to prioritize the cleanup of contaminated sites that may impact vulnerable populations or overburdened communities, and to periodically assess

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<sup>9</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-360A>

progress. However, Ecology retains the flexibility to establish goals, plans, and performance metrics outside of the rule. We expect to reduce environmental and health disparities in Washington state through these commitments.

- At the site level, the rule amendments emphasize accountability and transparency when making cleanup decisions. Rather than establishing new environmental justice criteria and evaluations that would be difficult to implement, the amendments emphasize the need to consider the impact of contaminated sites and their cleanup on vulnerable populations and overburdened communities under existing cleanup requirements. The amendments also require documentation to improve accountability and transparency. By adhering to these requirements, we expect that cleanup actions will result in equitable outcomes for vulnerable populations and overburdened communities impacted by a site.

- **Improve the site hazard assessment and ranking process.**

The rule amendments improve Ecology's process for assessing and ranking the hazard posed by contaminated sites. Ecology uses the rankings to compare and prioritize the threats to human health and the environment posed by contaminated sites. The amendments replace the outdated Washington Ranking Method (WARM) specified in the existing rule (without change since 1992) with a requirement that Ecology establish, implement, and maintain a new process outside the rule. This process will still be subject to performance standards and public comment opportunities in the rule. By maintaining the process outside the rule, Ecology will be able to review and update it more frequently.

- **Require comprehensive program plans and performance assessments.**

The rule amendments require Ecology to develop comprehensive program plans for cleaning up contaminated sites in Washington state. In particular, the amendments commit Ecology to develop and maintain a comprehensive and integrated strategic plan for cleaning up contaminated sites, and to periodically assess its performance. However, the amendments do not specify the content of such plans or how frequently they will be updated, or performance assessed. The requirements are intended to provide a level agency accountability and transparency, but also provide the agency sufficient flexibility to adjust plans as needed

- **Improve initial response to releases from regulated underground storage tanks.**

The rule amendments help accelerate the initial response to releases from Underground Storage Tank (UST) systems regulated under Chapter [173-360A](#) WAC. The changes are intended to streamline, clarify, and update the rule and improve integration between the rules. These cleanup rules are needed to maintain Washington state's federally approved UST program.

- **Update and clarify remedial investigation and remedy selection requirements.**

The rule amendments update and clarify the process for investigating and cleaning up contaminated sites based on the experience of practitioners over the past 20 years. For example, they introduce stepwise procedures for remedial investigations and feasibility studies, clarify reporting requirements, revise and clarify how public concerns and tribal rights and interests are considered and documented, and incorporate policies related to climate change resilience, environmental justice, and cultural resource protection. However, the amendments do not provide detailed guidance. Ecology plans to update or develop additional guidance to provide more specific instruction as needed.

- **Clarify which requirements apply to independent remedial actions.**

The rule amendments clarify the applicability of substantive requirements to independent remedial actions (e.g., conducting a Feasibility Study) and identify the differences in administrative requirements between independent remedial actions and Ecology-conducted and Ecology-supervised remedial actions (e.g., reporting Feasibility Study results and whether subject to public comment).

In addition, the amendments add investigation reporting requirements to provide Ecology and the public information about site hazards. The amendments also eliminate public opportunity to comment on post-cleanup actions to be consistent with existing rules for cleanup actions. They also replace the required method for providing the public with notice of independent remedial actions

- **Strengthen public participation and tribal engagement requirements for Ecology-conducted or supervised cleanups.**

The rule amendments update public notification methods to reflect changes in technology and practice over 20 years, and to enable Ecology to provide more information sooner to the public in a way that is more efficient. The amendments also update and clarify some of the public participation requirements for Ecology-conducted and Ecology-supervised remedial actions.

The rule amendments also establish requirements for tribal engagement for Ecology-conducted and Ecology-supervised remedial actions that are separate and independent from public participation requirements. However, the amendments do not prescribe how Ecology must engage Indian tribes during the cleanup process. Ecology plans to develop programmatic policies and templates based on guidance developed under the HEAL Act.<sup>10</sup>

- **Make the rule easier to use and understand.**

The rule amendments restructure, clarify, and correct many existing requirements to make the rule easier to use and understand.

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<sup>10</sup> See Chapter 70A.02 RCW, Environmental Justice.

## Chapter 3: Differences Between the Proposed Rule and Adopted Rule

The Administrative Procedure Act requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences (RCW [34.05.325\(6\)\(a\)\(ii\)](#)).<sup>11</sup>

There are some differences between the proposed rule amendments filed on February 15, 2023, and the adopted rule amendments filed on August 23, 2023. Ecology made these changes for all or some of the following reasons:

- In response to comments received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The changes Ecology made to the text of the proposed rule are included in a document on Ecology's [rulemaking webpage](#).<sup>12</sup> The changes and Ecology's reasons for making them are summarized below. For additional explanation of these changes, please refer to Ecology's response to comments in Chapter 5 of this document.

- **Throughout rule, except WAC 173-340-100:** Added word “likely” in front of each usage of the defined terms “vulnerable population” and “overburdened community.”

Reason: To help clarify the level of confidence and information needed to determine whether a population potentially exposed to a hazardous substance release is a vulnerable population or overburdened community for the limited purpose of implementing the MTCA Cleanup Regulations, Chapter 173-340 WAC. This determination affects the applicability of several site prioritization and site cleanup requirements in the rule. Ecology acknowledges the inherent difficulty in making the determination whether a population is vulnerable or overburdened, and that guidelines are still being developed to help make the determination under the HEAL Act, Chapter [70A.02](#) RCW.<sup>13</sup> Ecology added the term “likely” to emphasize that certainty or a high level of confidence is not needed to make such determinations under the MTCA Cleanup Regulations. Ecology intends to develop guidelines specifying what type of information may be used to make the determinations. Change based in part on public comment.

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<sup>11</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.325>

<sup>12</sup> <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340>

<sup>13</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.02>

- **WAC 173-340-200, definition of “conceptual site model”:** Clarified that “sensitive environments” are one of the “physical and habitat features” that must be included as part of a conceptual site model. The term “sensitive environment” is currently defined in WAC 173-340-200, and such environments must be identified during initial site characterizations of UST releases under WAC 173-340-450 and remedial investigations of all releases under WAC 173-340-350.

Reason: To ensure clarity and consistency of regulatory requirements, and to ensure that sensitive environments are considered when establishing cleanup levels and selecting cleanup actions. Change made in response to public comment.

- **WAC 173-340-200, definition of “practicable”:** Corrected rule cross-reference.

Reason: To correct technical mistake.

- **WAC 173-340-320(1)(b):** Edited text to help clarify the purpose of site hazard assessments and rankings in relation to program planning and assessment in WAC 173-340-340.

Reason: To ensure clarity of text.

- **WAC 173-340-320(2)(a)(iii):** Edited text to clarify the populations referenced are those that are “potentially exposed” to a release.

Reason: To ensure clarity and consistency of text.

- **WAC 173-340-320(2)(a)(iv):** Added as a functional requirement of the site hazard assessment and ranking process to “identify the environmental health disparity ranking of the potentially exposed population using the environmental health disparities map developed pursuant to RCW 43.70.815 or other readily available information.”

Reason: To enable Ecology to assess and rank the cumulative environmental health impacts of potentially exposed communities and determine whether the community is likely an “overburdened community.” Ecology must consider this information when prioritizing contaminated sites and the resources necessary to clean them up under WAC 173-340-340(1). Change made in response to public comment.

- **WAC 173-340-340(1):** Edited text to clarify that the strategic plan must prioritize contaminated sites that threaten likely vulnerable populations and overburdened communities.

Reason: To ensure clarity and consistency of text.

- **WAC 173-340-350(3)(a) and (b):** Deleted duplicate timing and phasing requirement for feasibility studies. The timing and phasing requirements for feasibility studies are specified separately in WAC 173-340-351(3).



Reason: To ensure clarity and consistency of text.

- **WAC 173-340-350(3)(c)**: Edited text to clarify that a remedial investigation and a feasibility study may be conducted as a single step or as separate steps in the cleanup process.

Reason: To ensure clarity of text.

- **WAC 173-340-350(5)(g)(iii)**: Clarified that the remedial investigation report must separately include information on threats to likely vulnerable populations and overburdened communities. Also moved provision from (g)(vii) of this subsection to make the list of what must be included in the remedial investigation report consistent with the steps for a remedial investigation.

Reason: To ensure clarity of, and consistency among, reporting requirements related to documenting likely vulnerable populations and overburdened communities and the impact of releases and cleanup actions on them. The need to separately include this information was not clear in the proposed rule amendments.  
Change made in response to public comment.

- **WAC 173-340-350(6)(a)**: Clarified that one must identify only the “estimated” quantity of “releases,” consistent with other regulatory requirements.

Reason: To ensure clarity of, and consistency among, reporting requirements related to documentation of the quantity or mass of releases or hazardous substances.  
Change made in response to public comment.

- **WAC 173-340-350(6)(g)(iii) and (iv)**: Added as a remedial investigation requirement that one must collect sufficient information on any “sensitive environments at the site” and “any habitat restoration or resource recovery goals for the site.” The term “sensitive environment” is currently defined in WAC 173-340-200.

Reason: To ensure clarity and consistency of regulatory requirements, and to ensure that sensitive environments are considered when establishing cleanup levels and selecting cleanup actions. Change made in response to public comment.

- **WAC 173-340-350(6)(h)(iii)**: Clarified that one must collect sufficient information during a remedial investigation to determine “whether the receptors include likely vulnerable populations or overburdened communities.”

Reason: To ensure clarity of regulatory requirements. The determination is necessary to comply with other requirements related to evaluating and documenting impacts of releases and cleanup action alternatives on likely vulnerable populations and overburdened communities. The need to make this determination was only implied in the proposed rule amendments.

- **WAC 173-340-350(6)(j):** Edited text to further clarify that sufficient information must be collected during the remedial investigation to determine whether a feasibility study is necessary.

Reason: To ensure clarity of text and consistency with other requirements.

- **WAC 173-340-350(6)(k):** Edited text to further clarify that, if a feasibility study is necessary, then sufficient information must be collected during the remedial investigation to develop and evaluate cleanup action alternatives in the feasibility study.

Reason: To ensure clarity of text and consistent with other requirements.

- **WAC 173-340-351(2)(a)(i) and (ii):** Corrected rule cross-references to WAC 173-340-350(6)(g)(vii).

Reason: To correct technical mistake.

- **WAC 173-340-351(3)(a) and (b):** Deleted duplicate timing and phasing requirement for remedial investigations. The timing and phasing requirements for remedial investigations are specified separately in WAC 173-340-350(3).

Reason: To ensure clarity and consistency of text.

- **WAC 173-340-351(3)(c):** Edited text to clarify that a remedial investigation and a feasibility study may be conducted as a single step or as separate steps in the cleanup process.

Reason: To ensure clarity of text.

- **WAC 173-340-351(6)(a):** Emphasized that, when identifying goals for the cleanup action in the feasibility study, one must include “any habitat restoration or resource recovery goals for the site.”

Reason: To ensure clarity and consistency of regulatory requirements, and to ensure that habitat restoration or resource recovery goals are considered when establishing cleanup levels and selecting cleanup actions. Change made in response to public comment.

- **WAC 173-340-351(6)(f)(v)(D) and (E):** Clarified that the feasibility study report must include for each alternative studied the estimated “mass” of each hazardous substance to be removed or treated versus the “mass” remaining behind above proposed cleanup levels. Specifically, clarified that “amount” means “mass.” Also clarified that Ecology may require or allow “estimates of the volume of contaminated material in place of, or in addition to, estimates of mass of hazardous substances.”

Reason: To ensure clarity of, and consistency among, regulatory requirements and to explicitly allow the use of less burdensome alternatives as appropriate. The information is needed to evaluate and compare cleanup action alternatives in

the feasibility study (WAC 173-340-351) and to develop cleanup action plans for the selected alternative (WAC 173-340-380). Change based in part on public comment.

- **WAC 173-340-355(2)**: Edited text to clarify that remediation levels are specific to a hazardous substance.

Reason: To ensure clarity of text.

- **WAC 173-340-355(5)**: Repeated current requirement in WAC 173-340-380 to emphasize that “the remediation levels selected as part of a cleanup action must be specified in the cleanup action plan.”

Reason: To ensure clarity of, and consistency among, regulatory requirements.

- **WAC 173-340-360(3)(c)(ii)**: Eliminated proposed rule requirement that a nonpermanent groundwater cleanup action must “provide an alternative water supply or treatment if the cleanup action does not protect an existing use of the groundwater.”

Reason: Ecology is deferring further consideration of the proposed rule amendment to a subsequent rulemaking that addresses groundwater cleanup standards under WAC 173-340-720, including the conditions for allowing a conditional point of compliance. Ecology has determined that those conditions would need to be changed to reflect the proposed requirement. However, those conditions are outside the scope of this rulemaking. The deferral is also based on public comments, which raised questions that will need further public input.

- **WAC 173-340-360(5)(c)(iii)(C)**: Corrected rule cross-reference to WAC 173-340-351(6)(c).

Reason: To correct technical mistake.

- **WAC 173-340-360(5)(c)(iv)(A)(I)**: Edited text to clarify that, in the disproportionate cost analysis, the baseline cleanup action alternative is only compared against the next most permanent alternative, not any of the other cleanup action alternatives.

Reason: To ensure clarity of text.

- **WAC 173-340-360(5)(d)(ii)**: Eliminated proposed rule amendment that defined the “permanence” criterion for a disproportionate cost analysis to include the degree to which the alternative permanently reduces the “exposure to” hazardous substances.

Reason: To ensure the clarity of, and maintain clear distinctions between, the disproportionate cost analysis criteria.

- Adding “exposure” to the “permanence” criterion blurs the distinction between the “permanence” and the “protectiveness” criteria.

- The focus of the “permanence” criterion is on the toxicity, mobility, and mass the hazardous substance itself, while the focus of the “protection” criterion is on the risk posed by the substance. One should consider exposure or potential exposure to a hazardous substance as part of the “protection” criterion.
- To achieve a “permanent reduction in exposure” to a hazardous substance, one would need to achieve a permanent reduction in toxicity, mobility, or mass of that substance, which is already considered under the “permanence” criterion. Containment of a hazardous substance does not permanently reduce exposure to that substance.

Change made in response to public comment.

- **WAC 173-340-360(5)(d)(vi)(B)(II):** Eliminated proposed rule amendment that made discounting of post-construction costs optional instead of mandatory. Also changed how post-construction costs must be discounted. Specifically, compared to the proposed rule, Ecology changed the inflation rate. Instead of using a construction cost index, the rule uses the U.S. Treasury nominal interest rate. This is accounted for by using constant dollars for future costs and discounting those costs using the U.S Treasury real interest rate.

Reason: The changes are necessary to more effectively and efficiently achieve statutory goals and objectives. By specifying the relevant discount rates to use in calculating the present value of postconstruction costs, and maintaining the current requirement to calculate present values, the rule amendments will apply a consistent approach for considering future costs in disproportionate cost analyses. The changes are anticipated to have the following benefits:

- Potential reductions in time spent determining the correct approach to present value calculations, including identifying appropriate inflation and discount rates.
- A universal discounting structure applied to all sites, reducing the variance across sites, of cost estimates used in remedy selection. This supports consistent and equitable decision-making across the universe of sites regulated by the rule, and reduces potential opportunities for independently chosen inflation and discount rates to affect remedy selection.
- Using the appropriate discount rate to reflect the relatively low-risk or risk-free, inflation-adjusted opportunity costs faced by the public. This ensures cost-effectiveness decisions regarding environmental and public health objectives are based on efficiency rather than private return.

Change prompted by public comment.

- **WAC 173-340-370(8):** Eliminated the clarifying edit in the proposed rule, which had replaced the term “overall” with the term “long-term.”

Reason: To clarify the expectation. The use of the term “overall” is consistent with the focus of the expectation, which is the threat posed by the contamination, either at the site being cleaned up or at another site involved with the cleanup action, not the threat posed by conducting the cleanup action. The hazards posed by the contamination could be short-term or long-term. Change prompted by public comment.

- **WAC 173-340-380(5)(c):** Added as required part of the cleanup action plan “a summary of how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action and developing the plan.”

Reason: To meet statutory goals and to ensure consistency among regulatory requirements governing how impacts on likely vulnerable populations and overburdened communities are considered and documented when conducting a feasibility study of cleanup action alternatives and when selecting and documenting a cleanup action. See WAC 173-340-351 and 173-340-380. In some cases, the cleanup action selected and documented in the cleanup action plan may be different than those evaluated and documented in the feasibility study. Such alternatives are usually hybrids of the alternatives evaluated in the study. In such cases, it is particularly important to document in the cleanup action plan how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action. Change based on public comment.

- **WAC 173-340-380(5)(l):** Clarified that the cleanup action plan for a containment remedy must include the “estimated mass” of hazardous substances remaining on site. In particular, clarified that “amount” means “mass” and that only an “estimate” is needed. Also clarified that Ecology may require or allow “estimates of the volume of contaminated material in place of, or in addition to, estimates of mass of hazardous substances.”

Reason: To ensure clarity of, and consistency among, regulatory requirements and to explicitly allow the use of less burdensome approaches as appropriate. The information is needed to evaluate and compare cleanup action alternatives in the feasibility study (WAC 173-340-351) and to develop cleanup action plans for the selected alternative (WAC 173-340-380). Change based in part on public comment.

- **WAC 173-340-390(4):** Repeated the requirement in WAC 173-340-351(2)(a)(ii) to emphasize that one must collect and document sufficient information during the remedial investigation to demonstrate that that the contaminated site meets the conditions identified by Ecology for using the model remedy.

Reason: To ensure clarity of, and consistency among, regulatory requirements.

- **WAC 173-340-440(5):** Restored guidance eliminated in the proposed rule amendments advising that demonstrations of the ability of institutional controls to reduce risks “should be based on a quantitative, scientific analysis.”

Reason: Change based on public comment.

- **WAC 173-340-450(5)(c)(iv):** Changed proposed rule amendment to allow Ecology to reduce the frequency of free product monitoring over time by UST owners and operators. Unless otherwise directed by Ecology, free product must be monitored quarterly.

Reason: To meet the intent of the authorizing statute (which requires Ecology to establish rules that are at least as stringent as federal requirements) using the least burdensome alternative to achieve statutory goals. The change is consistent with the requirements governing the frequency of progress reports on free product recovery in WAC 173-340-450(5)(c)(v). Changed based on public comment.

- **WAC 173-340-450(6)(c)(vi):** For interim action report, restored current requirement to include “sensitive environments” when describing the physical characteristics of the site. The proposed rule amendments mistakenly eliminated the requirement. The current rule defines the term “sensitive environments.”

Reason: To correct technical mistake. Change based in part on public comment.

- **WAC 173-340-600(5)(a):** Added requirement for Ecology to include on its webpage for each contaminated site “the date ecology or PLIA discovered or received notice of the release or, if this date is not known, the earliest date of administrative activity in ecology’s site database.” This information is already tracked in Ecology’s site database.

Reason: To meet the intent of the authorizing statute by making more information about contaminated sites readily available to the public. Ecology may consider how long the site has been listed when prioritizing funding or resources under WAC 173-340-340. Change based on public comment.

- **WAC 173-340-600(9)(e):** Edited text to clarify that the plan referred to is the “public participation plan.”

Reason: To ensure clarity of text.

- **WAC 173-340-620(3)(b):** Clarified that Ecology will not only seek to initiate, but also maintain meaningful engagement with Indian tribes throughout the cleanup process.

Reason: To ensure clarity of regulatory requirement. Change based in part on public comment.

- **WAC 173-340-702(12)(a), (b), and (c):** Updated the regulatory requirements governing the applicability of new cleanup levels to reflect the removal from the rule of Ecology-

approved analytical methods in WAC 173-340-830. As under the current rule, the cleanup level that applies to a release will be based on the rules **and analytical methods** in effect at the times specified in this subsection. A release will not be subject to further cleanup action due solely to subsequent amendments to the rules governing cleanup levels **or the subsequent availability of more sensitive analytical methods**.

Reason: To ensure that the effect of the regulatory requirements governing the applicability of new cleanup levels remains the same as under the current rule. Change based on public comment.

- **WAC 173-340-815(3)(b)**: Edited text to clarify the applicability of the consultation and inadvertent discovery plan requirements.

Reason: To ensure clarity of text.

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## Chapter 4:

# Public Comment on Proposed Rule Amendments

On February 15, 2023, Ecology filed the rule proposal. On March 1, 2023, the rule proposal was published in the Washington State Register (WSR 23-05-092). The comment period on the rule proposal ended on April 16, 2023.

## 4.1 Notice

Notice of the rule proposal and opportunity to comment was:

- Published in the [Washington State Register](#)<sup>14</sup> (WSR 18-03-178) on February 7, 2018.
- Published in the Toxics Cleanup Program's *Site Register*, which was emailed to about 925 subscribers on [February 23](#),<sup>15</sup> [March 9](#),<sup>16</sup> [March 23](#),<sup>17</sup> and [April 6](#),<sup>18</sup> 2023.
- Emailed to about 4,295 interested people, including:
  - 22 Stakeholder and Tribal Advisory Group members;
  - 863 people who subscribe to the agency's [Washington Administrative Code Track email list](#),<sup>19</sup> which provides updates on all agency rulemaking activities;
  - 953 people who subscribe to the agency's [Model Toxics Control Act and Sediment Management Standards Rule Update email list](#),<sup>20</sup> which provides updates on the cleanup program and this rulemaking;
  - 728 people who subscribe to the agency's [Underground Storage Tank Rule email list](#),<sup>21</sup> which provides updates on that program;
  - 1,717 underground storage tank owners and operators;
  - The Northwest Environmental Business Council; and
  - 11 other state and federal agencies.

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<sup>14</sup> <https://lawfilesext.leg.wa.gov/law/wsrpdf/2023/05/23-05-092.pdf>

<sup>15</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041D.html>

<sup>16</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041E.html>

<sup>17</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041F.html>

<sup>18</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041G.html>

<sup>19</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_60](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_60)

<sup>20</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_102](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_102)

<sup>21</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_58](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_58)

- Announced in a [News Release](#)<sup>22</sup> issued by the agency on February 16, 2023.
- Posted on the agency's [rulemaking](#)<sup>23</sup> and [public events](#)<sup>24</sup> webpages.

We also invited consultation with our tribal government environmental partners.

## 4.2 Opportunity

Ecology accepted public comments on the rule proposal for 61 days between February 15 and April 16, 2023. Comments could be submitted through one of the following ways:

- Online at: <https://tcp.ecology.commentinput.com/?id=uJVx2>
- By mail to: Sarah Wollwage  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600
- At a public hearing (as described below)

## 4.3 Hearings

Ecology held two public hearings on this rule proposal via webinar. Webinars are an online meeting you can attend from any computer using internet access. The hearings began with a short presentation and question and answer session, followed by the opportunity to provide testimony.

- **Thursday, March 23, 2023, at 10:00 am**

43 people attended by webinar. No one provided oral comments at the hearing.

- **Monday, March 27, 2023, at 5:00 pm**

13 people attended by webinar. No one provided oral comments at the hearing.

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<sup>22</sup> <https://ecology.wa.gov/About-us/Who-we-are/News/2023/MTCA-rule-comment>

<sup>23</sup> <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340>

<sup>24</sup> <https://ecology.wa.gov/Events/Search/Listing>

## 4.4 Commenters

In total, 212 individuals and organizations submitted comments on the proposed rule amendments.

Ecology assigned each commenter a unique identification number (from 1 to 213) in the order comments were submitted. Commenter #12 (Washington Conservation Action) submitted form letters on behalf of 174 people (Commenters 40 through 213). The commenters are identified in the Rule Commenter Index (Appendix A) by:

- Number;
- Name and affiliation; and
- The date comments were submitted.

The Commenter number is also inserted on the first page of the Commenter's written comments (see Appendix B).

## 4.5 Comments

Ecology identified a total of 811 separate comments. Ecology assigned each of those comments a unique number. The Comment number is identified in:

- The Rule Commenter Index (Appendix A); and
- The margins of the Commenter's written comments (Appendix B).

For each those 811 comments, the Rule Commenter Index (Appendix A) identifies the Issue number in the Concise Explanatory Statement where Ecology responded to the comment.

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## Chapter 5: Public Comment on Draft SHARP Tool and User Manual

On March 1, 2023, Ecology published a Draft Site Hazard Assessment and Ranking Process (SHARP) [Tool](#)<sup>25</sup> and [User Manual](#)<sup>26</sup> for public review and comment. The comment period ended on April 16, 2023, the same date as the comment period on the proposed rule amendments.

The Draft SHARP Tool and User Manual (March 2023) remain available through the agency's SHARP [website](#)<sup>27</sup> and [blog](#).<sup>28</sup>

### 5.1 Notice

Notice of the Draft SHARP Tool and User Manual and opportunity to comment was:

- Published in the Toxics Cleanup Program's *Site Register*, which was emailed to about 925 subscribers on [March 9](#),<sup>29</sup> [March 23](#),<sup>30</sup> and [April 6](#),<sup>31</sup> 2023.
- Emailed to the following interested persons:
  - 22 Stakeholder and Tribal Advisory Group members;
  - 953 people who subscribe to the agency's [Model Toxics Control Act and Sediment Management Standards Rule Update email list](#),<sup>32</sup> which provides updates on the cleanup program and this rulemaking;
  - 728 people who subscribe to the agency's [Underground Storage Tank Rule email list](#),<sup>33</sup> which provides updates on that program;
  - 8 other state and federal agencies.

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<sup>25</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsx>

<sup>26</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>27</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Ranking-contaminated-sites>

<sup>28</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

<sup>29</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041E.html>

<sup>30</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041F.html>

<sup>31</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2309041G.html>

<sup>32</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_102](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_102)

<sup>33</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_58](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_58)

- Posted on the agency’s SHARP website and blog, as well as the agency’s [public events](#)<sup>34</sup> webpage.

## 5.2 Opportunity

Ecology accepted public comments on the Draft SHARP Tool and User Manual for 47 days between March 1 and April 16, 2023. Comments could be submitted [online](#).<sup>35</sup>

## 5.3 Commenters

In total, 4 individuals and organizations submitted comments on the Draft SHARP Tool and User Manual. Ecology assigned each commenter a unique identification number (from STC1 to STC4) in the order comments were submitted. The commenters are identified in the SHARP Commenter Index (Appendix C) by:

- Number;
- Name and affiliation; and
- The date comments were submitted.

The Commenter number is also inserted on the first page of the Commenter’s written comments (see Appendix D).

## 5.4 Comments

Ecology identified a total of 42 separate comments. Ecology assigned each of those comments a unique number. The Comment number is identified in:

- The SHARP Commenter Index (Appendix C); and
- The margins of the Commenter’s written comments (Appendix D).

For each those 42 comments, the SHARP Commenter Index (Appendix A) identifies the Issue number in the Concise Explanatory Statement where Ecology responded to the comment.

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<sup>34</sup> <https://ecology.wa.gov/Events/Search/Listing>

<sup>35</sup> <https://tcp.ecology.commentinput.com/?id=94FiR>

## Chapter 6: Combined Response to Comments

This Concise Explanatory Statement (CES) responds to public comments on both the proposed rule amendments (see Chapter 4) and the draft Site Hazard Assessment and Ranking Process (SHARP) Tool and User Manual (see Chapter 5).

This CES responds to these public comments in a question-and-answer format. Ecology reviewed the comments and grouped them into a series of questions (the “issues”). Each of the questions reflects a particular issue or set of issues raised by one or more individuals or organizations. Following each question, Ecology identifies the commenter who raised the issue and the rule sections, if any, to which the question applies. Ecology then provides a response.

The Appendices to the CES include the public comments received by Ecology and indexes showing where in this document you can find Ecology’s response to each of those comments.

- **Appendix A – Index of Public Comments on Proposed Rule Amendments**

This appendix includes a complete list of the individuals or organizations who provided comments on the proposed rule amendments and where in this document you can find Ecology’s response to each of the identified comments.

- **Appendix B – Public Comments on Proposed Rule Amendments annotated with Comment Numbers**

This appendix includes a copy of all the public comments on the proposed rule amendments annotated with unique comment numbers. You can view the original comments Ecology received [online](#).<sup>36</sup>

- **Appendix C – Index of Public Comments on Draft SHARP Tool and User Manual**

This appendix includes a complete list of the individuals or organizations who provided comments on the draft Site Hazard Assessment and Ranking Process (SHARP) Tool and User Manual, and where in this document you can find Ecology’s response to each of the identified comments.

- **Appendix D – Public Comments on Draft SHARP Tool and User Manual annotated with Comment Numbers**

This appendix includes a copy of all the public comments on draft Site Hazard Assessment and Ranking Process (SHARP) Tool and User Manual annotated with unique comment numbers. You can view the original comments Ecology received [online](#).<sup>37</sup>

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<sup>36</sup> <https://tcp.ecology.commentinput.com/?id=uJVx2>

<sup>37</sup> <https://tcp.ecology.commentinput.com/?id=94FiR>

## 6.1 Environmental Justice – Definitions and usage

### Issue 1: Are “indigenous peoples” considered “vulnerable populations” and potentially “overburdened communities” under the HEAL Act and the amended rule? What is the relationship to Indian tribes?

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-7)
- Rule Sections: WAC 173-340-200: definition of “Indian tribe”  
WAC 173-340-200: definition of “indigenous peoples”  
WAC 173-340-200: definition of “vulnerable population”  
WAC 173-340-200: definition of “overburdened community”

#### Response:

Yes. Indigenous peoples are considered “vulnerable populations” and communities of indigenous peoples are potentially “overburdened communities” under both the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW,<sup>38</sup> and the amended rule. This means that all the amended rule requirements pertaining to vulnerable populations and overburdened communities pertain to indigenous peoples and communities.

- The amended rule defines “**indigenous peoples**” to mean “individual members of Indian tribes; other individual Native Americans; individual Native Alaskans, Native Hawaiians, and Native Pacific Islanders; and indigenous and tribal community-based organizations.” See WAC 173-340-200. Ecology added and defined the term “indigenous peoples” to refer to individual members of Indian tribes and other native peoples.
- The amended rule defines “**vulnerable population**” to mean the same as the term in the HEAL Act. See WAC 173-340-200. The HEAL Act defines “vulnerable populations” to include “racial or ethnic minorities.” See RCW [70A.02.010](#)(14)(b)(i).<sup>39</sup> Indigenous peoples are a racial or ethnic minority, and therefore a vulnerable population.
- The amended rule defines the term “**overburdened community**” to mean the same as the term in the HEAL Act. See WAC 173-340-200. The HEAL Act defines “overburdened community” to mean “a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts ....” See RCW [70A.02.010](#)(11). Communities of indigenous peoples (which are vulnerable populations) meeting these criteria would be considered an “overburdened community.”

The amended rule provides the following general framework to both protect **indigenous peoples** (as a population) and consider the rights and interests of **Indian tribes** (as sovereign tribal nations). That framework reflects the general approach in the HEAL Act.

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<sup>38</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>39</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>



- First, the amended rule considers **indigenous peoples** and communities (as vulnerable populations and potentially overburdened communities) when prioritizing and cleaning up sites. This includes both members of federally recognized tribes and other native peoples. See all the amended rule requirements pertaining to vulnerable populations and overburdened communities.
- Second, for Ecology-conducted or supervised remedial actions, the amended rule also requires Ecology to engage and consider the rights and interests of **Indian tribes** (as sovereign tribal nations) throughout the cleanup process. See WAC 173-340-360(3)(d), (4)(c)(xi), and (5)(c)(i)(C); 173-340-380(5)(c); and 173-340-720. The term “Indian tribe” is defined in the amended rule to mean the same as the term in Chapter [43.76](#) RCW,<sup>40</sup> which defines government-to-government relationship by state agencies with Indian tribes. See RCW [43.76.010](#)(1).<sup>41</sup>

**Issue 2: Are immigrant and refugee populations considered vulnerable populations under the HEAL Act and the amended rule?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-30)
- Rule Sections: WAC 173-340-200: definition of “vulnerable population”

**Response:**

Immigrant and refugee populations may be determined to be “vulnerable populations” on a case-specific basis based on the factors specified in the definition. The amended rule defines “vulnerable population” to mean the same as under the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW. See WAC 173-340-200. The HEAL Act defines “vulnerable populations” in RCW [70A.02.010](#)(14)(b)(i).<sup>42</sup> Many of the factors specified in the definition likely apply to immigrant and refugee populations.

**Issue 3: Should homeless populations be considered when investigating and cleaning up a site? Are they considered vulnerable populations?**

- Commenters: Washington State Department of Transportation (16-23)
- Rule Sections: WAC 173-340-200: definition of “vulnerable population”  
WAC 173-340-350 through 173-340-390

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<sup>40</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=43.376>

<sup>41</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=43.376.010>

<sup>42</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>

**Response:**

Yes. All populations impacted by a contaminated site, including homeless populations, must be considered when investigating and cleaning up a contaminated. For example, remedial investigations must identify impacted homeless populations and determine how such populations are being impacted based on their uses of the site. And cleanup actions must protect the health and safety of homeless populations. See WAC 173-340-350 to 173-340-390.

Homeless populations may be determined to be “vulnerable populations” on a case-specific basis based on the factors specified in the definition. The amended rule defines “vulnerable population” to mean the same as under the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW. See WAC 173-340-200. The HEAL Act defines “vulnerable populations” in RCW [70A.02.010](#)(14)(b)(i).<sup>43</sup> Many of the factors specified in the definition likely apply to homeless populations.

**Issue 4: In the definition of “reasonable maximum exposure,” should the rule focus attention on the exposures of vulnerable populations and overburdened communities?**

- Commenters: J.R. Simplot Company (6-7)
- Rule Sections: WAC 173-340-200: definition of “reasonable maximum exposure”

**Response:**

Yes. Ecology believes that, in the definition of “reasonable maximum exposure,” the amended rule should focus attention on the exposures of vulnerable populations and overburdened communities. This increased emphasis does not change regulatory requirements or their applicability; rather, it is intended to help ensure that all Washington state residents are protected by a cleanup action.

**Issue 5: Should Ecology refer to “likely” vulnerable populations and overburdened communities?**

- Commenters: City of Tacoma (8-3)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-15)
- Rule Sections: Throughout rule, except WAC 173-340-100

**Response:**

Yes. Ecology edited the proposed rule text by adding the word “likely” in front of each usage of the defined terms “vulnerable population” and “overburdened community” in the rule, except in

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<sup>43</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>

WAC 173-340-100. Ecology edited the proposed rule text to help clarify the level of confidence and information needed to determine whether a population potentially exposed to a hazardous substance release is a vulnerable population or overburdened community for the limited purpose of implementing the MTCA Cleanup Regulations, Chapter 173-340 WAC. This determination affects the applicability of several site prioritization and site cleanup requirements in the rule. Ecology acknowledges the inherent difficulty in making the determination whether a population is vulnerable or overburdened, and that guidelines are still being developed to help make the determination under the HEAL Act, Chapter [70A.02](#) RCW.<sup>44</sup> Ecology added the term “likely” to emphasize that certainty or a high level of confidence is not needed to make such determinations under the MTCA Cleanup Regulations. Ecology intends to develop guidelines specifying what type of information may be used to make the determinations. Change based in part on public comment.

## 6.2 Environmental Justice – Site Assessment and Prioritization

**Issue 6: As part of an initial investigation, should Ecology determine whether the population that may be threatened by a release or threatened release includes a likely vulnerable population or overburdened community?**

- Commenters: J.R. Simplot Company (6-8)
- Rule Sections: WAC 173-340-310(1)(b) and (c)  
WAC 173-340-320(1)(e) and (2)(a)  
WAC 173-340-340(1) and (2)(b)

### Response:

Yes. As part of an initial investigation, Ecology believes that it should make an initial determination as to whether the population that may be threatened by a release or threatened release includes a likely vulnerable population or overburdened community. See WAC 173-340-310(1)(c). Ecology needs to make this initial determination to complete an initial SHARP assessment of sites under WAC 173-340-320 and to help prioritize sites for further remedial action under WAC 173-340-340. See WAC 173-340-320(1)(e) and (2)(a) and 173-340-340(1) and (2)(b).

Ecology does not think this is duplicative of the requirement in WAC 173-340-310(1)(b) to determine whether the release or threatened release may pose a threat to human health or the environment. While the purpose of paragraph (b) is to determine whether a population may be impacted, the purpose of paragraph (c) is to determine whether that population is vulnerable or overburdened, as defined in the amended rule.

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<sup>44</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.02>

**Issue 7: Should SHARP identify whether the potentially exposed population includes a likely vulnerable population or overburdened community?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-9)
- Rule Sections: WAC 173-340-320(1)(e) and (2)(a)

**Response:**

Yes. Ecology agrees that SHARP should identify whether the potentially exposed population includes a likely vulnerable population or overburdened community. Ecology will initially make that determination during the initial investigation to help it prioritize contaminated sites for further remedial action and investment under WAC 173-340-340. The person conducting the cleanup of a site will update that determination during the remedial investigation to help them ensure the cleanup action selected protects vulnerable populations and overburdened communities. Ecology will reflect the determination in SHARP.

**Issue 8: During initial investigations, what will Ecology do to determine whether the populations that may be threatened by a contaminated site include a likely vulnerable population or overburdened community?**

- Commenters: City of Tacoma (8-2)  
Western States Petroleum Association (24-6, 24-8)  
Geosyntec Consultants Inc. (37-1)  
King County (STC2-3, STC2-7, STC2-12, STC2-13)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-5, STC4-13)
- Rule Sections: WAC 173-340-310(1)(c) and (6)  
WAC 173-340-320(1)(e), (2)(a), and (3)(a)(i)

**Response:**

During an initial investigation, the amended rule requires Ecology to determine whether the populations that may be threatened by a contaminated site include a likely vulnerable population or overburdened community. See WAC 173-340-310(1)(c). During the initial SHARP assessment, which is conducted following the initial investigation, the amended rule requires Ecology to identify its determination and report its confidence in that determination. See WAC 173-340-310(6) and 173-340-320(1)(e), (2)(a), and (3)(a)(i). To better reflect this determination in the SHARP Tool, Ecology plans to add a flag identifying whether the potentially exposed populations include a likely vulnerable population or overburdened community.

Ecology acknowledges the inherent difficulty in making the determination whether a population is vulnerable or overburdened, and that guidelines are still being developed to help make the

determination under the HEAL Act, Chapter [70A.02](#) RCW.<sup>45</sup> As discussed in the response to Issue 5, Ecology added the term “likely” in front of each usage of the term “vulnerable population” or “overburdened community” to emphasize that certainty or a high level of confidence is not needed to make the determination under the MTCA Cleanup Regulations.

Ecology expects that the level of information and confidence about what populations are threatened by a site, and whether those populations include a likely vulnerable population or overburdened community, will be limited when Ecology initially identifies a site (after completing an initial investigation) and will increase over the course of the cleanup process (particularly after completing a remedial investigation). To reflect this, Ecology plans to add a confidence score to the SHARP Tool for this determination (low, medium, and high) and define what each confidence level signifies. For an overview of how updates to SHARP site assessments result in increasing levels of confidence over the life of a cleanup, see the response to Issue 96.

For the purposes of both initial investigations (which are used for site prioritization) and subsequent remedial investigations (which are used for site cleanup), Ecology plans to develop guidance on how to determine whether the populations that may be threatened by a site include a likely vulnerable population or overburdened community, including criteria for making the determination.

The City of Tacoma requested guidance as to whether Ecology may use additional relevant criteria or sources of information, such as the City of Tacoma’s own equity index map, for making the determination. Ecology plans to address the use of such information in its guidance.

**Issue 9: Should the SHARP Tool separately track the socioeconomic indicators used to determine whether a potentially exposed population is vulnerable?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-16)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-3, STC4-7)
- Rule Sections: WAC 173-340-320(1)(e) and (2)(a)(iii)

**Response:**

Yes. Ecology agrees that the SHARP Tool should separately track the socioeconomic indicators used to determine whether a potentially exposed population is vulnerable, including both the demographic information and whether the population meets applicable criteria. The [Draft SHARP Tool](#)<sup>46</sup> submitted for public comment tracked the following six socioeconomic indicators featured in the U.S. Environmental Protection Agency’s [EJ Screen](#).<sup>47</sup>

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<sup>45</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.02>

<sup>46</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsx>

<sup>47</sup> <https://www.epa.gov/ejscreen/overview-socioeconomic-indicators-ejscreen>

- People of color
- Low income
- Less than high school education
- Age less than 5 years
- Age greater than 64 years
- Lack of English proficiency

As discussed under Issue 27, Ecology plans to develop guidance for determining whether a population is likely a “vulnerable population” for the purpose of implementing the MTCA Cleanup Regulations. The guidance will specify the socioeconomic indicators and criteria to use for this purpose. The final SHARP Tool will reflect the guidance.

**Issue 10: Should SHARP enable Ecology to identify and rank the cumulative environmental health impact of a potentially exposed community? Should Ecology use the Environmental Health Disparities (EHD) Map or other readily available information to do this?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-16)  
Olympic Environmental Coalition (34-1)  
Form letter comments (11-1, 13-1 to 15-1, 17-1, 20-1, 21-1, 23-1, 25-1 to 31-1, 33-1, 35-1, 36-1, 39-1 to 213-1)  
King County (STC2-2, STC2-3, STC2-7, STC2-12, STC2-13, STC2-14)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-9, STC4-10, STC 4-13)
- Rule Sections: WAC 173-340-320(2)(a)(iv)  
WAC 173-340-340(1) and (2)(b)

**Response:**

Yes. Ecology believes that SHARP should enable Ecology to identify and rank the cumulative environmental health impact of a potentially exposed community and determine whether the community is likely an “overburdened community.” Ecology further believes that, consistent with the Healthy Environment for All (HEAL) Act, it should use the [Environmental Health Disparities \(EHD\) Map](#)<sup>48</sup> developed by the Department of Health under RCW [43.70.815](#)<sup>49</sup> to do this. However, Ecology also believes that it should retain the authority to use other readily available information as appropriate. Accordingly, Ecology changed the proposed rule to add this as a

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<sup>48</sup> <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>

<sup>49</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=43.70.815>

functional requirement of SHARP. See WAC 173-340-320(2)(a)(iv). This change was made in response to public comment.

The EHD Map shows cumulative environmental health impacts at the community level based on 19 indicators. The communities are defined as census tracts. On average census tracts contain about 5,000 people but vary in size from about 2,000 to 8,000 people. Communities are compared using a 1 to 10 ranking scale.

Ecology will consider the cumulative environmental health impact of the potentially exposed community (EHD rank or other information) when prioritizing contaminated sites and the resources necessary to clean them up. See WAC 173-340-340(1) and (2)(b).

**Issue 11: Should SHARP integrate the affected community’s environmental health disparity (EHD) rankings or socioeconomic indicators into hazard rankings?**

- Commenters: King County (STC2-7)
- Rule Sections: WAC 173-340-320(2)(a)(iii) and (iv)  
WAC 173-340-340

**Response:**

No. Ecology does not believe the affected community’s environmental health disparity (EHD) ranking or socioeconomic indicators should be integrated into a site’s hazard rankings.

Under the amended rule, SHARP will identify for each site whether the potentially exposed population includes a likely vulnerable population or overburdened community (WAC 173-340-320(2)(a)(iii)). Ecology plans to add a flag or other indicator in the SHARP Tool to reflect these determinations, and a related confidence score to reflect increasing levels of confidence during the cleanup process. To enable Ecology to do make these determinations, Ecology plans to track the following information in SHARP:

- For determining whether the potentially exposed population includes a likely overburdened community, Ecology plans to use the EHD ranking of the potentially exposed population using the [Environmental Health Disparities \(EHD\) Map](#)<sup>50</sup> developed by the Washington State Department of Health under RCW [43.70.815](#).<sup>51</sup> Ecology may also use other readily available information (WAC 173-340-320(2)(a)(iv)).
- For determining whether the potentially exposed population includes a likely vulnerable population, Ecology plans to use, as appropriate, the socioeconomic indicators available through the U.S. Environmental Protection Agency’s [EJ Screen](#)<sup>52</sup> mapping tool.

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<sup>50</sup> <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>

<sup>51</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=43.70.815>

<sup>52</sup> <https://www.epa.gov/ejscreen/overview-socioeconomic-indicators-ejscreen>



Ecology plans to develop guidance on how to determine whether the potentially exposed population includes a likely vulnerable population or overburdened community, including criteria for making the determination. For additional discussion, see response to Issues 8 and 28.

Based on discussions with the [Stakeholder and Tribal Advisory Group](#)<sup>53</sup> (STAG), Ecology decided to keep the hazard rankings separate from EHD rankings and socioeconomic indicators to provide decision-makers and the public the information and clarity needed to consider both the site's hazards and the vulnerabilities and disparities of the communities affected by the site. Both types of information are considered when prioritizing sites and resources in a strategic plan under WAC 173-340-340, and when investigating sites and evaluating cleanup action alternatives in a remedial investigation and feasibility study under WAC 173-340-350 and 173-340-351.

The roles of SHARP and strategic planning are different. Ecology uses SHARP to rank a site's hazards and identify the environmental health disparity of the affected communities. During the strategic planning process required under WAC 173-340-340(1), Ecology will use the SHARP results to help prioritize sites and the resources needed to clean them up. SHARP does not itself prioritize sites. For further discussion of this relationship, see the response to Issues 86 and 18.

**Issue 12: Should the SHARP Tool separately track whether homeless encampments are located at the site?**

- Commenters: Washington State Department of Transportation (16-12)
- Rule Sections: WAC 173-340-320(2)(a)

**Response:**

Yes. Ecology agrees with the commenter that the SHARP Tool should separately track whether homeless encampments are located at the site. This information, if known, could be useful when prioritizing sites for further remedial action, including investigations or interim actions. Based on the comment, Ecology plans to add this as an "additional factor" to the SHARP Tool. However, Ecology does not believe the rule should include this factor as minimum functional requirement of SHARP.

**Issue 13: Should the SHARP Tool or User Manual define the term "environmental justice"?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-4)
- Rule Sections: WAC 173-340-320(1)(e) and (2)(a)(iii) and (iv)  
WAC 173-340-340(1) and (3)

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<sup>53</sup> [https://www.ezview.wa.gov/site/alias\\_\\_1988/37514/overview.aspx](https://www.ezview.wa.gov/site/alias__1988/37514/overview.aspx)



**Response:**

The Site Hazard Assessment and Ranking Process (SHARP) required under amended WAC 173-340-320 and the Draft SHARP [Tool](#)<sup>54</sup> and [User Manual](#)<sup>55</sup> (March 2023) do not require SHARP assessors to make judgements about environmental justice at particular sites. Instead, the assessors retrieve, and the SHARP Tool reports, specified information about the communities affected by a site for use by strategic planners. The planners are responsible for developing and evaluating environmental justice goals and strategies under WAC 173-340-340, not SHARP assessors. Therefore, to conduct a SHARP assessment, the assessors do not need a definition of environmental justice in the rule or in technical guidance.

More generally, the concept of environmental justice is fundamental to the goals of both the [Model Toxics Control Act](#)<sup>56</sup> (MTCA) and the [Healthy Environmental for All \(HEAL\) Act](#).<sup>57</sup> The HEAL Act provides a definition of environmental justice that is useful for Ecology's as it implements both laws. See RCW [70A.02.010](#)(8).<sup>58</sup> However, the term "environmental justice" does not appear and is not a defined term in either MTCA or the amended rule. The amended rule includes several new provisions that clarify and strengthen Ecology's commitment to environmental justice as that term is commonly used and as it is defined in the HEAL Act.

- At the program level, the amended rule requires to prioritize the cleanup of contaminated sites that threaten likely vulnerable populations or overburdened communities, and to periodically assess its progress. See WAC 173-340-340. Ecology expects to reduce environmental health disparities in Washington state through these commitments.
- At the site level, the amended rule emphasizes accountability and transparency when making cleanup decisions. Rather than establishing new environmental justice requirements, the amendments emphasize the need to consider the impact of contaminated sites and their cleanup on likely vulnerable populations and overburdened communities under the existing cleanup requirements. The amendments also require documentation of that consideration to improve accountability and transparency. See WAC 173-340-350 through 173-340-390. By adhering to these requirements, Ecology expects that cleanup actions will result in equitable outcomes for vulnerable populations and overburdened communities.

**Issue 14: Should the rule prioritize contaminated sites that threaten likely vulnerable populations or overburdened communities?**

- Commenters: J.R. Simplot Company (6-9, 6-10)  
Twin Harbors Waterkeeper (7-2, 7-5)

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<sup>54</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsm>

<sup>55</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>56</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>57</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>58</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>

City of Tacoma (8-1)

Port of Seattle (9-1)

Provozek (18-1)

Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-15)

Olympic Environmental Coalition (34-1)

- Rule Sections: WAC 173-340-340(1) and (2)(b)

### Response:

Yes. Ecology believes the rule should prioritize contaminated sites that threaten likely vulnerable populations or overburdened communities and require periodic assessments of Ecology's progress in cleaning up such sites. Ecology believes this prioritization is necessary to help reduce environmental and health disparities in Washington state and improve the health of all Washington state residents, consistent with the purposes of the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW,<sup>59</sup> and the Model Toxics Control Act, Chapter [70A.305](#) RCW.<sup>60</sup> As the HEAL Act states:

Washington state studies and national studies find that people of color and low-income people continue to be disproportionately exposed to environmental harms in their communities. As a result, there is a higher risk of adverse health outcomes for those communities. This risk is amplified when overlaid on communities with preexisting social and economic barriers and environmental risks, and creates cumulative environmental health impacts (RCW [70A.02.005\(2\)](#)).<sup>61</sup>

Ecology believes that it has a compelling interest in addressing environmental health disparities in the administration of the cleanup program, including in the prioritization of contaminated sites and the public resources necessary to cleanup them up, to remedy the effects of past disparate treatment of vulnerable populations and overburdened communities.

### Issue 15: Should the rule separately prioritize contaminated sites based on specific socioeconomic indicators, such as people of color?

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-16)  
  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-3, STC4-7)

<sup>59</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>60</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>61</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.005>

- Rule Sections: WAC 173-340-340(1) and (2)(b)

**Response:**

No. Ecology does not believe the rule itself should separately prioritize the cleanup of contaminated sites threatening vulnerable populations or overburdened communities based on specific socioeconomic indicators, such as peoples of color. Ecology believes that it should make such determinations when developing the strategic plan required by the rule.

The amended rule requires Ecology to develop a comprehensive and integrated strategic plan for cleaning up contaminated sites and to prioritize the cleanup of sites that threaten likely vulnerable populations and overburdened communities (WAC 173-340-340(1) and (2)(b)). The Healthy Environment for All (HEAL) Act, Chapter 70A.02 RCW, specially defines “vulnerable populations” to include “racial or ethnic” minorities. Ecology acknowledges that people of color have been and continue to be disproportionately exposed to environmental harms in their communities. When developing strategic plans for cleaning up contaminated sites threatening vulnerable populations and overburdened communities, Ecology can identify and prioritize those communities continuing to face the greatest cumulative environmental health impacts, particularly from contaminated sites. Those communities frequently include communities of color. Ecology can also track its performance based on the different socioeconomic indicators used to identify a vulnerable population, including people of color. As discussed under Issue 9, Ecology plans to track those indicators in the SHARP Tool and make that information available to the public.

**Issue 16: When prioritizing contaminated sites, should Ecology consider the cumulative environmental health impact on the potentially exposed community?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-1, 32-2, 32-3, 32-12, 32-13, 32-29)  
Olympic Environmental Coalition (34-1)  
Form letter comments (11-1, 13-1 to 15-1, 17-1, 20-1, 21-1, 23-1, 25-1 to 31-1, 33-1, 35-1, 36-1, 39-1 to 213-1)  
King County (STC2-2, STC2-3, STC2-7, STC2-12, STC2-13, STC2-14)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-9, STC4-10, STC4-13)
- Rule Sections: WAC 173-340-340(1) and (2)(a)  
WAC 173-340-320(1)(e) and (2)(a)(iv)

**Response:**

Yes. Ecology believes that, when prioritizing contaminated sites, Ecology should consider the cumulative environmental health impact on the potentially exposed community. The amended rule specifically requires that Ecology’s strategic plan for cleaning up contaminated site must

prioritize contaminated sites that threaten likely vulnerable populations and overburdened communities. Ecology edited the proposed rule text to clarify this. See WAC 173-340-340(1).

As discussed under Issue 10, to determine whether a potentially exposed community is an “overburdened community” for this purpose, Ecology will assess and rank the cumulative environmental health impact on the community using the [Environmental Health Disparities \(EHD\) Map](#)<sup>62</sup> developed by the Department of Health under RCW [43.70.815](#).<sup>63</sup> Ecology may also use other readily available information as appropriate. Ecology will conduct the assessment and make the determination as part of a SHARP assessment of the site. See WAC 173-340-320(1)(e) and (2)(a)(iv).

As discussed under Issue 8, Ecology plans to develop guidelines, including criteria, for determining whether a community is likely an “overburdened community” for the purpose of prioritizing contaminated sites and the public resources needed to clean them up.

**Issue 17: Should the rule specify goals, strategies, or metrics for reducing environmental health disparities?**

- Commenters: Western States Petroleum Association (24-6)
  - Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-17, 32-18)
  - King County (STC2-3, STC2-7, STC2-12, STC2-13, STC2-14)
  - Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-1, STC4-12, STC4-13, STC4-15)
- Rule Sections: WAC 173-340-340(1), (3), and (4)

**Response:**

No. Ecology does not believe the amended rule should specify at this time any goals, strategies, or metrics for reducing environmental health disparities. That is what the amended rule requires Ecology to develop. Specifically, the amended rule requires Ecology to develop a comprehensive and integrated strategic plan for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities. The strategic plan must include:

- Goals and strategies for all core program functions and major initiatives;
- Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and

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<sup>62</sup> <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>

<sup>63</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=43.70.815>

- Staffing and capital funds needed to accomplish the goals and implement the strategies.

See WAC 173-340-340(1). The amended rule also requires Ecology to periodically assess its progress in achieving its goals and implementing its strategies for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities. See WAC 173-340-340(3).

Ecology believes that it needs to maintain the discretion and flexibility to initially develop and then update as needed a strategic plan for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities. Ecology does not currently have any relevant goals or metrics to incorporate into the rule.

Ecology is committing resources to develop such a strategic plan. As required by the amended rule, Ecology will make its strategic plans and performance assessments publicly available on its website and provide notice of any updates to the strategic plans in the [Contaminated Site Register](#).<sup>64</sup> See WAC 173-340-340(4).

**Issue 18: How will SHARP rankings enable Ecology to prioritize further investigation at sites, particularly those impacting likely vulnerable populations or overburdened communities?**

- Commenters: King County (STC2-6)
- Rule Sections: WAC 173-340-340(1)  
WAC 173-340-320(2)

**Response:**

SHARP rankings include three types of information that will enable Ecology to identify the need for and prioritize further investigation at sites that pose threats to likely vulnerable populations or overburdened communities. These are:

- Site exposure potential and severity rankings for exposures to soil, surface water, groundwater, sediment, and indoor air.
- Assessed data confidence levels for each of the five environmental media.
- Socioeconomic and environmental health disparity indicators.

See WAC 173-340-320(2). As part of the strategic planning process under WAC 173-340-340(1), Ecology intends to develop strategies for how to use this information to determine which sites need further investigation and which of those sites should be prioritized.

As an example, the strategic plan might establish a goal of reducing data disparities for sites in likely overburdened communities. To do this, the plan might, for example, adopt a strategy of

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<sup>64</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Site-Register-lists-and-data>

prioritizing sampling at sites with SHARP rankings that indicate possible but not-yet confirmed active exposures (B), relatively severe health threats (1 or 2), low data confidence levels (low), proximity to a likely overburdened community (EHD score of 9 or 10).

Searching the contaminated sites list for these rankings, program planners could determine the number of such sites, map the location and identify clusters of target sites, and analyze the socioeconomic indicators included in their SHARP reports.

Consult the [Draft SHARP Tool User Manual](#)<sup>65</sup> (March 2023), which also available through the agency's [blog](#),<sup>66</sup> for more information about the ranking process.

For further discussion of SHARP, see our response to issues under Section 6.13 of this CES.

**Issue 19: Should remedial action grant projects impacting vulnerable populations or overburdened communities be eligible for more grant funding?**

- Commenters: Twin Harbors Waterkeeper (7-4)
- Rule Sections: WAC 173-340-340(2)  
Chapter 173-322A WAC

**Response:**

The [remedial action grant program](#)<sup>67</sup> for local governments and related guidelines are governed by Chapter [173-322A](#) WAC, Remedial Action Grants and Loans (RAG rule).<sup>68</sup>

The RAG rule already requires Ecology to consider the following factor when prioritizing projects for funding:

Whether the [contaminated] site is located within a highly impacted community (see, for example, WAC [173-322A-320\(3\)\(d\)](#)).<sup>69</sup>

A “highly impacted community” is defined in the RAG rule as:

[A] community that [Ecology] has determined is likely to bear a disproportionate burden of public health risks from environmental pollution (WAC [173-322A-100\(24\)](#)).<sup>70</sup>

In Section 4.5 of the current [RAG guidelines](#),<sup>71</sup> Ecology identifies a “highly impacted community” as one where:

<sup>65</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>66</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

<sup>67</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Paying-for-cleanups>

<sup>68</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A>

<sup>69</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A-320>

<sup>70</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A-100>

<sup>71</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2209043.html>

- The population of the census tract scores a rank of 9 or 10 on the [Environmental Health Disparities Map](#)<sup>72</sup> maintained by the Department of Health; or
- The site is located in the 80<sup>th</sup> percentile for people of color population or low income population demographic indicators according to U.S. Environmental Protection Agency's [EJ Screen](#).<sup>73</sup>

However, the RAG rule does not currently allow Ecology to increase funding limits for remedial action grant projects based on this factor. See, for example, WAC 173-322A-320(7).

The RAG rule is outside the scope of this rulemaking. Ecology will consider the commenter's input when Ecology next amends the RAG rule.

**Issue 20: Should equity be considered when prioritizing applications for public participation grants?**

- Commenters: Twin Harbors Waterkeeper (7-6)
- Rule Sections: WAC 173-340-340(2)  
Chapter 173-322A WAC

**Response:**

The [public participation grant program](#)<sup>74</sup> and guidelines are governed by Chapter [173-321](#) WAC,<sup>75</sup> Public Participation Grants (PPG rule).

The PPG rule already prioritizes consideration of applicants that “facilitate public participation in highly impacted or low-income communities” (WAC [173-321-010](#)(2)(b)).<sup>76</sup> The PPG rule defines these terms as follows:

- “Highly impacted community” means “a community that the department of health has determined is likely to bear a disproportionate burden of public health and economic risks from environmental pollution” (WAC [173-321-020](#)(10))<sup>77</sup>.
- “Low-income” means “households where the household income is less than or equal to twice the federal poverty level” (WAC 173-321-020(13)).

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<sup>72</sup> <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>

<sup>73</sup> <https://www.epa.gov/ejscreen/overview-socioeconomic-indicators-ejscreen>

<sup>74</sup> <https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Public-participation-grants>

<sup>75</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-321>

<sup>76</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-321-010>

<sup>77</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-321-020>



The PPG rule is outside the scope of this rulemaking. Ecology will consider the commenter's input when Ecology next amends that rule.

**Issue 21: Could the prioritization of contaminated sites threatening likely vulnerable populations or overburdened communities affect the priority of ongoing or future Ecology reviews of independent cleanups under the Voluntary Cleanup Program?**

- Commenters: Western States Petroleum Association (24-7)
- Rule Sections: WAC 173-340-340(1) and (2)

**Response:**

The prioritization of contaminated sites threatening likely vulnerable populations or overburdened communities will not affect the priority of ongoing Ecology reviews of independent cleanups under the [Voluntary Cleanup Program](#) (VCP),<sup>78</sup> even at sites that do not threaten likely vulnerable populations or overburdened communities. The prioritization requirement is not retroactive, and Ecology is committed to completing ongoing reviews once started.

However, the prioritization requirement could affect the priority of future Ecology reviews of independent cleanups under the Standard VCP Process, which is significantly subsidized by public funds. The prioritization requirement is not expected to affect the priority of future Ecology reviews of independent cleanups under the Expedited VCP Process, which are not subsidized by public funds (that is, the customer pays the full cost of such reviews).

As part of the strategic plan required under the rule, Ecology must develop goals and strategies for all core program functions, including reviews of independent cleanups under the Standard VCP Process. See WAC 173-340-340(1)(a). When allocating resources for this program function, Ecology may consider:

- The threats posed by a contaminated site to human health and the environment;
- Whether the population threatened by a contaminated site includes a likely vulnerable population or overburdened community;
- The land reuse potential and planning for a contaminated site; and
- Other factors specified by the legislature or Ecology.

See WAC 173-340-340(2). For this program function, Ecology currently prioritizes future reviews based on when they were requested by the customer. Under the amended rule, Ecology could also consider the other factors specified in WAC 173-340-320(2), including whether the site threatens a likely vulnerable population or overburdened community. However, unless Ecology is unable to meet its performance standards for completing reviews for an

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<sup>78</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>



extended period due to resource constraints, Ecology is unlikely to reprioritize future reviews based on other factors. Ecology understands that independent cleanups, and Ecology's reviews of those cleanups, are usually very time sensitive.

**Issue 22: Could the prioritization of contaminated sites threatening likely vulnerable populations or overburdened communities affect the priority of ongoing or future Ecology-supervised cleanups?**

- Commenters: Western States Petroleum Association (24-9)
- Rule Sections: WAC 173-340-340(1) and (2)

Response:

The prioritization of contaminated sites threatening likely vulnerable populations or overburdened communities will not affect the priority of ongoing Ecology-supervised cleanups, even at sites that do not threaten likely vulnerable populations or overburdened communities. The prioritization requirement is not retroactive, and Ecology is committed to completing Ecology-supervised cleanups once started.

However, the prioritization requirement could affect the priority of future Ecology-supervised cleanups. As part of the strategic plan required under the rule, Ecology must develop goals and strategies for all core program functions, including Ecology-supervised cleanups. See WAC 173-340-340(1)(a). When allocating resources for this program function, Ecology may consider:

- The threats posed by a contaminated site to human health and the environment;
- Whether the population threatened by a contaminated site includes a likely vulnerable population or overburdened community;
- The land reuse potential and planning for a contaminated site; and
- Other factors specified by the legislature or Ecology.

See WAC 173-340-340(2). For this program function, Ecology currently prioritizes voluntary cleanups (where a potentially liable person or prospective purchaser initiates discussions for an agreed order or consent decree) and then considers other factors, such as the site hazard. In the future, Ecology will need to appropriately balance the potentially competing goals of encouraging voluntary cleanups and prioritizing cleanup of sites threatening likely vulnerable populations or overburdened communities to reduce environmental health disparities. Achieving the latter goal may require Ecology to initiate the cleanup at some sites.

**Issue 23: How should Ecology report on its progress in cleaning up sites that may impact vulnerable populations and overburdened communities?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-12, STC4-14)

- Rule Sections: WAC 173-340-340(1), (3), and (4)

**Response:**

The amended rule requires Ecology to develop a comprehensive and integrated strategic plan for cleaning up contaminated sites and to prioritize the cleanup of those sites threatening likely vulnerable populations or overburdened communities. The strategic plan must include:

- Goals and strategies for all core program functions and major initiatives;
- Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and
- Staffing and capital funds needed to accomplish the goals and implement the strategies.

See WAC 173-340-340(1). Ecology plans to develop strategic plans for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities in alignment with [agency-level strategic planning](#)<sup>79</sup> under the HEAL Act, Chapter [70A.02](#) RCW.

The amended rule also requires Ecology to periodically assess its progress in achieving its goals and implementing its strategies for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities. Ecology must also make its performance assessments publicly available on its website and notify the public of any updates in its [Contaminated Site Register](#).<sup>80</sup> See WAC 173-340-340(3) and (4).

In accordance with the amended rule, Ecology plans to make the cleanup program's strategic plans and performance assessments available to the public through an online dashboard or by other means. Ecology expects that it will update the dashboard frequently as new information becomes available. Some data might even be updated in real time. Ecology anticipates that the online dashboard will necessarily be somewhat limited at first, but will grow as Ecology develops its strategic plan and program assessment procedures.

As appropriate, Ecology also plans to incorporate relevant strategic plans and performance assessments in its two [MTCA biennial reports to the legislature](#).<sup>81</sup>

- MTCA Biennial Report of Expenditures, published in odd years looking backward to report expenditures and accomplishments during the previous biennium.
- MTCA Ten-year Financing Report, published in even years looking forward to report the estimated financing needed to clean up contaminated sites in the next biennium.

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<sup>79</sup> <https://ecology.wa.gov/About-us/Who-we-are/Strategic-plan/2023-25-Strategic-Plan#goalbox3>

<sup>80</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Site-Register-lists-and-data>

<sup>81</sup> <https://ecology.wa.gov/about-us/who-we-are/our-programs/toxics-cleanup/tcp-legislative-reports>

**Issue 24: Should Ecology report how remedial action grant funding is spent related to specific socioeconomic factors, such as people of color?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-15)
- Rule Sections: WAC 173-340-340(1), (3), and (4)(a)

**Response:**

The amended rule requires Ecology to develop a comprehensive and integrated strategic plan for cleaning up contaminated sites and to prioritize the cleanup of those sites threatening likely vulnerable populations or overburdened communities. The strategic plan must include:

- Goals and strategies for all **core program functions** and major initiatives;
- Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and
- Staffing and capital funds needed to accomplish the goals and implement the strategies.

The amended rule also requires Ecology to periodically assess its progress in achieving its goals and implementing its strategies for cleaning up contaminated sites threatening likely vulnerable populations or overburdened communities. Ecology must also make its performance assessments publicly available on its website. See WAC 173-340-340(1), (3), and (4)(a).

Ecology's [grant and other capital funding programs](#)<sup>82</sup> for cleaning up contaminated sites are one of the cleanup program's core functions under the Model Toxics Control Act (MTCA). See RCW [70A.305.190](#)(4)(a). Ecology appreciates and will consider the commenters' recommendation as it sets strategic plan goals, performance metrics, and reporting methods.

**Issue 25: Should Ecology create an environmental justice board to ensure that environment justice is adequately considered?**

- Commenters: Twin Harbors Waterkeeper (7-7)
- Rule Sections: WAC 173-340-340(3)

**Response:**

Ecology does not currently have its own Environmental Justice Oversight Board. Ecology is currently taking significant steps to develop the structures and plans needed to implement the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW.<sup>83</sup> To do this, Ecology participates in several networks that serve as a collaborative space:

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<sup>82</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Paying-for-cleanups>

<sup>83</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

- Ecology recently established its Office of Equity and Environmental Justice and staffed up on environmental justice expertise.
- Ecology works collaboratively and iteratively on the HEAL Interagency Work Group, which includes 7 covered agencies, 1 opt-in agency, and multiple other listen-and-learn agencies, as well as members from the Environmental Justice Council.
- Ecology also reaches out to engage with key community organizations and partners.

As it continues to develop the structures and plans needed to implement the HEAL Act, Ecology will continue to listen and learn from its partners and determine what is needed to successfully achieve the goals of the Act.

## 6.3 Environmental Justice – Site Cleanup

### Issue 26: Should the rule emphasize consideration of likely vulnerable populations and overburdened communities during the cleanup process?

- Commenters: City of Tacoma (8-1)  
Port of Seattle (9-1)  
Washington State Department of Transportation (16-14)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-34)
- Rule Sections: WAC 173-340-350 through 173-340-390

#### Response:

Yes. Ecology believes the rule should emphasize consideration of likely vulnerable populations and overburdened communities during the cleanup process. Ecology believes this emphasis is necessary to help reduce environmental and health disparities in Washington state and improve the health of all Washington state residents, consistent with the purposes of the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW,<sup>84</sup> and the Model Toxics Control Act, Chapter [70A.305](#) RCW.<sup>85</sup> As the HEAL Act states:

Washington state studies and national studies find that people of color and low-income people continue to be disproportionately exposed to environmental harms in their communities. As a result, there is a higher risk of adverse health outcomes for those communities (RCW [70A.02.005\(2\)](#)).<sup>86</sup>

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<sup>84</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>85</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>86</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.005>

Ecology believes that it has a compelling interest in addressing environmental health disparities in the administration of the cleanup program, including in the cleanup of contaminated sites.

In the amended rule, Ecology emphasizes accountability and transparency when making cleanup decisions. Rather than establishing new requirements or evaluations that would be difficult to implement, the amended rule emphasizes the need to consider the impact of contaminated sites and their cleanup on vulnerable populations and overburdened communities under existing regulatory requirements. The amended rule also requires documentation of such considerations to improve accountability and transparency to the public. By adhering to these requirements, Ecology expects that cleanup actions will result in equitable outcomes for vulnerable populations and overburdened communities impacted by a site.

**Issue 27: Will Ecology develop guidance on how to identify and consider likely vulnerable populations and overburdened communities during the remedy cleanup process?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-35)
- Rule Sections: WAC 173-340-350 through 173-340-390

**Response:**

Yes. Ecology plans to develop guidance on how to identify and consider likely vulnerable populations and overburdened communities during the cleanup process. Ecology will prioritize the development of guidance on how to identify likely vulnerable populations and overburdened communities, which is a new requirement. Ecology will then develop, as needed or appropriate, guidance for how to consider likely vulnerable populations and overburdened communities during the remedy selection process.

The amended rule simply emphasizes the need to consider the impact of contaminated sites and their cleanup on vulnerable populations and overburdened communities under existing regulatory requirements and to document those consideration for Ecology and the public to improve accountability and transparency. Consequently, Ecology does not anticipate the need to develop substantial new guidance.

**Issue 28: During remedial investigations, what do you need to do to determine whether the populations that may be threatened by a contaminated site include a likely vulnerable population or overburdened community?**

- Commenters: City of Tacoma (8-2)  
Port of Seattle (9-4, 9-5, 9-7)  
Geosyntec Consultants Inc. (37-1)
- Rule Sections: WAC 173-340-350(6)(h)(iii)  
WAC 173-340-320(1)(e), (2)(a), and (3)(a)(iii)

**Response:**

During a remedial investigation, the amended rule requires you to collect sufficient information to determine whether the populations that may be threatened by a contaminated site include a likely vulnerable population or overburdened community. Ecology edited the proposed rule text to clarify this requirement. See WAC 173-340-350(6)(h)(iii).

Based on the results of that investigation, Ecology may update the SHARP assessment for the site to reflect any change in its determination or its confidence in that determination. See WAC 173-340-320(1)(e), (2)(a), and (3)(a)(iii). To better reflect this determination in the SHARP Tool, Ecology plans to add a flag identifying whether the potentially exposed populations include a likely vulnerable population or overburdened community.

Ecology acknowledges the inherent difficulty in making the determination whether a population is vulnerable or overburdened, and that guidelines are still being developed to help make the determination under the HEAL Act, Chapter [70A.02](#) RCW.<sup>87</sup> As discussed under Issue 5, Ecology added the term “likely” in front of each usage of the term “vulnerable population” or “overburdened community” to emphasize that certainty or a high level of confidence is not needed to make the determination under the MTCA Cleanup Regulations.

Ecology expects that the level of information and confidence about what populations are threatened by a site, and whether those populations include a likely vulnerable population or overburdened community, will be limited when Ecology initially identifies a site (after completing an initial investigation) and will increase over the course of the cleanup process (particularly after completing a remedial investigation). To reflect this, Ecology plans to add a confidence score to the SHARP Tool for this determination (low, medium, and high) and define what each confidence level signifies. For an overview of how updates to SHARP site assessments result in increasing levels of confidence over the life of a cleanup, see the response to Issue 96.

For the purposes of both initial investigations (which are used for site prioritization) and subsequent remedial investigations (which are used for site cleanup), Ecology plans to develop guidance on how to determine whether the populations that may be threatened by a site include a likely vulnerable population or overburdened community, including criteria for making the determination.

The City of Tacoma requested guidance as to whether additional criteria or sources of information, such as its own equity index map, may be used to make the determination. Ecology plans to address the use of such information in its guidance.

As discussed under Issue 30, Ecology plans to determine whether cleanup actions at some sites constitute a “significant agency action” requiring an environmental justice (EJ) assessment. See RCW [70A.02.060](#)(2).<sup>88</sup> For those sites, Ecology will conduct the EJ assessment and

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<sup>87</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.02>

<sup>88</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.060>

identify vulnerable populations and overburdened communities in accordance with the HEAL Act, and any rules or guidelines developed under the Act. See RCW 70A.02.060(4) and (5).

**Issue 29: Does the rule require any different or additional assessment of human health impacts for vulnerable populations and overburdened communities than for other populations?**

- Commenters: City of Tacoma (8-4)  
Port of Seattle (9-2, 9-3, 9-6)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-28)
- Rule Sections: WAC 173-340-350 through 173-340-390

**Response:**

No. The amended rule does not require any different or additional assessment of human health impacts for vulnerable populations and overburdened communities than for other populations. The amended rule simply emphasizes the need to consider the impact of contaminated sites and their cleanup on vulnerable populations and overburdened communities under existing regulatory requirements to improve compliance, and to document those considerations in applicable remedial action plans and reports to improve accountability and transparency. The amended rule does not establish a separate equitability requirement or criterion for cleanup actions requiring consideration of cumulative environmental health impacts from sources other than the site. The amended rule also does not establish a different level of protection (such as a risk level) for vulnerable populations.

**Issue 30: Should the rule require the equivalent of an environmental justice assessment under the HEAL Act to select a cleanup action for a contaminated site that threatens a likely vulnerable population or overburdened community?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-1, 32-2, 32-3, 32-29, 32-41, 32-46)  
Form letter comments (11-1, 13-1 to 15-1, 17-1, 20-1, 21-1, 23-1, 25-1 to 31-1, 33-1, 35-1, 36-1, 39-1 to 213-1)
- Rule Sections: WAC 173-340-350 through 173-340-390

**Response:**

No. Ecology does not believe the amended rule should require the equivalent of an environmental justice (EJ) assessment under the Healthy Environment for All (HEAL) Act,

Chapter [70A.02](#) RCW,<sup>89</sup> to select a cleanup action for a contaminated site threatening a likely vulnerable population or overburdened community. Adding a separate equitability requirement for cleanup actions, such as the one specified in the HEAL Act, would necessitate conducting the equivalent of an EJ assessment. Ecology does not believe the amended rule should identify significant agency actions, establish equitability requirements for those actions, or prescribe how to conduct an EJ assessment of those actions.

However, in accordance with the HEAL Act, Ecology plans to consider whether cleanup actions at some contaminated sites constitute a “significant agency action” requiring an environmental justice assessment under the HEAL Act. RCW [70A.02.060](#)(2).<sup>90</sup> At such sites, Ecology will conduct an environmental justice assessment in accordance with the HEAL Act and any rules or guidelines developed under the Act. Ecology will also apply the equitability requirement for significant agency actions specified in RCW [70A.02.060](#)(6).

In addition, consistent with the purposes of the HEAL Act, the amended rule establishes the following two-part approach to reduce environmental health disparities in Washington state and to address such disparities in the administration of the cleanup program:

- At the program level, Ecology will help remedy the effects of past disparate treatment by prioritizing the cleanup of contaminated sites threatening likely vulnerable populations or overburdened communities. When prioritizing contaminated sites, Ecology will consider the cumulative environmental health impact from sources other than the site on the potentially exposed community. See WAC 173-340-310 through 173-340-340.
- At the site level, Ecology will help reduce environmental health disparities in the site-specific administration of the cleanup program by ensuring that persons cleaning up contaminated sites:
  - Consider the impact of the site and its cleanup on vulnerable populations and overburdened communities when conducting remedial investigations and feasibility studies and selecting cleanup actions; and
  - Document those considerations in remedial investigation and feasibility study reports and cleanup action plans.

See WAC 173-340-350 through 173-340-390. These actions are intended to improve transparency and accountability, and thereby compliance with the MTCA Cleanup Regulations’ already robust cleanup requirements.

**Issue 31: Should the feasibility study report separately document how impacts on likely vulnerable populations and overburdened communities were considered during the evaluation of cleanup action alternatives?**

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<sup>89</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>90</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.060>



- Commenters: J.R. Simplot Company (6-11)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-32)
- Rule Sections: WAC 173-340-351(6)(f)(vii)  
WAC 173-340-350(5)(g)(iii)

### Response:

Yes. Ecology believes that the feasibility study report should separately document how impacts on likely vulnerable populations and overburdened communities were considered during the evaluation of cleanup action alternatives. Ecology believes this separate documentation is necessary to ensure that the impacts on those populations and communities are identified and appropriately considered during the feasibility study. In short, Ecology believes this separate documentation will improve accountability and transparency, and thereby compliance with the underlying existing regulatory requirements. This emphasis is consistent with the purposes of the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW.<sup>91</sup>

Based on this comment, Ecology also edited the proposed rule text in WAC 173-340-350(5)(g) to clarify that the remedial investigation report must separately include information on threats to likely vulnerable populations and overburdened communities. Ecology also moved the provision from (g)(vii) to (g)(iii) of the subsection to make the list of what must be included in the remedial investigation report consistent with the steps for a remedial investigation.

### **Issue 32: When estimating the benefits of a cleanup action alternative in a disproportionate cost analysis, does the rule require any different assessment of the alternative's impact on likely vulnerable populations and overburdened communities than on other populations?**

- Commenters: Western States Petroleum Association (24-18)
- Rule Sections: WAC 173-340-360(5)(d)(i), (iii), and (iv)  
WAC 173-340-350(6)(f)(vii)  
WAC 173-340-380(5)(c)

### Response:

No. When estimating the benefits of a cleanup action alternative in a disproportionate cost analysis (DCA), the amended rule does not require any different assessment of the alternative's impact on likely vulnerable populations and overburdened communities than on other populations. The amended rule simply emphasizes the need to consider the impact of cleanup action alternatives on likely vulnerable populations and overburdened communities under three of the existing DCA criteria (protectiveness, effectiveness over the long term, and management of implementation risks) to improve compliance. See WAC 173-340-360(5)(d)(i), (iii), and (iv).

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<sup>91</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

The amended rule also requires you to then document those considerations in the feasibility study report and cleanup action plan to improve accountability and transparency. See WAC 173-340-350(6)(f)(vii) and 173-340-380(5)(c). The amended rule does not establish a separate equitability criterion for the DCA requiring consideration of cumulative environmental health impacts from sources other than the site.

**Issue 33: Should the cleanup action plan separately document how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-49)
- Rule Sections: WAC 173-340-380(5)(c)  
WAC 173-340-351

**Response:**

Yes. Ecology agrees that the cleanup action plan should separately document how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action. In response to the comment, Ecology changed the proposed rule text to require this documentation as part of the cleanup action plan. See WAC 173-340-380(5)(c).

Ecology made this change to meet statutory goals and to ensure consistency among regulatory requirements governing how impacts on likely vulnerable populations and overburdened communities are considered and documented when conducting a feasibility study of cleanup action alternatives under and when selecting and documenting a cleanup action. See WAC 173-340-351 and 173-340-380. In some cases, the cleanup action selected and documented in the cleanup action plan may be different than those evaluated and documented in the feasibility study. Such alternatives are usually hybrids of the alternatives evaluated in the study. In such cases, it is particularly important to document in the cleanup action plan how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action.

**Issue 34: For Ecology-conducted or supervised remedial actions, should the rule emphasize consideration of likely vulnerable populations and overburdened communities when assessing public participation needs at a contaminated site?**

- Commenters: J.R. Simplot Company (6-3)
- Rule Sections: WAC 173-340-600(9)  
WAC 173-340-130(5)

**Response:**

Yes. For Ecology-conducted or supervised remedial actions, Ecology believes the rule should emphasize consideration of likely vulnerable populations and overburdened communities when you assess public participation needs at a contaminated site. Ecology believes this emphasis is necessary to ensure that those populations and communities are effectively engaged during the cleanup process and that their concerns are appropriately considered when cleanup actions are selected and other cleanup decisions are made. This emphasis is also consistent with the purposes of the Healthy Environment for All (HEAL) Act, Chapter [70A.02](#) RCW.<sup>92</sup>

## 6.4 Climate Change

**Issue 35: Should a remedial investigation include an investigation of site characteristics relevant to climate change, such as sea level rise and potential for wildfires?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-27)
- Rule Sections: WAC 173-340-350(6)(f)

**Response:**

Yes. Ecology believes a remedial investigation should include an investigation of site characteristics relevant to climate change, such as sea level rise and potential for wildfires. Such climatological characteristics can impact the long-term effectiveness and protectiveness of cleanup actions. Ecology plans to update its *Sustainable Remediation* guidance, Publication No. 17-09-052, to reflect these changes. Thank you for your support.

**Issue 36: Should climate resilience be separated out from the threshold protectiveness requirement?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-36)
- Rule Sections: WAC 173-340-360(3)(a)(v)

**Response:**

Yes. Ecology believes that climate resilience should be separated out from the threshold protectiveness requirement. As you note, specifying that a cleanup action must be resilient to climate change impacts that have a high likelihood of occurring and severely compromising the

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<sup>92</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

action's long-term effectiveness is critical in ensuring the long-term effectiveness and protectiveness of cleanup actions. Thank you for your support.

Ecology plans to update its *Sustainable Remediation* guidance, Publication No. 17-09-052, to reflect these changes. The updates will be minor clarifications because the rule amendments make explicit what was implicit in the current rule and follow current guidance. For example, the guidance includes how to consider climate change resilience as both a threshold requirement (under protectiveness) and as a disproportionate cost analysis factor (under long-term effectiveness).

**Issue 37: How do you determine whether a climate change impact has a high likelihood of occurring or severely compromising the long-term effectiveness of the cleanup action?**

- Commenter: Port of Seattle (9-12)
- Rule Sections: WAC 173-340-360(3)(a)(v)

**Response:**

Ecology agrees that these are important issues, but the answers are more appropriate for guidance rather than rule. The projections surrounding the impacts from climate change, such as sea level rise, are based on robust and peer-reviewed science and we can project the amount of sea level rise under different greenhouse gas emissions scenarios. However, the likelihood of an impact occurring is influenced by human behavior -- specifically a greenhouse gas emissions scenario, which is the amount we are able to reduce in a specified time frame. Considering that this behavior is not easily predictable, we must be able to make reasonable decisions based on a risk-management approach. In addition, the science is still evolving for some climate change impacts such as wildfire projections.

The concept of "severely compromising" would center around preventing a cleanup action from achieving or maintaining cleanup standards and its protectiveness. In other words, remedy failure. However, how and when remedy failure could occur is uncertain. For example, a severe flood could result in a release of hazardous substances due to damage of a protective cap during this single event. Another scenario could be a series of storms over time compromising the integrity of a cap resulting in the release of hazardous substances. Or, sea level rise could result in salt water intrusion of a contaminated groundwater site resulting in groundwater rise and release of hazardous substances or a change in geochemistry resulting in failure of a pump and treat system. Considering the numerous potential remedy failure scenarios that could occur from climate change impacts, clarity on how to determine this is more appropriate for guidance.

Given these uncertainties, we provide information on how to develop a risk management approach in Ecology's *Sustainable Remediation* guidance, Publication No. 17-09-052. We will continue to update this guidance as more information becomes available to ensure the guidance remains relevant and topical.

**Issue 38: When evaluating the long-term effectiveness of a cleanup action alternative in the disproportionate cost analysis, should climate resilience be separated out as an explicit factor?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-37)
- Rule Sections: WAC 173-340-360(5)(d)(iii)(A)(III)

**Response:**

Yes. Ecology believes that climate resilience should be separated out as an explicit factor when evaluating the long-term effectiveness of a cleanup action alternative. Climate resilience plays an increasingly important role in the long-term effectiveness of many cleanup actions. Thank you for your support.

Ecology plans to update its *Sustainable Remediation* guidance, Publication No. 17-09-052, to reflect these changes. The updates will be minor clarifications because the rule amendments make explicit what was implicit in the current rule and follow current guidance. For example, the guidance includes how to consider climate change resilience as both a threshold requirement (under protectiveness) and as a disproportionate cost analysis factor (under long-term effectiveness).

**Issue 39: Should the rule include a separate cleanup action expectation that cleanups be resilient to climate change?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-46)
- Rule Sections: WAC 173-340-370

**Response:**

No. During the development of the proposed rule amendments, Ecology developed a separate cleanup action expectation for climate resilience in WAC 173-340-370. However, based on earlier stakeholder comment and further analysis, Ecology determined that the draft expectation was both duplicative and conflicting with the proposed requirement in WAC 173-340-360. The draft expectation essentially implied that the requirement may not always need to be met. Ecology therefore did not include it in the final proposal. Ecology believes the cleanup action requirements in WAC 173-340-360 are sufficient.

**Issue 40: Will Ecology update its *Guidance for Sustainable Remediation* to reflect rule amendments? Will Ecology provide the public with an opportunity to comment on the updates?**

- Commenter: Western States Petroleum Association (24-14)

- Rule Sections: WAC 173-340-350(6)(f)  
WAC 173-340-360(3)(a)(v) and (5)(d)(iii)(A)(III)

**Response:**

Yes. Ecology will update the *Sustainable Remediation* guidance, Publication No. 17-09-052. The updates will be minor clarifications because the rule amendments make explicit what was implicit in the current rule and follow current guidance. For example, the guidance includes how to consider climate change resilience as both a threshold requirement (under protectiveness) and as a disproportionate cost analysis factor (under long-term effectiveness).

We intend to update the guidance on a regular basis to reflect the latest science, technical information, policy decisions, and rulemaking. We originally published the guidance in December 2017 and updated it in January 2023. We welcome public engagement and input and will provide opportunity for public comment for the next update.

**Issue 41: Should the rule incorporate by reference Ecology's *Guidance for Sustainable Remediation*?**

- Commenter: J.R. Simplot Company (6-13)
- Rule Sections: WAC 173-340-350(6)(f)  
WAC 173-340-360(3)(a)(v) and (5)(d)(iii)(A)(III)

**Response:**

No. Ecology does not believe incorporating guidance by reference in rule is the best option. Doing so prevents us from updating the guidance as frequently as needed, which is a critical tool to ensure the guidance reflects latest science, technical information, and policy decisions. We welcome public engagement and input and will provide opportunity for public comment when we update the guidance.

**Issue 42: May greenhouse gas emissions be considered when selecting a cleanup action or only when optimizing the selected cleanup action?**

- Commenters: Washington State Department of Transportation (16-24)  
Western States Petroleum Association (24-14)  
Geosyntec Consultants Inc. (37-6)
- Rule Section: WAC 173-340-360

**Response:**

Greenhouse gas emissions may not be considered when evaluating cleanup action alternatives in a feasibility study, including in the disproportionate cost analysis, or when selecting a cleanup action. However, greenhouse gas emissions may and should be considered when optimizing the selected cleanup action.

Under MTCA, Ecology's primary focus is protecting our communities and environment from the direct impact of releases of hazardous substances, not the indirect impact of cleanup actions on global greenhouse gas emissions. Our communities, particularly those that are vulnerable or already overburdened by cumulative environmental health impacts, should not bear greater long-term risks from hazardous substances to reduce greenhouse gas emissions.

However, the selected cleanup action should be optimized to reduce greenhouse gas emissions. That is the focus of Ecology's green remediation guidance, which is included in Appendix D of our *Sustainable Remediation* guidance document, Publication No. 17-09-052. The goals for implementing green remediation are to maximize the environmental benefits and reduce the environmental impacts from the cleanup process. Reducing greenhouse gas emissions is a part of these goals along with water, energy, materials, and waste conservation, improving air and water quality, habitat restoration, and minimizing nuisances to the community. Appendix D provides details on how to implement green remediation in different phases of cleanup (e.g., remedial investigation, remedial design, long-term monitoring, etc.) consistent with the MTCA Cleanup Regulations, Chapter 173-340 WAC, and the Sediment Management Standards, Chapter 173-204 WAC. Appendix D Section D.1.4 and Figure D-2 clearly states that green remediation (e.g., reducing greenhouse gas emissions, etc.) cannot be considered as scorable criteria in the disproportionate cost analysis and may not be used to influence identification of a protective cleanup action. Instead, Appendix D details how to optimize a cleanup action once it has been identified, and reducing greenhouse gas emissions is a part of this optimization. For Ecology-conducted or funded cleanups, Ecology requires compliance with the green remediation guidance.

**Issue 43: Does Ecology's Guidance for Sustainable Remediation include specific guidance on how to reduce greenhouse gas emissions when optimizing the selected cleanup action?**

- Commenters: Washington State Department of Transportation (16-26)
- Rule Sections: WAC 173-340-380 and 173-340-400

**Response:**

Yes. Ecology's *Sustainable Remediation* guidance, Publication No. 17-09-052, includes green remediation in Appendix D. This appendix includes a comprehensive list of best management practices to implement green remediation for different media and types of sites and includes the items listed in this comment (i.e., monitoring, fuel usage, and recommended products).

## 6.5 Section 100

**Issue 44: Support for moving past sustainability to regeneration.**

- Commenters: Oulwa Research Studio (4-2)
- Rule Sections: WAC 173-340-100

**Response:**

Ecology appreciates your comment. Similar feelings are summarized in the Model Toxics Control Act's declaration of purpose in RCW [70A.305.010](#)(1).<sup>93</sup>

Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

The amended rule is promulgated under the Model Toxics Control Act. See WAC 173-340-100.

**6.6 Section 110****Issue 45: Do Ecology-funded cleanups of contaminated sites need to comply with the same cleanup requirements as for other sites?**

- Commenters: Carroll (5-4)
- Rule Sections: WAC 173-340-110

**Response:**

Yes. Ecology-funded contaminated site cleanups need to comply with the same cleanup requirements as for other sites. See WAC 173-340-110 and Chapter [173-322A](#) WAC<sup>94</sup>.

**Issue 46: Should the rule use the term “clean up” instead of “remedy” in WAC 173-340-110(1)?**

- Commenters: J.R. Simplot Company (6-1)
- Rule Sections: WAC 173-340-110(1)  
WAC 173-340-100  
WAC 173-340-200

**Response:**

Yes. Ecology believes the term “clean up” is the correct term to use in the following statement in WAC 173-340-110(1):

Under this chapter, ecology may require or take those actions necessary to investigate and **clean up** these releases.

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<sup>93</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.010>

<sup>94</sup> <https://apps.leg.wa.gov/wac/default.aspx?cite=173-322A>



Ecology does not believe the term “remedy” is appropriate in this context because the term is defined in the current and amended rule to include investigations. Specifically, the term is defined in WAC 173-340-200 to include:

any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment **including any investigative and monitoring activities** with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

As defined, both investigations and cleanups, which include interim actions and cleanup actions, are types of a “remedy.”

The usage of the term “clean up” in WAC 173-340-110(1) is also consistent with the usage in the statement of purpose in WAC 173-340-100.

## 6.7 Section 120

### Issue 47: Should the rule use the term “clean up” instead of “remedy” in WAC 173-340-110(1)?

- Commenters: J.R. Simplot Company (6-1)
- Rule Sections: WAC 173-340-110(1)  
WAC 173-340-100  
WAC 173-340-200

#### Response:

Yes. Ecology believes the term “clean up” is the correct term to use in the following statement in WAC 173-340-110(1):

Under this chapter, ecology may require or take those actions necessary to investigate and **clean up** these releases.

Ecology does not believe the term “remedy” is appropriate in this context because the term is defined in the current and amended rule to include investigations. Specifically, the term is defined in WAC 173-340-200 to include:

any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment **including any investigative and monitoring activities** with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

As defined, both investigations and cleanups, which include interim actions and cleanup actions, are types of a “remedy.”

The usage of the term “clean up” in WAC 173-340-110(1) is also consistent with the usage in the statement of purpose in WAC 173-340-100.

**Issue 48: Should the rule clarify what happens if Ecology does not undertake an initial investigation?**

- Commenters: City of Tacoma (8-8)
- Rule Sections: WAC 173-340-120(2)  
WAC 173-340-310(2)

**Response:**

No. Ecology does not believe the rule needs to clarify what happens if Ecology does not undertake an initial investigation under the circumstances specified in WAC 173-340-310(2). Accordingly, Ecology also does not believe the overview of the initial investigation step in the cleanup process in WAC 173-340-120(2) needs to be clarified. Ecology will update [Policy 310A](#)<sup>95</sup> to better explain what needs to happen procedurally in these circumstances.

**Issue 49: During and upon completion of construction, may Ecology inspect the site and provide construction oversight?**

- Commenters: J.R. Simplot Company (6-2)
- Rule Sections: WAC 173-340-120(9)(b)  
WAC 173-340-400(6)(a)

**Response:**

Yes. During and upon completion of construction, Ecology may inspect the site and provide construction oversight (WAC 173-340-400(6)(a)). The comment refers to a provision in the overview of the cleanup process. See WAC 173-340-120(9)(b). The provision refers to Ecology’s current authority in WAC 173-340-400(6)(a), which Ecology did not amend in this rulemaking. If there is any inconsistency between the overview and the referenced section, the referenced section governs (WAC 173-340-120).

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<sup>95</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0909050.html>

## 6.8 Section 130

### Issue 50: Does the rule continue to provide an appeal process for Ecology decisions made under the rule?

- Commenters: Carroll (5-2)
- Rule Sections: WAC 173-340-130(10)

#### Response:

Yes. The amended rule continues to provide an appeal process for Ecology decision made under the rule. Specifically, the rule provides the following in WAC 173-340-130(10):

Unless otherwise indicated, all ecology decisions made under this chapter are remedial decisions and may be appealed only as provided for in RCW [70A.305.070](#).<sup>96</sup>

In addition, for Ecology-supervised remedial actions, Ecology provides a dispute resolution process in the order or decree governing the actions. See, for example, Toxics Cleanup Program Policy [520A](#): Consent Decrees.<sup>97</sup>

### Issue 51: Should the rule include a code of ethical conduct for Ecology employees?

- Commenters: Carroll (5-1)
- Rule Sections: WAC 173-340-130

#### Response:

An agency code of employee conduct is a personnel matter and beyond the scope of this rulemaking.

Ecology's internal executive policies establish guidelines for internal personnel investigations and apply to all Ecology employees. Non-agency and non-state employees may bring complaints about employee misconduct to Ecology's Director of Human Resources, Sandi Stewart, at [sandi.stewart@ecy.wa.gov](mailto:sandi.stewart@ecy.wa.gov) or through the Washington [Executive Ethics Board](#)<sup>98</sup> using a [form](#)<sup>99</sup> available at the Board's website.

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<sup>96</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.070>

<sup>97</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1609067.html>

<sup>98</sup> <https://ethics.wa.gov/about-us>

<sup>99</sup> <https://ethics.wa.gov/enforcement/complaint-forms>

## 6.9 Section 200

### Issue 52: Should the rule include a list of abbreviations and acronyms?

- Commenters: Washington State Department of Transportation (16-1)
- Rule Sections: WAC 173-340-200

#### Response:

No. Ecology does not believe the amended rule should include a list of abbreviations and acronyms. The rule does not use any abbreviations or acronyms that are not already defined in the rule.

### Issue 53: Request clarification of terms “cleanup” and “remedial action.”

- Commenters: Washington State Department of Transportation (16-9)
- Rule Sections: WAC 173-340-200  
WAC 173-340-120

#### Response:

The amended rule defines the terms “cleanup,” “cleanup action,” “interim action” and “remedial action” in WAC 173-340-200. However, Ecology did not amend any of those definitions in this rulemaking. The amended rule did update the overview of the cleanup process in WAC 173-340-120, including how each of those terms are used in the rule. Ecology believes that any further explanation belongs in guidance rather than in the rule.

### Issue 54: Should the rule define the terms “contaminant of concern” and “contaminant of potential concern”?

- Commenters: Landau Associates (38-1, 38-2)
- Rule Sections: WAC 173-340-200

#### Response:

No. Ecology does not believe the amended rule should define the terms “contaminant of concern” and “contaminant of potential concern” because the terms are not currently used anywhere in the rule. The amended rule does not make such a distinction. Ecology does not believe a rule should define terms that it does not use. If the rule were amended in the future to use these terms, Ecology expects that the terms would likely need to be defined.

### Issue 55: Should the rule define the terms “contaminant of emerging concern” and “emerging contaminants”?

- Commenters: Washington State Department of Transportation (16-3)

- Rule Sections: WAC 173-340-200

**Response:**

No. Ecology does not believe the amended rule should define the terms “contaminants of emerging concerns” and “emerging contaminants” because the terms are not used anywhere in the rule. The amended rule does not make such a distinction.

**Issue 56: Request clarification of name, content, and location of site lists**

- Commenters: City of Tacoma (8-9, 8-10)  
J.R. Simplot Company (6-5, 6-6)
- Rule Sections: WAC 173-340-200: definition of “contaminated site”  
WAC 173-340-200: definition of “contaminated sites list”  
WAC 173-340-200: definition of “no further action sites list”  
WAC 173-340-330  
WAC 173-340-335

**Response:**

The amended rule defines a “**contaminated site**” as “a site for which Ecology or PLIA has determined further remedial action is necessary under the state cleanup law to:

- Confirm whether there is a threat to human health or the environment posed by a release or threatened release; or
- Address the threat posed by a release or threatened release, based on the criteria in WAC 173-340-330(5).

A contaminated site is referred to as hazardous waste site in chapter [70A.305 RCW](#)<sup>100</sup> (WAC 173-340-200). See also WAC 173-340-330(1).

Under the amended rule, all sites will be listed either on the “contaminated sites list” or the “no further action sites list.”

- The amended rule defines the “**contaminated sites list**” (**CSL**) to mean “a list of contaminated sites maintained by ecology under WAC 173-340-330. For each listed site, the list also identifies the site’s current remedial action status. This list is referred to as the hazardous sites list in chapter [70A.305 RCW](#)” (WAC 173-340-200). Ecology currently maintains such a list, which is referred to as the “confirmed and suspected contaminated sites list” (CSCSL). As the name suggests, the list includes both types of sites. The list is currently publicly available on Ecology’s [website](#).<sup>101</sup> The list will remain available under the amended rule but with a simpler name, the “contaminated sites list.”

<sup>100</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>101</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/contaminated>

- The amended rule defines the “**no further action sites list**” (**NFASL**) to mean “a list of sites for which Ecology or PLIA has determined no further remedial action is necessary under state cleanup law to meet the criteria in WAC 173-340-330(5). For each listed site, the list also identifies whether institutional controls or periodic reviews remain necessary at the site. Ecology maintains the list under WAC 173-340-335” (WAC 173-340-200). Ecology currently maintains and makes that list publicly available on Ecology’s [website](#).<sup>102</sup> The list will remain available under the amended rule.

Under the current rule, sites listed on the CSCSL for which Ecology had formally assessed and then ranked using the Washington Ranking Method (**WARM**) were also included on what was called the “**hazardous sites list**” (**HSL**). In short, the sites on the HSL were a subset of the sites on the CSCSL. As of the adoption date of the amended rule, the HSL included about 2,000 of the approximately 6,300 sites on the CSCSL. Under the current rule, Ecology published the HSL semi-annually in a special edition of the *Site Register* and included it every two years in the *Model Toxics Control Accounts Biennial Report of Expenditures*. This report is available through Ecology’s [website](#).<sup>103</sup> The amended rule eliminates the separate HSL and replaces WARM with a new site assessment and hazard ranking process (**SHARP**) that will enable to assess and rank all sites on the CSL (formerly CSCSL). See WAC 173-340-320.

More information about all of Ecology’s site lists is available on Ecology’s [website](#).<sup>104</sup> For more information about the new SHARP is also available on Ecology’s [website](#).<sup>105</sup>

**Issue 57: Is a “contaminated site” the same as a “hazardous waste site” referred to in the MTCA statute?**

- Commenters: City of Tacoma (8-14)
- Rule Sections: WAC 173-340-200: definition of “contaminated site”

**Response:**

Yes. A “contaminated site” is the same as a “hazardous waste site” referred to in the Model Toxics Control Act, Chapter [70A.305](#) RCW.<sup>106</sup> Ecology clarified this in the proposed rule in the definition of the term “contaminated site” in WAC 173-340-200.

**Issue 58: Is the “contaminated sites list” the same as the “hazardous sites list” referred to in the MTCA statute?**

- Commenters: City of Tacoma (8-14)

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<sup>102</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/nfa>

<sup>103</sup> <https://ecology.wa.gov/about-us/who-we-are/our-programs/toxics-cleanup/tcp-legislative-reports>

<sup>104</sup> <https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/site-register-lists-and-data#AboutCaTS>

<sup>105</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Ranking-contaminated-sites>

<sup>106</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

- Rule Sections: WAC 173-340-200: definition of “contaminated sites list”

**Response:**

Yes. The “contaminated sites list” is the same as a “hazardous waste site” referred to in the Model Toxics Control Act, Chapter [70A.305](#) RCW.<sup>107</sup> Ecology clarified this in the proposed rule in the definition of the term “contaminated sites list” in WAC 173-340-200.

**Issue 59: Should the rule define the term “contaminated site register”?**

- Commenters: City of Tacoma (8-12)
- Rule Sections: WAC 173-340-200  
WAC 173-340-600(6) and (7)

**Response:**

No. Ecology does not believe the amended rule should define the term “contaminated site register.” The register is not a list of sites but rather a method of notifying the public about the cleanup program, the listing of sites, and proposed actions at a site subject to public comment. The amended rule describes the register in WAC 173-340-600(7), including methods of publication and content.

Under the amended rule, Ecology maintains two lists of sites, the contaminated sites list (CSL) and the no further action sites list (NFASL). These two lists are defined in WAC 173-340-200 and described in WAC 173-340-330 and 173-340-335. In short, the CSL is a list of sites requiring further remedial action to meet the delisting criteria in WAC 173-340-330(5). The NFASL is a list of sites requiring no further remedial action to meet those criteria.

**Issue 60: Should the rule define the term “indigenous or traditional knowledge”?**

- Commenters: Washington State Department of Transportation (16-7)
- Rule Sections: WAC 173-340-200

**Response:**

No. Ecology does not believe the amended rule should define the term “indigenous or traditional knowledge” because the term is not used anywhere in the rule.

**Issue 61: Should the rule define the term “mitigation”?**

- Commenters: Washington State Department of Transportation (16-3)
- Rule Sections: WAC 173-340-200

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<sup>107</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

**Response:**

No. Ecology does not believe the amended rule should define the term “mitigation” because the common meaning is adequate for each of the 5 occurrences in the rule. The rule only needs to define a term if the intended meaning differs from its common meaning or usage.

**Issue 62: Should the definition of “model remedy” limit for what types of sites Ecology may develop model remedies, consistent with the statutory definition?**

- Commenters: GHD Inc. (22-5)  
Western States Petroleum Association (24-4)
- Rule Sections: WAC 173-340-200: definition of “model remedy”  
WAC 173-340-390(2) and (4)

**Response:**

Yes. The definition of “model remedy” should limit for what types of sites Ecology may develop model remedies, consistent with the statutory definition. The definition in the amended rule is the same as in the MTCA statute. Compare the definition in WAC 173-340-200 with the definition in RCW 70A.305.020(20).

The statutory definition limits Ecology’s authority to develop model remedies to those sites posing “lower risks to human health and the environment” (RCW 70A.305.020(20)). When developing a model remedy, Ecology has and will continue to identify the conditions for using the model remedy (WAC 173-340-390(2)). The conditions will help ensure that qualifying sites are “lower risk.” If a site meets the conditions set by Ecology, the model remedy may be used at the site (WAC 173-340-390(4)).

**Issue 63: Should the rule define the term “proposed cleanup level?”**

- Commenters: Landau Associates (38-3)
- Rule Sections: WAC 173-340-200

**Response:**

No. Ecology does not believe the rule should define the term “proposed cleanup level.” The rule defines the term “cleanup level.” A “proposed” cleanup level is simply a “cleanup level” that has been proposed. The use of the term is limited to a remedial investigation under WAC 173-340-350. Ecology believes its usage in that context is clear. If needed, Ecology can consider adding a definition in a future rulemaking.

**Issue 64: Request clarification of the defined term “remedial action.”**

- Commenters: Washington State Department of Transportation (16-3)
- Rule Sections: WAC 173-340-200: definition of “remedial action”



**Response:**

The current and amended rules define the term “remedial action” to mean the same as in the Model Toxics Control Act (MTCA) statute. The term means:

any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

See RCW [70A.305.020\(33\)](#)<sup>108</sup> and WAC 173-340-200. In the amended rule, Ecology only changed the citation to MTCA statute, which was recodified by the Legislature. The statutory definition can only be changed by the Legislature.

**Issue 65: Request clarification of the defined terms “site” and “facility.”**

- Commenters: City of Tacoma (8-15)  
Washington State Department of Transportation (16-6)
- Rule Sections: WAC 173-340-200: definitions of “site” and “facility”

**Response:**

As defined in the current and amended rules, the term “site” means the same as “facility,” and the term “facility” is defined the same as in the Model Toxics Control Act (MTCA) statute to mean:

(a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

See RCW [70A.305.020\(8\)](#)<sup>109</sup> and WAC 173-340-200. Ecology understands the legislature’s use of the word “site” in its definition of “facility” to have its common meaning rather than the technical definition later established in the rule. The statutory definition of the term “facility” can only be changed by legislation, and the definitions of both terms have been in place for more than 30 years.

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<sup>108</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.020>

<sup>109</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.020>

**Issue 66: Should the rule define the term “threatened release”?**

- Commenters: Western States Petroleum Association (24-5)
- Rule Sections: WAC 173-340-200

**Response:**

No. Ecology does not believe the amended rule needs to define the term “threatened release” because the term simply uses the common meaning of “threatened” to modify the term “release,” which is already defined in the rule in WAC 173-340-200. As needed, Ecology can provide further guidance in Toxics Cleanup Program [Policy 300](#).<sup>110</sup> about what may constitute a threatened release and when it may pose a threat requiring remedial action under the rule.

**Issue 67: Should the definition of “total petroleum hydrocarbons” be modified to define the -Gx and -Dx carbon ranges?**

- Commenters: GHD Inc. (22-7)
- Rule Sections: WAC 173-340-200: definition of “total petroleum hydrocarbons”

**Response:**

This comment refers to a definition that was not changed during this rulemaking and is beyond the scope of this rulemaking. Matters related to the cleanup standards established in Parts 7 and 9 of the rule will be considered in one or more future rulemakings.

## 6.10 Section 210

**Issue 68: Does the term “threat” include “potential threats”?**

- Commenters: Port of Seattle (9-19)
- Rule Sections: WAC 173-340-210(8)  
Throughout Part 7 of the rule

**Response:**

The current rule defines the usage of the term “threat” to mean “threat or potential threat” (WAC 173-340-210(8)). Ecology did not amend that definition in this rulemaking.

In Part 7, the proposed rule corrected usages of the terms “threat” and “potential threat” that were inconsistent with the definition in WAC 173-340-210(8). Ecology confirmed the appropriate usage in each case. So the adopted rule reflects the proposed rule.

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<sup>110</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0409102.html>

## 6.11 Section 300

### **Issue 69: Should the rule require owners and operators to notify the U.S. Environmental Protection Agency upon discovery of a release?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-3)
- Rule Sections: WAC 173-340-300(5)

#### **Response:**

No. Ecology does not believe the amended rule should require owners and operators to notify the U.S. Environmental Protection Agency (EPA) upon discovery of a release. The MTCA Cleanup Regulations are not well suited to serve as a guide to the release reporting requirements of other agencies and jurisdictions. However, Ecology maintains a [webpage dedicated to spill reporting](#),<sup>111</sup> which specifies that oil and hazardous substance spills to water must be reported immediately to the EPA National Response Center. As this and other reporting requirements change, Ecology can more quickly update the list of those requirements on its website than in a rule.

### **Issue 70: Request clarification of release reporting exemption for a release to a permitted wastewater facility.**

- Commenters: City of Tacoma (8-13)
- Rule Sections: WAC 173-340-320(2)(a)(x)

#### **Response:**

The comment refers to a release reporting exemption in the current rule that Ecology did not propose changing in this rulemaking. Releases to wastewater facilities are exempt from reporting under this rule because they are regulated by the federal Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit system. All spills, sanitary sewer overflows, and combined sewer overflows to and from a wastewater treatment facility are reported to the appropriate authority under the NPDES permit.

### **Issue 71: Should the rule exempt releases to stormwater systems and facilities?**

- Commenters: City of Tacoma (8-13)
- Rule Sections: WAC 173-340-320(2)(a)

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<sup>111</sup> <https://ecology.wa.gov/footer-pages/report-an-environmental-issue/report-a-spill>

**Response:**

Whether releases to stormwater systems or facilities should be exempt from reporting under the rule is beyond the scope of this rulemaking. Ecology did not propose any such exemption. Ecology may consider this matter further during a future rulemaking.

**Issue 72: Should the rule specify under what circumstances a release or threatened release may pose a reportable threat?**

- Commenters: GHD Inc. (22-8)
- Rule Sections: WAC 173-340-300(2)

**Response:**

No. Ecology does not believe the amended rule should specify under what circumstances a release or threatened release may pose a reportable threat. The amended rule requires owners and operators to report any release or threatened release of a hazardous substance that may pose a threat to human health or the environment (WAC 173-340-300(2)(a)). Ecology believes it would be impossible or impractical to include in the rule a list all circumstances under which a release or threatened release may pose a reportable threat. Accordingly, the amended rule acknowledges the need for professional judgement and provides guidance as to the type of circumstances when owners or operators generally should report a release or threatened release (WAC 173-340-300(2)(a) and (b)). Ecology provides additional guidance in Toxics Cleanup Program [Policy 300: Site Discovery – Reporting releases](#).<sup>112</sup>

**Issue 73: Does the site hazard assessment and ranking process (SHARP) define the reportability of a release or threatened release?**

- Commenters: GHD Inc. (22-8)
- Rule Sections: WAC 173-340-300(2)  
WAC 173-340-320

**Response:**

No. The site hazard and ranking process (SHARP) required under the amended rule supports decisions to add or remove sites from the contaminated sites list and to identify and inform the public about the threats posed by sites. SHARP does not itself define whether a specific release or threatened release of a hazardous substance is reportable under WAC 173-340-300(2). See WAC 173-340-320. However, Ecology's SHARP Tool is based on Ecology's experience with thousands of contaminated sites, and the questions and guidance in the SHARP Tool can inform professional judgment about whether a release or threatened release poses a threat and should be reported.

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<sup>112</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0409102.html>

**Issue 74: Should the rule require owners and operators to report a threatened release of a hazardous substance that may pose a threat to human health or the environment?**

- Commenters: GHD Inc. (22-9)  
Western States Petroleum Association (24-5)  
Washington State Department of Transportation (16-15)
- Rule Sections: WAC 173-340-300(2)

**Response:**

Yes. Ecology believes the amended rule should require owners and operators to report a threatened release of a hazardous substance that may pose a threat to human health or the environment. The Model Toxics Control Act (MTCA), Chapter [70A.305](#) RCW,<sup>113</sup> authorizes Ecology to regulate both releases and threatened releases of hazardous substances. See, for example, RCW [70A.305.030](#)(1)(a) and (b)<sup>114</sup>. To regulate threatened releases effectively, owners and operators need to report threatened releases that may pose a threat to human health or the environment. For this reason and for consistency with other provisions of the amended rule (see, for example, WAC 173-340-110 and 173-340-310), Ecology added the phrase “or threatened release” to the release reporting requirement in WAC 173-340-300(2).

As discussed under Issue 72, owners and operators should use best professional judgement to determine whether a threatened release of a hazardous substance may pose a threat to human health or the environment. The amended rule retains the following example of a circumstance where a threatened release generally should be reported: “Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances” (WAC 173-340-300(2)(b)(vi)).

**Issue 75: When an independent remedial action is completed within 90 days of release discovery, when should the owner or operator report the release and the independent remedial action?**

- Commenters: Washington State Department of Transportation (16-17)
- Rule Sections: WAC 173-340-300(2) and (3)(c)  
WAC 173-340-515(4)(a) and (b)

**Response:**

Compared to the current rule, the amended rule changes and clarifies the timing of release reporting in cases where an independent site investigation, interim action, or cleanup action is completed within 90 days of release discovery. In such cases, the release must be reported within 90 days of discovery instead of within 90 days of completing the independent remedial action. The release report must still include information on any planned, ongoing, or completed

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<sup>113</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>114</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

independent remedial actions (WAC 173-340-300(2) and (3)(c)). Ecology made this change in response to stakeholder and tribal input during the development of the proposed rule.

The amended rule requires persons conducting an independent site investigation, interim action, or cleanup action to report the action within 90 days of completion. For the purposes of this reporting requirement, an independent site investigation, interim action, or cleanup action is considered complete if no remedial action other than compliance monitoring has occurred at the site for 90 days (WAC 173-340-515(4)(a) and (b)). Compared to the current rule, the amended rule expanded this reporting requirement to include site investigations. For additional discussion of when to report independent remedial actions, see response to Issues 174 through 176.

**Issue 76: Do the examples in the rule of when a release or threatened release should generally be reported ignore the possibility that it does not pose a threat?**

- Commenters: GHD Inc. (22-10)
- Rule Sections: WAC 173-340-300(2)(b)

**Response:**

No. The examples in the amended rule of when a release or threatened release should generally be reported do not ignore the possibility that it does not pose a threat. The examples are only guidance, not requirements. As stated in the amended rule, the listed examples are situations where an owner or operator “should generally report” a release (WAC 173-340-320(2)(a)). The known presence of contamination is a good indicator of whether a release should be reported, but an owner or operator may use best professional judgement and any available evidence (such as sample results) to determine that the contamination does not pose a threat and, therefore, does not need to be reported.

**Issue 77: Do the rule’s release reporting requirements for releases from UST systems conflict with one another?**

- Commenters: GHD Inc. (22-11)
- Rule Sections: WAC 173-340-300(2) and (4)

**Response:**

No. The amended rule’s release reporting requirements for releases from underground storage tank (UST) systems do not conflict with one another. The amended rule provides the following:

- A release from a regulated UST system must be reported in accordance with the UST Regulations, Chapter [173-360A](#) WAC.<sup>115</sup> Under those regulations, UST system owners

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<sup>115</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-360A>

and operators and regulated service providers must report a confirmed release to Ecology within 24 hours (WAC 173-340-300(4)(a)).

- A release from a heating oil tank (HOT) must be reported in accordance with the HOT Regulations, Chapter [374-45 WAC](#).<sup>116</sup> Under those regulations, owners and operators of a heating oil tank and owners of the property where the tank is located must report a suspected or confirmed release from the tank to PLIA within 90 days (WAC 173-340-300(4)(b)).
- If an UST release is reported under either the UST Regulations or HOT Regulations, then the release does not need to be reported again to Ecology under the MTCA Cleanup Regulations (WAC 173-340-300(2)(a)(i) and (ii) and (4)(a)).
- However, any UST release not reported in accordance with either the UST Regulations or HOT Regulations must be reported in accordance with the MTCA Cleanup Regulations (WAC 173-340-300(2)(a)(i) and (ii) and (b)(ix)).

Many historic UST releases may not have been reported under the UST Regulations and so are required to be reported under the MTCA Cleanup Regulations. In addition, many UST systems are not regulated; releases from such systems would also need to be reported under the MTCA Cleanup Regulations.

## 6.12 Section 310

### **Issue 78: How will Ecology determine whether an initial investigation of a reported release is necessary?**

- Commenters: GHD Inc. (22-12)
- Rule Sections: WAC 173-340-310(2) through (4)

#### **Response:**

The comment refers to rule provision that Ecology did not amend in this rulemaking. As required in the current and amended rules, for releases that are not exempt from reporting under WAC 173-340-300(2)(a) and have not already been investigated, Ecology makes the decision whether to investigate using best professional judgement and site-specific information available in the release report. See WAC 173-340-310(2). Ecology believes it is impractical and unnecessary to list specific criteria for this decision in the amended rule.

Ecology would not delegate this responsibility to a potentially liable person since such persons would likely have a conflict of interest. See WAC 173-340-310(4). However, Ecology may ask

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<sup>116</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=374-45>

such persons to collect additional information to help Ecology make a determination. See WAC 173-340-310(3).

Ecology plans to update Toxics Cleanup Program [Policy 310A \(Initial Investigations\)](#)<sup>117</sup> following adoption of the rule amendments. During this update, Ecology will consider whether to provide further guidance for staff as to when to conduct an initial investigation of a reported release.

**Issue 79: Should the rule always require site visits as part of an initial investigation? If not, should Ecology develop guidelines for determining when a site should be visited?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-5)
- Rule Sections: WAC 173-340-310(3)

**Response:**

No. Ecology does not believe the amended rule should always require site visits as part of an initial investigation. Ecology believes staff should visit sites only when necessary to meet the objectives of an initial investigation. Compared to when the rule was originally adopted, Ecology can now meet those objectives at many sites by relying on more detailed release and remedial action reports submitted by the owners and operators, and by accessing available information about the site online. This has made it possible to conclude many initial investigations at a high level of confidence without a physical site visit. Further, Ecology has not always been able to physically access contaminated properties at some sites. Ecology will continue to conduct site visits as needed or appropriate to meet the objectives of an initial investigation.

This policy is consistent with the Model Toxics Control Act, which does not require site visits, and the Pollution Liability Insurance Agency's own rules for conducting initial investigations of heating oil tank releases, which were adopted in 2022. See RCW [70A.305.030\(2\)\(d\)](#)<sup>118</sup> and WAC [374-45-040](#).<sup>119</sup>

Ecology plans to update Toxics Cleanup Program [Policy 310A \(Initial Investigations\)](#)<sup>120</sup> following adoption of the rule amendments. During this update, Ecology will consider whether to include specific factors or other guidance for determining whether to conduct a site visit as part of an initial investigation.

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<sup>117</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0909050.html>

<sup>118</sup>

<sup>119</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=374-45-040>

<sup>120</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0909050.html>



**Issue 80: May independent remedial actions be conducted before, during, and after an initial investigation?**

- Commenters: Washington State Department of Transportation (16-18)
- Rule Sections: WAC 173-340-310(5)(b)  
WAC 173-340-515

**Response:**

Yes. Under the amended rule, independent remedial actions may be conducted before an initial investigation. But for Ecology to consider the results during the initial investigation, the person must complete the independent remedial action within 90 days of discovery and report the remedial action to Ecology within 90 days of completion. See WAC 173-340-310(5)(b). Persons may conduct independent remedial actions during or after an initial investigation, but Ecology cannot consider the results as part of the initial investigation. All independent remedial actions are subject to the limitations and requirements in WAC 173-340-515.

**Issue 81: Should the rule always require Ecology to notify all persons in potentially affected vicinity when initially listing a site based on an initial investigation?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-4, 32-14)
- Rule Sections: WAC 173-340-310(1)(f) and (6)(e)(vi)  
WAC 173-340-600

**Response:**

No. Ecology does not believe the rule should always require Ecology to notify all persons in potentially affected vicinity when initially listing a site based on an initial investigation. Ecology believes that notice of, and communications about, at site should be tailored to the site based on threats posed and the populations threatened.

The principal objectives of the initial investigation are simply to determine whether there is a release or threatened release that may pose a threat to human health or the environment, and whether further remedial action is needed to confirm or address that threat. See WAC 173-340-310(1). The objective is not to fully characterize the nature and extent of the threat and all the populations threatened. That is the purpose of a remedial investigation. See WAC 173-340-350. Without such a full characterization, Ecology cannot reasonably determine whom to notify about the threats and how best to notify them. Ecology also does not have the resources to undertake such an intensive effort for every site listed each year.

Nevertheless, one of the other important objectives of an initial investigation is to at least determine whether an emergency remedial action or an interim action is needed to quickly address the threat, and whether persons in the potentially affected vicinity need to be notified of such action. Under the amended rule, if Ecology determines such action and notice is needed, Ecology will notify persons in the potentially affected vicinity, or require the owner or operator to

do the same. Ecology will determine the method and nature of the notice on a case-by-case basis using the methods in WAC 173-340-600. See WAC 173-340-310(1)(f) and (6)(e)(vi).

In all cases, when initially listing a site based on an initial investigation, the amended rule requires Ecology to notify the public of the site and its determination in the [Contaminated Site Register](#)<sup>121</sup> under WAC 173-340-600(7). The notice must include instructions on who to sign up for future electronic alerts about the site provided by Ecology under WAC 173-340-600(6). See WAC 173-340-310(6).

Ecology retains the authority to provide or require additional notice at any stage of the cleanup process, including at the initial investigation stage. Ecology plans to update Toxics Cleanup Program [Policy 310A \(Initial Investigations\)](#)<sup>122</sup> following adoption of the rule amendments. During this update, Ecology will consider whether to include specific factors or other guidance to staff for determining under what types of circumstances Ecology should provide direct notice to some or all persons in the potentially affected vicinity based only on the results of an initial investigation.

### **Issue 82: Can Ecology provide additional means for Indian tribes to request notice of initial investigation determinations or SHARP assessments?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-6)
- Rule Sections: WAC 173-340-310(6)  
WAC 173-340-600(5) through (7)  
WAC 173-340-620

### **Response:**

Under the amended rule, Ecology committed to provide automatic, site-specific electronic alerts triggered by remedial actions at any site on the contaminated sites list or the no further action sites list. The actions triggering such alerts include changes in the listing, status, or SHARP ranking of a site or the availability of remedial action plans or reports. Persons who have requested such notices will be able to review this information on Ecology website. See WAC 173-340-600(5) and (6).

However, this site-specific electronic alert system has an important limitation. The system will not be able to provide interested persons alerts when Ecology initially identifies and lists the site. That's because a person would need to know about a site before they could sign up to receive alerts about the site. Ecology will notify the public of all new sites on its *Contaminated*

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<sup>121</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Site-Register-lists-and-data>

<sup>122</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0909050.html>

*Site Register.* Tribal officials may sign up to receive such notices. See WAC 173-340-310(6) and 173-340-600(7).

Ecology is studying the feasibility of extending the new site-specific electronic alert system to enable users, including tribal officials, to request alerts for any current or future site within a user-defined geographic area, including alerts of the listing of new sites within the designated area. With such a system, an Indian tribe could identify geographic areas of interest where the tribe would like to be notified of new sites and Ecology's hazard assessments of those sites. Based on the available information about those sites, Indian tribes could also determine at which sites they would like to engage with Ecology during the cleanup process.

**Issue 83: Could a threatened release pose a threat to human health and the environment? Based on an initial investigation, may Ecology determine further remedial action is necessary to address the threat posed by the threatened release?**

- Commenters: GHD Inc. (22-13)
- Rule Sections: WAC 173-340-310(1) and (6)

**Response:**

Yes. A threatened release, such as that posed by abandoned containers or deteriorating onsite containment systems, could pose a threat to human health or the environment. Further, under the Model Toxics Control Act (MTCA), Ecology may determine based on an initial investigation that further remedial action beyond the initial investigation is needed to confirm or address the threatened release. See RCW [70A.305.030](#)<sup>123</sup>(1)(a) and (b) and (2)(d) and WAC 173-340-310(1) and (6). For example, further remedial action could be needed to determine the integrity of the containers or containment system, the severity of the threats posed by the contained hazardous substances, and the feasibility of various alternatives to reduce or eliminate the threats.

## 6.13 Section 320

**Issue 84: Support for replacing current Washington Ranking Method (WARM) with new Site Hazard Assessment and Ranking Process (SHARP).**

- Commenters: Washington State Department of Transportation (16-10, 16-13)  
GHD Inc. (22-1)
- Rule Sections: WAC 173-340-320

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<sup>123</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

**Response:**

Ecology appreciates your comments. Ecology believes the rule amendments improve the process of assessing and ranking the hazard posed by contaminated sites. Ecology uses the rankings to compare and prioritize the threats to human health and the environment posed by contaminated sites. The amendments replace the outdated 1992 Washington Ranking Method (WARM), which had been incorporated into the rule in 2001, with a requirement that Ecology establish, implement, and maintain a new process outside the rule (WAC 173-340-320).

**Issue 85: Should the Site Hazard Assessment and Ranking Process (SHARP) be incorporated as part of the rule rather than as a separate agency procedure?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-2)
- Rule Sections: WAC 173-340-320

**Response:**

No. Ecology does not believe the new Site Hazard Assessment and Ranking Process (SHARP) should be incorporated as part of the rule rather than as a separate agency procedure.

The Model Toxics Control Act (MTCA) requires Ecology to “establish a hazard ranking system for hazardous waste sites” (RCW [70A.305.030](#)(2)(b)).<sup>124</sup> The amended rule replaces the outdated 1992 edition of the Washington Ranking Method (WARM), which had been incorporated into the rule in 2001,<sup>125</sup> with a requirement that Ecology establish, implement, and maintain a new Site Hazard Assessment and Ranking Process (SHARP) outside the rule. See WAC 173-340-320. The amended rule requires SHARP to:

- Fulfill the functional requirements specified in the rule.
- Meet the performance standards established in Ecology policy for the new system.
- Undergo quality assurance assessments established in Ecology policy, with updates to ranking procedures and practices as needed.
- Be subject to public review and comment before establishing or making any changes that could affect hazard rankings.

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<sup>124</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

<sup>125</sup> Ecology developed the Washington Ranking Method (WARM) in 1988 and 1989, updated and then adopted its latest version of WARM as an agency procedure in 1992, and then incorporated that procedure without change into the rule in 2001. As provided in the 2001 rule amendments, short of repeal and replacement by further rule amendment, the 1992 version of WARM could only be updated with review by a MTCA Science Advisory Board that was itself abolished by the Legislature in 2009.

See WAC 173-340-320(2). Ecology believes this approach will assure that SHARP will be more relevant to current operations, more adaptable to future needs, and more transparent to staff, stakeholders, Indian tribes, and the general public.

**Issue 86: What are the objectives of SHARP and what is its relationship to strategic program planning?**

- Commenters: King County (STC2-1, STC2-2, STC2-3, STC2-12)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-16)
- Rule Sections: WAC 173-340-320(1) and (2)(a)  
WAC 173-340-340(1) and (2)

**Response:**

The Site Hazard Assessment and Ranking Process (SHARP) ranks the hazards posed by a site and identifies whether the potentially exposed population includes a likely vulnerable population or overburdened community. **SHARP does not itself rank or prioritize sites or resources.** See WAC 173-340-320(1) and (2)(a).

Ecology will use the SHARP hazard rankings and environmental justice factors to prioritize sites and the resources necessary to clean them up as part of its strategic planning process required under WAC 173-340-340(1). See WAC 173-340-320(1)(b). The hazards posed by a site and whether the potentially exposed population includes a likely vulnerable population or overburdened community are two of the three factors that Ecology must consider when prioritizing sites and allocating agency resources. Ecology may consider other factors, which it must identify. See WAC 173-340-340(1) and (2).

Based on the comments received, Ecology edited the proposed rule amendment in WAC 173-340-320(1)(b) to clarify the purpose of site hazard assessments and rankings in relation to program planning and assessment.

See the response to Issue 18 for an example of how SHARP rankings could support strategic planning, including site prioritization.

**Issue 87: What does a SHARP hazard ranking for exposure and for severity mean?**

- Commenters: King County (STC2-2)
- Rule Sections: WAC 173-340-320(2)(a) and (3)(d)(i)

**Response:**

SHARP rankings consider both the potential for human or environmental exposure to known or suspected hazardous substances at the site, and the severity of such an exposure if it occurs.

SHARP reports a pair of scores (potential exposure, severity) for each of five environmental media at the site: soil, surface water, groundwater, sediment, and indoor air.

- The SHARP potential exposure score is an absolute indicator of whether there is (A) a known active exposure, (B) an unknown but possible active exposure, (C) a known possible future but not active exposure, or (D) no potential exposure, through each of the environmental media at the site.
- The SHARP severity score indicates the toxicity and extent of contamination, combined with the sensitivity of receptors that might be exposed at the site. Severity for each environmental medium is scored on an absolute scale from 1 (most severe) to 4 (least severe) based on question sets appropriate for each environmental medium. Ranking scales for different environmental media are calibrated to allow severity comparisons between media.

The SHARP Tool also reports the assessor's level of confidence in the data available for ranking each of five potential exposure media at the site. The SHARP data confidence levels are:

- High: the score is based on site-specific data sufficient to strongly support the score. Additional site-specific information is not needed to increase the confidence level.
- Medium: the score is based on site-specific data of limited quality or quantity. Additional site-specific information is needed to increase the confidence level.
- Low: the score is based on general site conditions and land uses, or information on site operations, processes, and contamination associated with analogous sites. Site-specific information is needed to increase the confidence level.

See WAC 173-340-320(2)(a) and (3)(d)(i).

The SHARP ranking approach allows assessors to generate consistent rankings with only information that is readily available at the time of the ranking, and then to re-assess the site as further remedial action makes more information available. To be valid, the SHARP potential exposure and severity scores for each environmental medium must be reported with the assessed data confidence level for that medium.

For a more detailed discussion of SHARP rankings and the SHARP Tool, please refer to the [Draft SHARP Tool User Manual](#) (March 2023).<sup>126</sup> The Draft SHARP Tool and User Manual remain available to the public on the agency's [blog](#).<sup>127</sup>

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<sup>126</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>127</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

**Issue 88: Should SHARP enable Ecology to update assessments when new information becomes available or when site conditions change?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-9)  
Western States Petroleum Association (STC3-1, STC3-2)
- Rule Sections: WAC 173-340-320(1)(d) and (3)(a)(iii)

**Response:**

Yes. Ecology agrees that SHARP should enable Ecology to update assessments when new information becomes available or when site conditions changes. Ecology appreciates the statements of support for this innovation in the amended rule. This innovation will enable Ecology to track progress in cleaning up sites and communicate changes in threats posed by a site to the public and Indian tribes. See WAC 173-340-320(1)(d) and (3)(a)(iii).

The amended rule replaces the outdated 1992 edition of the Washington Ranking Method (WARM), which had been incorporated into the rule in 2001. Ecology used WARM to produce a one-time initial site ranking, normally before initiating an Ecology-conducted or supervised remedial action at a site. WARM did not allow for re-ranking unless significant additional information became available before the initiation of such action at a site, and so could not be used to track the progress of site investigations and cleanups. Initially, WARM rankings were intended to be the primary basis (though not the sole criterion) for prioritizing Ecology-conducted and Ecology-supervised remedial actions.

WARM rankings were limited to a single number indicating an overall level of site hazard posed by sediment, surface water and groundwater relative to the hazards of other ranked sites. This relative measure provides no absolute information about the overall risks of the site, nor about the types of risk posed by different environmental media at the site. Further, because the WARM ranking process made significant demands on staff time, fewer and fewer sites were selected for WARM rankings. To date, only about 17 percent of sites have been ranked. Thus, the meaning of the relative ranking became even harder to interpret or use for program planning and evaluation.

As specified in the amended rule, SHARP rankings address several key limitations of WARM rankings. SHARP rankings will:

- Provide separate hazard rankings by environmental medium for each site (soil, surface water, groundwater, sediment, and indoor air).
- Provide absolute rankings that allow direct comparisons between media and among sites.
- Allow Ecology to re-assess and rank sites to reflect changes in information availability or site conditions.

- Take significantly less time to generate, making it possible for Ecology to rank all new sites and, within several years, to rank the backlog of unranked sites on the contaminated sites list.
- Include available socioeconomic data for the site by census block group, and the Washington State Department of Health Environmental Health Disparity (EHD) rank by census tract.

See WAC 173-340-320. More than a dozen experienced site managers, initial investigators, and site assessors have collaborated since 2017 (as time was available) to develop and test the SHARP Tool. We also appreciate the comments and suggestions of STAG members who reviewed an earlier version of the SHARP Tool.

**Issue 89: Could SHARP include an assessment of whether a site is likely to impact tribal resources?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-7, 10-8)  
King County (STC2-5)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-5, STC4-7, STC4-8, STC4-11)
- Rule Sections: WAC 173-340-320(1) and (2)(a)  
WAC 173-340-340(1)  
WAC 173-340-620  
WAC 173-340-815(2)(b)(i)

**Response:**

At this time, without site-specific tribal engagement, Ecology does not believe that the Site Hazard Assessment and Ranking Process (SHARP) could reliably identify all Indian tribes that may have rights or interests in resources potentially affected by a site, nor assess the potential impact of the site and cleanup on those resources. This means that such an assessment is not currently practicable for most initial SHARP assessments. Ecology may reconsider this matter if it can develop a system by which Indian tribes can define geographic (rather than site-specific) areas of interest, as discussed below.

For Ecology-conducted and Ecology-supervised remedial actions, Ecology will seek to meaningfully engage with affected Indian tribes before conducting a remedial investigation or interim action and throughout the cleanup process. See WAC 173-340-620. This includes cultural resource consultations under WAC 173-340-815(2)(b)(i). Based on tribal consultations and remedial investigations, Ecology could identify likely impacts on tribal resources. However, because this information would not be available before the remedial investigation (and typically would not be available for independent remedial actions), Ecology would not be able to use this information when prioritizing sites and program resources when developing its strategic plans under WAC 173-340-340(1).



However, Ecology is studying the feasibility of extending its site-specific electronic alert system to allow users to identify geographic areas of interest. See Ecology's response to Issue 82. An Indian tribe could use that capability to identify geographic areas of interest where the tribe would like to be notified of new sites and Ecology's hazard assessments of those sites. Ecology could use the areas identified by an Indian tribe as a proxy indicator of whether a site is likely to impact tribal resources or other interests. That indicator would be available for all sites when Ecology conducts an initial investigation and the initial SHARP assessment. Ecology could then use that indicator when prioritizing sites and program resources. Ecology could also use the indicator to help determine which Indian tribes to engage during the cleanup process. After the remedial investigation is completed, Ecology could update the indicator in SHARP to reflect more site-specific information. There is at least one problem with this proxy indicator. If a significant majority of Washington state is designated as an area of interest by one or more Indian tribes, then Ecology could not practically use the proxy indicator to help prioritize site and program resources in the state.

**Issue 90: Should the SHARP Tool enable Ecology to consider climate vulnerabilities?**

- Commenters: Western States Petroleum Association (STC3-5, STC3-6)
- Rule Sections: WAC 173-340-320(2)

**Response:**

Yes. While not a functional requirement, Ecology believes the SHARP Tool should include an assessment of climate vulnerabilities. Accordingly, Ecology included a climate change vulnerability indicator in the "Additional Factors" tab of the [Draft SHARP Tool](#)<sup>128</sup> (March 2023). The Draft SHARP Tool and User Manual remain available to the public on the agency's [blog](#).<sup>129</sup>

**Issue 91: Should the SHARP Tool enable Ecology to consider available biological data, such as fish tissue or plants?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-9)
- Rule Sections: WAC 173-340-320(2)(a) and (3)(b)

**Response:**

The amended rule requires SHARP assessments to consider readily available information to rank a contaminated site on: (a) its potential to expose human and environmental receptors to confirmed or suspected releases of hazardous substances, and (b) the likely severity of such an exposure (WAC 173-340-320(2)(a) and (3)(b)). If data on the biologic availability of hazardous substances is available for the site, a SHARP assessment would consider this information to assess the exposure potential and severity of threats posed by soil and groundwater at the site.

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<sup>128</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsm>

<sup>129</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

**Issue 92: Can the SHARP Tool incorporate new information on chemical hazards, including changes in toxicological data and new hazardous substances? Can the SHARP Tool track emerging hazards?**

- Commenters: King County (STC2-11)
- Rule Sections: WAC 173-340-320(2)(a)

**Response:**

Yes. The SHARP Tool can incorporate new information on chemical hazards, including changes in toxicological data and new hazardous substances. Ecology expects to update the SHARP Tool Chemical Toxicity Reference Table (included in the “ChemTox” tab in the [Draft SHARP Tool](#)<sup>130</sup> (March 2023)) in conjunction with regular updates to Ecology’s Cleanup Levels and Risk Calculations (CLARC)<sup>131</sup> data tables. See the appendix to the [Draft SHARP Tool User Manual](#)<sup>132</sup> (March 2023) for further discussion. The Draft SHARP Tool and User Manual remain available to the public on the agency’s [blog](#).<sup>133</sup>

The SHARP Tool can also track emerging hazards. The presence of any new or emerging chemicals of concern that are not yet regulated or included in the CLARC data tables can be noted in a comment field of the SHARP Tool. Ecology will consider whether to create a separate field to flag the presence of an emerging contaminant at the site.

**Issue 93: Support for requiring performance standards and quality assurance measures for SHARP.**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-10)
- Rule Sections: WAC 173-340-320(2)(b) and (c)

**Response:**

The amended rule requires Ecology to:

- Establish performance standards for assessing the technical validity, efficiency, consistency, and practical utility of the Site Hazard Assessment and Ranking Process (SHARP).

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<sup>130</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsx>

<sup>131</sup> <https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/contamination-clean-up-tools/clarc>

<sup>132</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>133</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

- Periodically assess whether SHARP meets those performance standards, and update SHARP as appropriate.

See WAC 173-340-320(2)(b) and (c). Ecology agrees that the rule should require the development of such performance standards and quality assurance measures. Ecology appreciates the support.

During development of the SHARP Tool, Ecology conducted several trials of developmental versions, including a formal test of the reliability (inter-rater agreement) of SHARP Tool rankings for a variety of sites by experienced Ecology staff. A similar trial for the final version of the SHARP Tool will allow us to evaluate the effectiveness of our training for Ecology staff and others who will use the SHARP Tool. That will provide Ecology a baseline for periodic SHARP performance assessments.

**Issue 94: Concern about SHARP assessment reliability, quality assurance, and use of best professional judgement.**

- Commenters: King County (STC2-9, STC2-10, STC2-14)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-18, STC4-19)
- Rule Sections: WAC 173-340-320(2)(a) through (c) and (3)(b)

**Response:**

The amended rule requires Ecology to establish performance standards for the technical validity, efficiency, consistency, and practical utility of the site hazard assessment and ranking process (WAC 173-340-320(2)(b)). Ecology will periodically assess whether SHARP rankings meet those standards and update the process as necessary (WAC 173-340-320(2)(c)). Ecology is developing a quality assurance plan as part of the startup phase of SHARP that will evolve as Ecology gains more experience with the SHARP Tool and its users.

As provided by the amended rule, SHARP is a method for evaluating and comparing the hazards (the danger, or risk of harm) that known or suspected contamination at a site may pose to human health or the environment. See WAC 173-340-320(2)(a). Because concepts such as “hazard” and “risk of harm” can’t be measured directly, site hazard rankings require judgements based on various site attributes or conditions that can be measured or reliably observed and reported as qualitative data, and on related knowledge of similar sites or other sites in the vicinity.

The SHARP Tool is an instrument for collecting and evaluating such observations and combining them correctly and consistently into site hazard rankings. No system can eliminate the need for judgement by trained investigators, but an effective instrument can make rankings more consistent for each investigator over multiple sites and with rankings of other investigators for a single site. It can also help make efficient use of available information and reflect best professional practices and available science.

Ecology designed and tested the SHARP Tool to enhance the inter-rater reliability of SHARP assessments: the likelihood that different but similarly trained investigators would produce the same rankings given the same data. During development of the SHARP Tool, carefully crafted questions with unambiguous multiple-choice answers, convenient contextual help for each question, a simple visual interface, and intuitive navigation within the SHARP Tool have helped to reduce instrument-related variability (“noise”) in our ranking trials.

While developing and improving the SHARP Tool itself, Ecology has also been learning to train new evaluators effectively. During the startup phase of SHARP, rankings will be conducted by a mix of seasoned initial investigators, site managers, and new permanent staff hired to help rank new sites and the backlog of unranked sites already on the contaminated sites list. Ecology is planning collaborative group and individual trainings for new assessors, and periodic reliability assessments using duplicate rankings for both new and experienced assessors.

### **Issue 95: Which sites will Ecology assess and rank using SHARP?**

- Commenters: Port of Seattle (9-8)  
King County (STC2-8)
- Rule Sections: WAC 173-340-320(1)(a) and (3)(a)  
WAC 173-340-310(6)  
WAC 173-340-340(1)

### **Response:**

Under the amended rule, Ecology will perform a site hazard assessment and ranking (SHARP assessment) before adding or removing a site from the contaminated sites list (CSL) under WAC 173-340-330 or the no further action sites list (NFASL) under WAC 173-340-335 (WAC 173-340-320(1)(a) and (3)(a)). In short, this means that Ecology will perform a SHARP assessment of all “contaminated sites,” as defined in WAC 173-340-200.

The amended rule requires Ecology to conduct SHARP assessments of:

- New contaminated sites within 30 days of completing an initial investigation (WAC 173-340-320(3)(a)(i) and 173-340-310(6)).
- Sites currently on the CSL on the effective date of the amended rule, as resources permit, including previously WARM-ranked sites (WAC 173-340-320(3)(a)(ii)).
- Any site currently on the NFASL on the effective date of the amended rule that is subsequently relisted on the CSL (WAC 173-340-320(3)(a)(i)).

This will require Ecology to perform SHARP assessments:

- For about 300 to 350 new sites each year; and
- As resources permit, for more than 1,900 existing WARM-ranked sites and 4,400 existing unranked sites already on the CSL.

Ecology anticipates that it will take several years to complete rankings of the 6,300 ranked and unranked sites already listed on the CSL. These rankings will be prioritized in accordance with the strategic plan developed under WAC 173-340-340(1).

**Issue 96: When will Ecology reassess and re-rank sites using SHARP during the cleanup process? How will Ecology show progress in cleaning up sites?**

- Commenters: GHD Inc. (22-2)  
Hokanson (STC1-1, STC1-2)  
King County (STC2-4, STC2-8)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-6)
- Rule Sections: WAC 173-340-320(3)(a)

**Response:**

The amended rule requires Ecology to reassess and re-rank sites before removing a site from the contaminated sites list (CSL) (WAC 173-340-320(3)(a)(i)). The amended rule also allows Ecology to reassess and re-rank sites when new information becomes available or when site conditions change (WAC 173-340-320(3)(a)(iii)).

Ecology will establish policies for reassessing and re-ranking sites, including timelines and standard triggers for re-ranking. In general:

- After the initial investigation, Ecology may reassess and re-rank sites using the SHARP Tool when new or more reliable information becomes available or when site conditions change. This is most likely to occur after a remedial investigation or interim action is completed.
- Ecology will reassess and re-rank sites before removing a site from the CSL.
- When a site is reassessed, the assessment will be based on the latest information readily available and will use the most recent updated version of the SHARP Tool.
- Changes in SHARP Tool questions, scoring algorithms, or guidance (such as updates to the chemical toxicity reference table) will not automatically trigger site reassessment or re-ranking.

As a site moves through the cleanup process and more information becomes available to Ecology, the site's SHARP ranking confidence levels will generally increase. Current and previous SHARP rankings for each site will be available to the public through the Ecology website, allowing Ecology to report and the public to follow cleanup progress. Ecology also plans to integrate SHARP rankings with Ecology's existing site database to make this even easier. Improvements in reported SHARP data confidence levels will be one indicator of progress toward cleanup.

The public will be able to view written and graphic summaries of the site hazard rankings on Ecology website. Ecology is still working on the final design, but draft versions of these reports are shown in the “SHARP1” and “SHARP2” tabs on the draft SHARP [Draft SHARP Tool](#)<sup>134</sup> (March 2023).

With few (if any) exceptions, all sites currently have at least a minimal “Generated Site Page” (GSP) available to the public through Ecology’s website. GSPs are based on information in Ecology’s site database and electronic records system, and they provide links to available documents for each site. GSPs are available to the public through the “[Cleanup and Tank Search](#)”<sup>135</sup> and “[What’s In My Neighborhood](#)”<sup>136</sup> search tools on Ecology’s website.

Beyond reports for individual sites, Ecology is considering how to report progress on SHARP rankings and summarize the results geographically on the cleanup program’s website. Ecology appreciates suggestions received for the content and presentation of SHARP reports.

**Issue 97: Does Ecology have sufficient resources to conduct SHARP assessments, maintain site lists, and update site statuses?**

- Commenters: Port of Seattle (9-8)
- Rule Sections: WAC 173-340-320  
WAC 173-340-330  
WAC 173-340-335

**Response:**

Yes. Ecology believes that it will have sufficient resources to conduct SHARP assessments, maintain site lists, and update site statuses. Ecology is filling new staff positions and training existing staff to conduct SHARP assessments. Ecology plans to have the staff resources necessary to implement the amended rule by the time the amended rule takes effect.

Notably, the amended rule only requires SHARP assessments to consider the data readily available at the time of assessment, and to include the assessor’s level of confidence in that data (WAC 173-340-320(2)(a)(v) and(3)(b)). Data confidence levels will be reported with all site hazard rankings (WAC 173-340-320(4)(d)(i)).

Ecology has developed and tested the SHARP Tool, a question-and-answer based site assessment instrument with contextual guidance for qualified and consistently trained users. During development, trials of the SHARP Tool confirm that qualified staff can produce SHARP rankings reliably and much more quickly than they can develop rankings with the prior Washington Ranking Method (WARM). Staff training with the SHARP Tool has begun and will continue as needed throughout the SHARP Tool’s use.

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<sup>134</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsm>

<sup>135</sup> <https://apps.ecology.wa.gov/cleanupsearch/>

<sup>136</sup> <https://apps.ecology.wa.gov/neighborhood/>

Ecology is also developing an agency SHARP Tool application based on the current Excel version of the SHARP Tool. We expect the application to further streamline the SHARP process and automatically link SHARP results to Ecology's site database. Ecology staff will begin SHARP rankings using the final Excel version of the SHARP Tool until the integrated agency application is available.

Ecology currently maintains both the site lists required by the amended rule, including the [contaminated sites list](#)<sup>137</sup> and the [no further action sites list](#).<sup>138</sup> With few (if any) exceptions, all sites currently have at least a minimal "Generated Site Page" (GSP) available to the public through Ecology's website. GSPs are based on information in Ecology's site database and electronic records system, and they provide links to available documents for each site. GSPs are available to the public through the "[Cleanup and Tank Search](#)"<sup>139</sup> and "[What's In My Neighborhood](#)"<sup>140</sup> search tools on Ecology's website.

**Issue 98: Support for providing an opportunity for public comment when establishing SHARP or making any change to SHARP that could affect hazard rankings.**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-8)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-16)
- Rule Sections: WAC 173-340-320(2)(d)

**Response:**

The amended rule requires Ecology to provide the public with notice and opportunity to comment when establishing the Site Hazard Assessment and Ranking Process (SHARP) or making any change to the process that could affect hazard rankings (WAC 173-340-320(2)(d)). Ecology appreciates the support for this provision of the amended rule.

Ecology provided the public a concurrent opportunity to review and comment on the proposed rule amendments and the draft SHARP [Tool](#)<sup>141</sup> and [User Manual](#).<sup>142</sup> Ecology accepted public comments on the draft SHARP Tool and User Manual for 47 days between March 1 and April 16, 2023. See Chapters 4 and 5 of this document for more information. The Draft SHARP Tool and User Manual remain available to the public on the agency's [blog](#).<sup>143</sup>

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<sup>137</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/contaminated>

<sup>138</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/nfa>

<sup>139</sup> <https://apps.ecology.wa.gov/cleanupsearch/>

<sup>140</sup> [https://apps.ecology.wa.gov/neighborhood/?](https://apps.ecology.wa.gov/neighborhood/)

<sup>141</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsm>

<sup>142</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>143</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

While the opportunity to comment on the draft SHARP Tool and the proposed rule amendments were separate, Ecology received overlapping comments on both the rule and the SHARP Tool. For completeness and efficiency, we combined our responses to both in this single document.

**Issue 99: Who will conduct SHARP assessments?**

- Commenters: GHD Inc. (22-3)  
Western States Petroleum Association (24-3, STC3-3, STC3-4)
- Rule Sections: WAC 173-340-320(3)(a) and (c)

**Response:**

The amended rule requires Ecology to perform a site hazard assessment and ranking of a contaminated site (WAC 173-340-320(3)(a)). However, the amended rule also allows Ecology to rely on another government agency or a contractor to Ecology to perform a site hazard assessment and ranking on its behalf, provided that:

- The agency or contractor is not suspected of having contributed to the release or threatened release; and
- The agency or contractor has no conflict of interest (WAC 173-340-320(3)(c)).

Given these conditions, Ecology is unlikely to rely on a potentially liable person or their contractor to perform a site hazard assessment and ranking on Ecology's behalf at their site since such persons would likely either have contributed to the release or threatened release or have a conflict of interest.

Ecology may rely on the Pollution Liability Insurance Agency (PLIA) to perform a site hazard assessment and ranking on Ecology's behalf, particularly at sites where PLIA is conducting initial investigations under Chapter [374-45](#) WAC<sup>144</sup> or providing technical assistance under Chapter [374-80](#) WAC.<sup>145</sup> Ecology will work with PLIA to determine who will conduct site hazard assessments and rankings at such sites.

**Issue 100: Support for providing detailed site hazard rankings to public.**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-11)
- Rule Sections: WAC 173-340-320(1)(c), (2)(a), and (3)(d)(i)

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<sup>144</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=374-45>

<sup>145</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=374-80>



**Response:**

One of the purposes of the Site Hazard Assessment and Ranking Process (SHARP) is to inform the public about the threats posed by contaminated sites (WAC 173-340-320(1)(c)). To achieve this purpose, the amended rule requires Ecology to make the following information available to the public in the site hazard rankings:

- The potential exposure of human and environmental receptors to confirmed or suspected releases of hazardous substances through each environmental medium (soil, groundwater, surface water, sediment, and indoor air).
- The severity of such exposures to human health and the environment.
- Whether the potentially exposed population includes a likely vulnerable population or overburdened community.
- The environmental health disparity ranking of the potentially exposed population.
- The assessor's level of confidence in the information used for the assessment.

See WAC 173-340-320(2)(a) and (3)(d)(i). Ecology agrees that information is important to communicate to the public.

**Issue 101: How will Ecology notify the public about site hazard rankings?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-17)
- Rule Sections: WAC 173-340-320(3)(d)  
WAC 173-340-600(4) through (7)

**Response:**

In accordance with the amended rule, upon completing a site hazard assessment and ranking, Ecology will:

- Make the site's current hazard rankings publicly available on Ecology's website (WAC 173-340-320(3)(d)(i) and WAC 173-340-600(5)(a).

With few (if any) exceptions, all sites currently have at least a minimal "Generated Site Page" (GSP) available to the public through Ecology's website. GSPs are based on information in Ecology's site database and electronic records system, and they provide links to available documents for each site. GSPs are available to the public through the

“[Cleanup and Tank Search](#)”<sup>146</sup> and “[What’s In My Neighborhood](#)”<sup>147</sup> search tools on Ecology’s website.

- If requested, provide a site-specific electronic alert (WAC 173-340-320(3)(d)(ii) and WAC 173-340-600(6)).

At a minimum, Ecology will provide the public with instructions on how to request such alerts:

- When notifying the public of any initial investigation determination under WAC 173-340-310(6) resulting in the listing of a site (WAC 173-340-600(7)(b)(x)).
- When notifying owners and operators of an initial investigation determination that further remedial action is necessary at a site (WAC 173-340-310(6)(e)(iv)(F)).
- On each site’s webpage (WAC 173-340-600(5)(h) and 173-340-600(6)(b)).
- In any public notice required under the rule (WAC 173-340-600(6)(b)).
- As appropriate, use additional methods for informing the public about contaminated sites and cleanups in their communities, including those without easy access to the internet. See WAC 173-340-600(4). Ecology believes additional methods should be identified on a site-specific basis instead of mandated for all sites.

For additional discussion of publication notification methods, see response to Issue 180.

**Issue 102: Will Ecology integrate all site hazard rankings into its site database to enable both Ecology and the public to query the rankings for all sites?**

- Commenters: King County (STC2-4)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-6)
- Rule Sections: WAC 173-340-320(3)(d)

**Response:**

Yes. Ecology plans to integrate all site hazard rankings into its site database to enable both Ecology and the public to query the rankings for all sites. However, Ecology is not currently able to do that.

Ecology plans to develop an agency SHARP Tool application based on the final Excel version of the SHARP Tool. Ecology expects the application to further streamline the SHARP process and automatically link SHARP results to Ecology’s site database. Ecology staff will begin SHARP

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<sup>146</sup> <https://apps.ecology.wa.gov/cleanupsearch/>

<sup>147</sup> <https://apps.ecology.wa.gov/neighborhood/>

rankings using the final Excel version of the SHARP Tool until the integrated agency application is available. Once the integrated SHARP Tool application is available, Ecology can upload all previous site hazards rankings produced using the Excel version into Ecology's site database.

**Issue 103: Will Ecology provide public workshops about SHARP and the resulting site hazard rankings?**

- Commenters: Washington State Department of Transportation (16-11)
- Rule Sections: WAC 173-340-320(3)(d)

**Response:**

Yes. Ecology plans to provide, as resource permit, public workshops about the Site Hazard Assessment and Ranking Process (SHARP) and the resulting site hazard rankings after the rule is effective. The purpose of the workshops would likely focus on the objective of SHARP, how Ecology conducts assessments using the SHARP Tool, and the meaning of the resulting site hazard rankings and their role in site prioritization and cleanup.

Ecology does not intend to train the public to conduct SHARP assessments. However, Ecology plans to make the final SHARP Tool and User Manual publicly available through its [website](#)<sup>148</sup> to increase the public's understanding of SHARP and the resulting site hazard rankings, and to facilitate and encourage public participation in the cleanup process.

## 6.14 Section 330

**Issue 104: Do contaminated sites include sites where Ecology has determined further remedial action is necessary to confirm or address the threat posed to human health or the environment by a threatened release of a hazardous substance?**

- Commenters: GHD Inc. (22-14)
- Rule Sections: WAC 173-340-110(1)  
WAC 173-340-200: definition of "contaminated site"  
WAC 173-340-200: definition of "contaminated sites list"  
WAC 173-340-310(6)(d) and (e)

**Response:**

Yes. The MTCA Cleanup Regulations apply to all sites where there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the

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<sup>148</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Ranking-contaminated-sites>

environment. Ecology may require or take those action necessary to investigate and clean up these releases. See WAC 173-340-110(1) and RCW [70A.305.030](#)(1) and (2).<sup>149</sup>

Based on an initial investigation, Ecology may determine that further remedial action is necessary to confirm whether there is a threatened release that poses a threat to human health or the environment or to address such a release. In both of those circumstances, the site is added to the “contaminated sites list.” See WAC 173-340-310(6)(d) and (e).

“Contaminated sites” are therefore defined in the rule to include sites where Ecology has determined further remedial action is necessary either to confirm whether there is a threat to human health and the environment posed by a threatened release or to address the threat posed by a threatened release. See WAC 173-340-200.

**Issue 105: If a cleanup action achieves cleanup standards, is it always permanent?**

- Commenters: GHD Inc. (22-15)
- Rule Sections: WAC 173-340-330(5)(b) and (c)  
WAC 173-340-200: definition of “permanent cleanup action”

**Response:**

No. A cleanup action that achieves cleanup standards is not always a permanent cleanup action. In other words, both permanent and non-permanent cleanup actions can achieve cleanup standards. A cleanup action is permanent only if:

“... cleanup standards ... can be met without further action being required at the site being cleaned up or any other site involved with the cleanup action, other than the approved disposal of any residue from the treatment of hazardous substances.”

See definition of “permanent cleanup action” in WAC 173-340-200. Further remedial action can include, for example, compliance with institutional controls, maintenance of engineered controls, and compliance monitoring. An example of a non-permanent cleanup action meeting cleanup standards is one using industrial soil cleanup standards. If you use such standards, then institutional controls are required for as long as cleanup levels exceed unrestricted levels. See WAC 173-340-440(4).

**Issue 106: Should the rule use the term “cleanup action” instead of “remedy” in WAC 173-340-330(5)(c)?**

- Commenters: J.R. Simplot Company (6-1)
- Rule Sections: WAC 173-340-330(5)(c)(v)

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<sup>149</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

**Response:**

Yes. Ecology believes the term “cleanup action” is the correct term to use throughout WAC 173-340-330(5), which identifies the criteria for removing a site from the contaminated sites list. To remove a site from the list, the remedial action must be a “cleanup action,” as defined in WAC 173-340-200. If the remedial action were an “interim action,” the site could not be removed from the list. Further, in the current rule, the use of the term “remedy” in WAC 173-340-330(5)(c)(v) was inconsistent with the use of the term “cleanup action” earlier in the same subsection. Ecology corrected that inconsistency in the proposed rule amendments.

**Issue 107: What administrative options may be used to clean up a contaminated site and remove it from the contaminated sites list?**

- Commenters: City of Tacoma (8-6)
- Rule Sections: WAC 173-340-330(5) through (7)  
WAC 173-340-510

**Response:**

A contaminated site may be cleaned up using any of the administrative options for remedial action specified in WAC 173-340-510, as applicable, including Ecology-conducted, Ecology-supervised, or independent.

A site may be removed from the contaminated sites list if it meets the criteria specified in WAC 173-340-330(5), regardless of which of the administrative options for remedial action is used to clean up the site.

For independent remedial actions, Ecology will remove a site from the contaminated sites list only if Ecology or PLIA has issued a written opinion that no further remedial action is necessary at the site. To make that determination, Ecology or PLIA needs to determine that the site meets the delisting criteria in WAC 173-340-330(5). This opinion is referred to as an “NFA opinion.” Upon issuance of an NFA opinion for the site, Ecology will delist the site. If Ecology fails to delist the site upon issuance of the NFA opinion, a person may petition Ecology to delist the site. See Ecology’s obligation to delist in WAC 173-340-330(5) and a person’s right to petition to delist in WAC 173-340-330(6).

**Issue 108: When will Ecology use the term “no further action” or “NFA” in the context of a cleanup required under the state cleanup law?**

- Commenters: Washington State Department of Transportation (16-2)
- Rule Sections: WAC 173-340-330(5)  
WAC 173-340-335(2)

**Response:**

In the context of a cleanup required under the state cleanup law, the term refers to a remedial action status. The status applies when Ecology or PLIA determines that no further remedial action is necessary under the state cleanup law to meet the criteria in WAC 173-340-330(5). When that determination is made, Ecology removes the site from the contaminated sites list (if the site was on the list) and adds the site to the no further action sites list. See WAC 173-340-330(5) and WAC 173-340-335(2).

**Issue 109: May Ecology relist a site on the contaminated sites list if Ecology or PLIA subsequently determines based on new information that further remedial action is necessary at the site?**

- Commenters: Washington State Department of Transportation (16-16)
- Rule Sections: WAC 173-340-330(8)

**Response:**

Yes. Ecology may relist a site on the contaminated sites list if Ecology or PLIA subsequently determines based on new information that further remedial action is necessary at the site to meet the criteria in WAC 173-340-330(5). When making this determination for independent remedial actions, Ecology or PLIA will also withdraw the No Further Action (NFA) opinion letter previously issued by that agency. When making this determination, Ecology does not need to consider other factors, such as whether relisting a site may diminish the value of the property.

## 6.15 Section 340

**Issue 110: Support for performance assessments of strategic plan.**

- Commenters: GHD Inc. (22-16)
- Rule Sections: WAC 173-340-340(3)

**Response:**

The amended rule requires Ecology to periodically assess its progress in accomplishing its goals and implementing its strategies for cleaning up contaminated sites using the metrics established in its strategic plan (WAC 173-340-340(3)). Ecology appreciates the support.

**Issue 111: Concern regarding pace and prioritization of cleanups.**

- Commenters: Bailey (1-1)  
Twin Harbors Waterkeeper (7-3)  
Olympic Environmental Coalition (34-1)
- Rule Sections: WAC 173-340-340(1) and (2)

**Response:**

Regarding the pace of cleanups at individual sites, Ecology will continue to seek effective policies and practices to speed cleanups without compromising cleanup standards, and while providing for appropriate public awareness and involvement in the cleanup process.

Ecology does not believe the changes in the amended rule will slow cleanups. For example, the requirements pertaining to consideration of likely vulnerable populations and overburdened communities in the cleanup process are intended to ensure the selected cleanup action will protect the health and environment of the communities based on their land and resource uses, which should already be done under the current rule.

Regarding the pace and prioritization of sites generally, the amended rule requires Ecology to develop and periodically update a comprehensive and integrated strategic plan for cleaning up contaminated sites that includes:

- Goals and strategies for all core program functions and major initiatives;
- Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and
- Staffing and capital funds needed to accomplish the goals and implement the strategies.

When prioritizing resources, including staff and capital funds, the strategic plan must consider the following factors:

- The threats posed by a site to human health and the environment;
- Whether the population threatened by a site includes a likely vulnerable population or overburdened community;
- The land reuse potential and planning for a contaminated site; and
- Other factors specified by the legislature or Ecology.

These factors are consistent with:

- The directives in the Model Toxics Control Act (RCW [70A.305.030\(1\)\(i\)](#));<sup>150</sup> and
- The goals of the Health Environmental for All (HEAL) Act (Chapter [70A.02](#) RCW).<sup>151</sup>

See WAC 173-340-340(1) and (2).

Historically, Ecology's most successful strategy for increasing the speed and limiting the public cost of cleanups has been to support independent cleanups of less complex sites. In fact, about

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<sup>150</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

<sup>151</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

90% of the sites cleaned up have been cleaned up independently. Such cleanups are usually market-driven, conducted by persons interested in selling or redeveloping contaminated property.

Through the strategic planning process, Ecology will need to develop approaches for cleaning up sites in communities where potentially liable persons are unwilling or unable fund a cleanup, or where economic conditions do not encourage independent cleanups.

**Issue 112: Concern regarding the pace of cleanup at Port Angeles Rayonier Mill Site.**

- Commenters: Bailey (1-1)  
Moore (2-1)  
Taylor (3-1)  
Mantooth (19-1)  
Olympic Environmental Coalition (34-1)
- Rule Sections: Not applicable

**Response:**

Thanks for your comment. Please contact Ecology's site manager or public involvement coordinator for the Port Angeles Rayonier Mill Site for more information about progress at the site or to make additional comments. Their contact information is available on Ecology's webpage for the [Port Angeles Rayonier Mill Site](#).<sup>152</sup>

**Issue 113: Will Ecology provide the public with an opportunity to comment before it specifies additional resource allocation factors for core functions of the cleanup program?**

- Commenters: Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-16)
- Rule Sections: WAC 173-340-340(2) and (4)(b)(ii)

**Response:**

Yes. Ecology will provide the public with an opportunity to comment before specifying additional resource allocation factors for core functions of the cleanup program under the Model Toxics Control Act (MTCA).

When prioritizing cleanup resources under MTCA, including staff and capital funds, the amended rule requires Ecology to consider the following factors in WAC 173-340-340(2):

- The threats posed by a site to human health and the environment;

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<sup>152</sup> <https://apps.ecology.wa.gov/cleanupsearch/site/2270>



- Whether the population threatened by a site includes a likely vulnerable population or overburdened community;
- The land reuse potential and planning for a contaminated site; and
- Other factors specified by the legislature or Ecology.

Ecology may specify additional resource allocation factors in rules or policies. For example, for the remedial action grant and loan program, Ecology previously specified additional factors in the governing rules, Chapter [173-322A](#) WAC.<sup>153</sup> See, for example, WAC [173-322A-320\(3\)](#).<sup>154</sup> By comparison, for the affordable housing cleanup grant program, Ecology specified factors in the [grant guidelines](#)<sup>155</sup> since rules have not yet been adopted. In both cases, Ecology provided the public an opportunity to comment before adopting the additional factors.

Ecology will continue to provide the public with an opportunity to comment before specifying additional resource allocation factors for core functions of the cleanup program, including factors for prioritizing Ecology-conducted and Ecology-supervised remedial actions.

When Ecology specifies additional resource allocation factors for a core function of the cleanup program, Ecology will provide notice in the Contaminated Site Register in accordance with the amended rule (WAC 173-340-340(4)(b)(ii)).

#### **Issue 114: Should Ecology seek public input or invite tribal engagement when developing the cleanup program's strategic plans?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-19, 32-60)  
  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-16)
- Rule Sections: WAC 173-340-340(1) and (4)

#### **Response:**

The amended rule does not require Ecology to seek public input or invite tribal engagement when developing the comprehensive and integrated strategic plan for the cleanup program under WAC 173-340-340(1). However, the amended rule does require Ecology to make its strategic plans and performance assessments for the cleanup program publicly available and to notify the public when Ecology updates those plans and assessments. See WAC 173-340-340(1). This approach is consistent with current agency-wide practices and provides Ecology

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<sup>153</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A>

<sup>154</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A-320>

<sup>155</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2209048.html>

the necessary flexibility to develop and then update strategic plans over time (as needed or appropriate), instead of on a set schedule (such as once every 2 years).

Nevertheless, Ecology acknowledges the interest of both the public and Indian tribes in the agency's strategic plans for the cleanup program and would value their input. Ecology retains the authority under the amended rule to formally seek public input or invite tribal engagement as needed or appropriate. Ecology will consider providing such opportunities in the future. In the meantime, the public is always welcome to review and comment on our strategic plans.

Further, if you would like to connect with Ecology about its work related to the HEAL Act, please reach out to the Senior Environmental Justice Policy Advisor, Courtney Cecale, by emailing [courtney.cecale@ecy.wa.gov](mailto:courtney.cecale@ecy.wa.gov) or calling 360-480-6270. You can also sign up to receive updates by subscribing to our [Office of Equity and Environmental Justice mailing list](#).

## 6.16 Section 350

**Issue 115: Should a remedial investigation be conducted at all contaminated sites, regardless of which administration option in WAC 173-340-510 is used to conduct remedial action at the site (Ecology-conducted, Ecology-supervised, or independent)?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-20)
- Rule Sections: WAC 173-340-350(2)(a)  
WAC 173-340-510

### Response:

Yes. Ecology agrees that a remedial investigation should be conducted at all contaminated sites, regardless of which administration option in WAC 173-340-510 (Ecology-conducted, Ecology-supervised, or independent) is used to conduct remedial action at the site. This is a current rule requirement that Ecology clarified in the amendments. The clarified requirement is specified in WAC 173-340-350(2)(a). Thank you for your support.

**Issue 116: Should Ecology eliminate duplicate timing and phasing requirements for feasibility studies in WAC 173-340-350?**

- Commenters: Port of Seattle (9-10)
- Rule Sections: WAC 173-340-350(3)

### Response:

Yes. Ecology agrees that the reference to feasibility studies in the proposed timing and phasing requirements for remedial investigations in WAC 173-340-350(3) was potentially confusing. The

timing and phasing requirements for feasibility studies are specified separately in WAC 173-340-351(3).

In response to the comment, Ecology edited the proposed rule text as follows to ensure clarity and consistency:

- In WAC 173-340-350(3)(a) and (b): Deleted reference to feasibility studies.
- In WAC 173-340-350(3)(c): Edited text to further clarify that a remedial investigation and a feasibility study may be conducted as a single step or as separate steps.

**Issue 117: Should the term “target concentration” be defined in the rule or replaced with the term “screening level”?**

- Commenters: Landau Associates (38-4, 38-5)
- Rule Sections: WAC 173-340-350(5)(b)(i)(B)  
WAC 173-340-200

**Response:**

No. Ecology does not believe the term “target concentration” should be defined in the rule or replaced with the term “screening level.” Ecology intentionally used the generic, descriptive term, “target concentration,” which can be used in different sampling contexts (such as investigative and compliance sampling). The term “target concentration” does not need to be defined in the rule because Ecology is not using the term differently than its common meaning.

As part of this rulemaking, Ecology decided not to specify screening levels for remedial investigations in the rule. Ecology is deferring any further consideration of using and defining the term “screening levels” to a future rulemaking. Before adopting such a term, Ecology would need to seek additional input from stakeholders, Indian tribes, and the public.

**Issue 118: Should remedial investigation work plans, construction plans, operation and maintenance plans, and interim action plans include an inadvertent discovery plan meeting the requirements in WAC 173-340-815?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-23)
- Rule Sections: WAC 173-340-815(3)(a) and (b)(ii)  
WAC 173-340-350(5)(b)(i)(F)  
WAC 173-340-400(4)(b)(x) and (c)(xii)  
WAC 173-340-430(7)(f)

**Response:**

Yes. Ecology agrees that remedial investigation work plans, construction plans, operation and maintenance plans, and interim action plans should include an inadvertent discovery plan (IDP) meeting the requirements in WAC 173-340-815. The requirement to include an IDP in these plans is specified in the following sections of the amended rule:

- Remedial investigations work plans: WAC 173-340-350(5)(b)(i)(F)
- Construction plans: WAC 173-340-400(4)(b)(x)
- Operation and maintenance plans: WAC 173-340-400(4)(c)(xii)
- Interim action plans: WAC 173-340-430(7)(f)

The amended rule requires IDPs for all Ecology-conducted, Ecology-supervised, and Ecology-funded independent remedial actions. See WAC 173-340-815(3)(a). Ecology added the IDP requirement consistent with agency policy. One may use the IDP form provided by Ecology or an equivalent document. Unlike for cultural resource consultations, Ecology may require another party to prepare an IDP. Consistent with program policy, the IDP must be kept at the site during all remedial actions and persons conducting remedial action must be familiar with its contents and its location at the site. The plan must be kept up to date based on any discoveries at the site. See WAC 173-340-815(3)(b)(ii).

**Issue 119: Does the rule allow for the use of a phased analytical approach to perform site investigations with the appropriate analytical sensitivity to meet target concentrations?**

- Commenters: Western States Petroleum Association (24-20)
- Rule Sections: WAC 173-340-350(5)(b)(ii)  
WAC 173-340-350(5)(b)(i)(D)

**Response:**

Yes. The rule allows for the use of a phased analytical approach to perform site investigations with the appropriate analytical sensitivity to meet target concentrations. The rule specifically provides the following flexibility in WAC 173-340-350(5)(b)(ii):

The work plan should remain flexible and be streamlined when possible to avoid collection and evaluation of unnecessary information. While it may be appropriate to phase investigations at some sites, ecology encourages expedited investigations. For example, using field screening methods to guide investigations and fast turnaround laboratory analyses to provide real-time feedback may be appropriate at some sites. However, in all cases, sufficient information must be collected and evaluated to meet the purposes in subsection (1) of this section.

Ecology's guidance also allows for phased investigations and associated phased analytical approaches, as needed for a thorough and complete site characterization. These may be necessary and recommended on a site-specific basis based on the nature of hazardous substances and media. Ecology refers to this approach in the following guidance documents:

- [Guidance for Remediation of Petroleum Contaminated Sites](#), Publication Number 10-09-057.<sup>156</sup> See Section 7.1.
- [Sediment Cleanup User's Manual](#), Publication Number 12-09-057.<sup>157</sup> See Chapter 3.

**Issue 120: In the remedial investigation report, should site maps, figures, and diagrams be limited to features relevant to the conceptual site model?**

- Commenters: Western States Petroleum Association (24-11)
- Rule Sections: WAC 173-340-350(5)(g)(ii)  
WAC 173-340-350(1)  
WAC 173-340-400

**Response:**

No. While the purpose of a remedial investigation is not unlimited, Ecology does not believe that the site maps, figures, and diagrams required under WAC 173-340-350(5)(g)(ii) should be limited to features relevant only to the conceptual site model. The purpose of a remedial investigation is to adequately characterize a contaminated site to enable not only cleanup standards to be set, but also cleanup action alternatives to be developed and evaluated in the feasibility study. See WAC 173-340-350(1). This information will also enable the development of engineering design and other implementation plans under WAC 173-340-400 for the cleanup action selected.

**Issue 121: Should the remedial investigation report include documentation of proper management and disposal of any waste materials generated by the study?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-24)
- Rule Sections: WAC 173-340-350(5)(g)(viii)

**Response:**

Yes. Ecology agrees the remedial investigation report should include documentation of the proper management and disposal of any waste materials generated as a result of the remedial investigation, as specified in WAC 173-340-350(5)(g)(viii). This information is needed to confirm compliance with applicable state and federal laws. Thank you for your support.

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<sup>156</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1009057.html>

<sup>157</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1209057.html>

**Issue 122: Should the rule refer specifically to Chapter 173-303 WAC regarding the disposal of waste generated during remedial investigations?**

- Commenters: Washington State Department of Transportation (16-4, 16-5)
- Rule Sections: WAC 173-340-350(5)(g)(viii)

**Response:**

No. Ecology does not believe the rule refer specifically to Chapter 173-303 WAC regarding the disposal of waste generated during remedial investigations. The amended rule requires that remedial investigation reports include “documentation of the proper management and disposal of any waste materials generated as a result of the remedial investigations in accordance with applicable state and federal laws” (WAC 173-340-350(5)(g)(viii)). Ecology does not believe it would be practical to specifically cite and maintain current references to all these laws in the rule.

**Issue 123: Does the rule require only those remedial investigations applicable to the site?**

- Commenters: Geosyntec Consultants (37-2)
- Rule Sections: WAC 173-340-350(6)

**Response:**

Yes. The rule requires only those remedial investigations applicable to the site. Specifically, the rule provides the following in WAC 173-340-350(6):

A remedial investigation **must** collect and evaluate sufficient information about a site and the surrounding area to meet the purposes in subsection (1) of this section, including the following **as applicable to the site**.

As highlighted above, the term “must” is qualified by the phrase “as applicable to the site.”

**Issue 124: Should the rule clarify that the investigation required in WAC 173-340-350(6)(a) is limited to the source of the release?**

- Commenters: Western States Petroleum Association (24-12)
- Rule Sections: WAC 173-340-350(6)(a)

**Response:**

Yes. In response to the comment, Ecology edited the proposed rule text to clarify that the investigation required in WAC 173-340-350(6)(a) is limited to the source of the “release,” not the entire site affected by the release. This eliminates the potential overlap with other required investigations of contaminated media.

**Issue 125: Should the rule clarify that the quantity of hazardous substances released, which is required to be identified under WAC 173-340-350(6)(a), is only an estimate?**

- Commenters: Western States Petroleum Association (24-12)
- Rule Sections: WAC 173-340-350(6)(a)

**Response:**

Yes. In response to the comment, Ecology edited the proposed rule text to clarify that the quantity of hazardous substances released required to be identified under WAC 173-340-350(6)(a) is only an “estimate.” This also makes this rule provision consistent with other similar provisions in the rule. See, for example, WAC 173-340-351(6)(f) and 173-340-450(6)(b)(iii).

**Issue 126: May modeling be used to help characterize the areal and vertical distribution and concentrations of hazardous substances in groundwater?**

- Commenters: GHD Inc. (22-23)
- Rule Sections: WAC 173-340-350(6)(c)(i)

**Response:**

Yes. Modeling may be used to help characterize the areal and vertical distribution and concentrations of hazardous substances in groundwater, as required under WAC 173-340-350(6)(c)(i). However, you must still collect sufficient data to verify the accuracy of the model.

For cleanups of a property within a larger site, Ecology provides guidance on the use of modelling to extrapolate beyond the property boundary in Section 4.2.2 of Ecology’s [Guidelines for Property Cleanups under the Voluntary Cleanup Program](#), Publication Number 08-09-044.<sup>158</sup>

**Issue 127: Should the remedial investigation include an assessment of the geologic and hydrogeologic features of the site that are likely to affect the ability to implement cleanup action alternatives?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-25)
- Rule Sections: WAC 173-340-350(6)(c)(iv)

**Response:**

Yes. Ecology agrees the remedial investigation should include, as specified in WAC 173-340-350(6)(c)(iv), an assessment of the geologic and hydrogeologic features of the site that are

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<sup>158</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/0809044.html>

likely to affect the ability to implement cleanup action alternatives. This requirement is consistent with current requirements for investigating other environmental media (see, for example, 173-340-360(6)(b)(ii) regarding soil). Thank you for your support.

**Issue 128: Should the properties of surface and subsurface sediments be investigated to determine the potential for recontamination?**

- Commenters: Western States Petroleum Association (24-13)
- Rule Sections: WAC 173-340-350(6)(d)(iii)  
WAC 173-204-500(4)(b)  
WAC 173-204-550(6)

**Response:**

Yes. Ecology believes that the properties of surface and subsurface sediments should be investigated to determine the potential for recontamination, as required under WAC 173-340-350(6)(d)(iii). Ecology added this provision to be consistent with the Sediment Management Standards in WAC [173-204-550\(6\)](#),<sup>159</sup> which was updated in 2013.

The Sediment Management Standards establish a policy in WAC [173-204-500\(4\)\(b\)](#)<sup>160</sup> that:

Recontamination of sediment at remediated sites or sediment cleanup units may occur from ongoing discharges or other releases. It is the department's expectation that further cleanup of recontamination will not be required by the person(s) conducting the initial cleanup when the person(s) can demonstrate, upon department approval, that the recontamination is caused by ongoing discharges or other releases not under the authority or responsibility of the person(s) conducting the initial cleanup.

For additional discussion of recontamination issues, see chapters 3 and 14 of Ecology's [Sediment Cleanup User's Manual](#), Publication Number 12-09-057.<sup>161</sup>

**Issue 129: Should the remedial investigation include an assessment of the potential impacts of vapor migration on subsurface soil gas, on air quality within current and future buildings or other structures, and on outdoor ambient air?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-26)
- Rule Sections: WAC 173-340-350(6)(e)

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<sup>159</sup> <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204-550>

<sup>160</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-204-500>

<sup>161</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1209057.html>



**Response:**

Yes. Ecology agrees the remedial investigation should include, as specified in WAC 173-340-350(6)(e), potential impacts of vapor migration on subsurface soil gas, on air quality within current and future buildings or other structures, and on outdoor ambient air. The rule amendments added more specific requirements to reflect increased understanding of the vapor pathway. The investigation must adequately characterize the potential impacts of vapor migration on subsurface soil gas, on air quality within current and future buildings or other structures, and on outdoor ambient air. Ecology also emphasized that it may require expedited sampling of indoor air quality to assess threats to human health and require emergency action or interim action to mitigate any such threats. Thank you for your support.

**Issue 130: Should Ecology clarify what factors should be considered when determining whether it is appropriate to phase terrestrial ecological evaluations?**

- Commenters: Western States Petroleum Association (24-15)
- Rule Sections: WAC 173-340-350(6)(i)(i)

**Response:**

In this rulemaking, Ecology decided to defer any significant changes to the rules governing the terrestrial ecology evaluation process, including the phasing of such evaluations during remedial investigations and feasibility studies, until a future rulemaking involving the cleanup standards in Part 7 of the rule. Ecology will consider developing further guidance as to the phasing of terrestrial ecological evaluations after that rulemaking.

**Issue 131: Should the remedial investigation collect sufficient information to determine whether a feasibility study is necessary and to develop and evaluate cleanup action alternatives in the feasibility study?**

- Commenters: Port of Seattle (9-10)
- Rule Sections: WAC 173-340-350(6)(j) and (k)  
WAC 173-340-350(1)(b)

**Response:**

Yes. Ecology believes the remedial investigation should collect sufficient information to determine whether a feasibility study is necessary, as required in WAC 173-340-350(6)(k) of the amended rule. This includes assessing, as applicable:

- Whether prior remedial actions at the site constitute a permanent cleanup action and meet the delisting criteria in WAC 173-340-330(5)(a).
- Whether a model remedy established by Ecology may be used as a cleanup action or a cleanup action component at the site under WAC 173-340-390.

Ecology also believes the remedial investigation should collect sufficient information to develop and evaluate cleanup action alternatives in the feasibility study, as required in WAC 173-340-350(6)(k) of the amended rule. This may include, for example, treatability or pilot studies.

These assessments help fulfill one of the main purposes of a remedial investigation, which is to adequately characterize a contaminated site to enable cleanup action alternatives to be developed and evaluated in a feasibility study. See WAC 173-340-350(1)(b).

In response to the comment, however, Ecology edited the proposed rule text to further clarify the requirements and their purpose. This included splitting subsection (6)(j) into two provisions, one in subsection (6)(j) and the other in subsection (6)(k).

## 6.17 Section 351

### **Issue 132: Is a feasibility study required to select a model remedy as the cleanup action for a site? Should Ecology develop model remedies for petroleum contaminated sites to expedite cleanups?**

- Commenters: GHD Inc. (22-19, 22-22, 22-24)
- Rule Sections: WAC 173-340-390(4)  
WAC 173-340-351(2)(a)(ii)  
WAC 173-340-350(6)(j)(ii) and (5)(f)(ii) and (g)(vii)

#### **Response:**

Under both the current and amended rules, a feasibility study is not required to select a model remedy as the cleanup action or as a component of the cleanup action for a site. However, a feasibility study is still required to select any remaining cleanup action components for the site. See WAC 173-340-390(4) and 173-340-351(2)(a)(ii). To qualify for this exemption or partial exemption, sufficient information must be collected and included in the remedial investigation report to demonstrate the site meets the conditions established by Ecology for using the model remedy. See WAC 173-340-350(6)(j)(ii) and (5)(f)(ii) and (g)(vii).

As suggested by the commenter, Ecology has already developed model remedies for petroleum contaminated sites, including remedies for both soil and groundwater contamination. See <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/MTCA-model-remedies>.

### **Issue 133: Should Ecology eliminate duplicate timing and phasing requirements for remedial investigations in WAC 173-340-351?**

- Commenters: Port of Seattle (9-10)
- Rule Sections: WAC 173-340-351(3)

**Response:**

Yes. Ecology agrees that the reference to remedial investigations in the proposed timing and phasing requirements for feasibility studies in WAC 173-340-351(3) was potentially confusing. The timing and phasing requirements for remedial investigations are specified separately in WAC 173-340-350(3).

In response to the comment, Ecology edited the proposed rule text as follows to ensure clarity and consistency:

- In WAC 173-340-351(3)(a) and (b): Deleted reference to remedial investigations.
- In WAC 173-340-351(3)(c): Edited text to further clarify that a remedial investigation and a feasibility study may be conducted as a single step or as separate steps.

**Issue 134: Must a feasibility study be completed before cleanup standards are established?**

- Commenters: GHD Inc. (22-18, 22-25)
- Rule Sections: WAC 173-340-351(3)(a)  
WAC 173-340-350(5)(e)  
WAC 173-340-351(6)(b)(iii) and (iv)

**Response:**

Yes. Both a remedial investigation and a feasibility study must be completed before “cleanup standards” (not “cleanup levels”) are established. As defined in WAC 173-340-200, the term “cleanup standard” includes:

- Hazardous substance concentrations that protect human health and the environment (“cleanup levels”).

Cleanup levels are developed based on a remedial investigation. See WAC 173-340-350(5)(e). A feasibility study is not necessary to establish cleanup levels. Cost may not be considered when establishing cleanup levels.

- The location on the site where those cleanup levels must be attained (“points of compliance”).

Points of compliance (standard or conditional) are developed and evaluated in the feasibility study and generally established in conjunction with the selection of a cleanup action plan. Cost may be considered when establishing some points of compliance. See WAC 173-340-351(6)(b)(iii) and (iv).

- Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site.

These requirements are specified in applicable state and federal laws and are generally established in conjunction with the selection of a specific cleanup action.

The commenter appears to confuse the terms “cleanup standard” and “cleanup level.”

**Issue 135: Should the rule further explain the process of evaluating cleanup action alternatives in a feasibility study?**

- Commenters: Washington State Department of Transportation (16-9)
- Rule Sections: WAC 173-340-351  
WAC 173-340-360  
WAC 173-340-120

**Response:**

No. Ecology does not believe the amended rule needs to further explain the process of evaluating cleanup action alternatives and selecting a cleanup action. In the amended rule, Ecology already restructured and established stepwise procedures for conducting a feasibility study, including procedures for conducting a disproportionate cost analysis for determining whether an alternative is permanent to the maximum extent practicable. See WAC 173-340-351 and 173-340-360. The amended rule also provides an overview of the entire cleanup process in WAC 173-340-120. Ecology will develop further guidance as needed.

**Issue 136: Should the rule require consideration of any designated habitat restoration or resource recovery goals for a site when conducting a feasibility study of cleanup action alternatives and selecting a cleanup action?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-6)
- Rule Sections: WAC 173-340-351(6)(a)  
WAC 173-340-350(6)(g)(iii) and (iv)  
WAC 173-340-450(6)(c)(vi)  
WAC 173-340-200: definition of “conceptual site model”

**Response:**

Yes. Ecology believes that the rule should require consideration of any designated habitat restoration or resource recovery goals for a site when conducting a feasibility study of cleanup action alternatives and selecting a cleanup action. This includes goals designated under applicable laws or based on the current or planned uses of the site.

Ecology’s focus is ensuring that the selected cleanup action protects human health and the environment at the site based on the designated uses of the site (current or planned), including any designated habitat restoration or resource recovery goals. Those uses should be identified

during the remedial investigation and considered when establishing cleanup standards<sup>162</sup> and selecting cleanup actions based on a feasibility study. Ecology's welcomes the engagement of Indian tribes in the cleanup process to help ensure that cleanup actions are protective of the designated uses.

In response to the comment, Ecology made the following changes to the proposed rule amendments to facilitate consideration of any designated habitat restoration or resource recovery goals for a site:

- **Feasibility study**

In WAC 173-340-351(6)(a), Ecology emphasized that, when identifying the goals for the cleanup action in the feasibility study, one must include "any habitat restoration or resource recovery goals for the site."

- **Remedial investigation**

In WAC 173-340-350(6)(g)(iii) and (iv), Ecology added a requirement that, when conducting a remedial investigation, one must collect sufficient information on any "sensitive environments at the site" and "any habitat restoration or resource recovery goals for the site." The term "sensitive environment" is currently defined in WAC 173-340-200.

- **Initial site characterization of UST releases**

In WAC 173-340-450(6)(c)(vi), Ecology restored the current rule requirement that the interim action report's description of the physical characteristics of the site must include "sensitive environments." The proposed rule amendments mistakenly eliminated this requirement. The term "sensitive environment" is currently defined in WAC 173-340-200.

- **Definition of "conceptual site model"**

In WAC 173-340-200, Ecology clarified that "sensitive environments" are one of the "physical and habitat features" that must be included as part of a conceptual site model. The term "sensitive environment" is currently defined in WAC 173-340-200, and such environments must be identified during initial site characterizations of UST releases under WAC 173-340-450 and remedial investigations of all releases under WAC 173-340-350.

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<sup>162</sup> See, for example, WAC 173-340-708(3)(a), which provides that "cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter."

**Issue 137: For feasibility study report, support inclusion of information required in WAC 173-340-351(6)(f)(v)(D) and (E).**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-31)
- Rule Sections: WAC 173-340-351(6)(f)(v)(D) and (E)

**Response:**

The final rule amendments in WAC 173-340-351(6)(f)(v)(D) and (E) require the following information to be included in the feasibility study report:

- The location and estimated mass of each hazardous substance to be removed or treated by the alternative and the estimated time frame in which removal or treatment will occur. Ecology may require or allow estimates of the volume of contaminated material in place of, or in addition to, estimates of the mass of hazardous substances.
- The location, estimated mass, and projected concentration distribution of each hazardous substance remaining above proposed cleanup levels after implementing the alternative. Ecology may require or allow estimates of the volume of contaminated material in place of, or in addition to, estimates of the mass of hazardous substances.

Ecology agrees that this information should be included in the feasibility study report, as it is needed to conduct the required evaluations in the feasibility study, including the disproportionate cost analysis.

This information is already required for sediment-impacted sites in WAC [173-204-550\(7\)\(f\)\(i\)](#) and (ii).<sup>163</sup>

**Issue 138: Should the feasibility study include estimates of the mass of each hazardous substance or the amount of contaminated material in each media?**

- Commenters: Western States Petroleum Association (24-16)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-31)
- Rule Sections: WAC 173-340-351(6)(f)(v)(D) and (E)  
WAC 173-340-380(5)(l)

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<sup>163</sup> <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204-550>

**Response:**

Ecology edited the proposed rule text in WAC 173-340-351(6)(f)(v)(D) and (E) to clarify that the feasibility study report must include for each alternative studied the estimated “mass” of each hazardous substance to be removed or treated versus the “mass” remaining behind above proposed cleanup levels. Specifically, Ecology clarified that “amount” means “mass.” Ecology also clarified that it may require or allow “estimates of the volume of contaminated material in place of, or in addition to, estimates of mass of hazardous substances.”

Similarly, Ecology edited the proposed rule text in WAC 173-340-360(5)(l) to clarify that the cleanup action plan for a containment remedy must include the “estimated mass” of hazardous substances remaining on site. Specifically, Ecology clarified that “amount” means “mass” and that only an “estimate” is needed. Ecology also clarified that it may require or allow “estimates of the volume of contaminated material in place of, or in addition to, estimates of mass of hazardous substances.”

Ecology made these edits to ensure clarity of, and consistency among, regulatory requirements and to explicitly allow the use of less burdensome alternatives as appropriate. The information is needed to evaluate and compare cleanup action alternatives in the feasibility study (WAC 173-340-351) and to develop cleanup action plans for the selected alternative (WAC 173-340-380). The changes are based in part on public comment.

**Issue 139: Should the feasibility study report include documentation of proper management and disposal of any waste materials generated by the study?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-33)
- Rule Sections: WAC 173-340-351(6)(f)(ix)

**Response:**

Yes. Ecology agrees the feasibility study report should include documentation of the proper management and disposal of any waste materials generated as a result of the feasibility study, as specified in WAC 173-340-351(6)(f)(ix). This information is needed to confirm compliance with applicable state and federal laws. Thank you for your support.

## 6.18 Section 355

**Issue 140: Are remediation levels needed when different cleanup action components are used to clean up different hazardous substances in the same media, each component attaining the cleanup level for that substance?**

- Commenters: Landau Associates (38-6)
- Rule Sections: WAC 173-340-355(2)

**Response:**

No. Remediation levels are not needed when different cleanup action components are used to clean up different hazardous substances in the same media, each component attaining the cleanup level for that substance. In response to the comment, Ecology changed the text of the proposed rule in WAC 173-340-355(2) to clarify this.

**Issue 141: Must remediation levels be developed and evaluated in the feasibility study?  
May different remediation levels be selected in the cleanup action plan?**

- Commenters: Landau Associates (38-7)
- Rule Sections: WAC 173-340-355(4) and (5)  
WAC 173-340-351(6)(b)(v)  
WAC 173-340-380(5)(e)  
WAC 173-340-400(7)(b)  
WAC 173-340-600(15)(b)

**Response:**

Yes. Cleanup action alternatives (each with its own remediation levels) must be developed and evaluated in the feasibility study, and a cleanup action (with final remediation levels) must be selected and documented in the cleanup action plan. This is analogous to the development and evaluation of conditional points of compliance in the feasibility study and subsequent selection in the cleanup action plan. The statement in WAC 173-340-355(4) is accurate. See WAC 173-340-351 and 173-340-380(5)(e).

Ecology recognizes that the cleanup action selected may differ from the alternatives evaluated in the feasibility study, and that action may include different remediation levels. In such cases, one must still evaluate the selected alternative against the requirements in WAC 173-340-360, as in the feasibility study, and justify its selection in the cleanup action plan. See WAC 173-340-380(5)(b).

To emphasize the respective roles of the feasibility study and cleanup action plan, Ecology added the following text to the proposed rule in a new WAC 173-340-355(5), which reiterates the existing requirement in WAC 173-340-380(5)(e):

The remediation levels selected as part of a cleanup action must be specified in the cleanup action plan under WAC 173-340-380(5).

For Ecology-conducted or supervised cleanup actions, Ecology would need to assess whether any proposed change to a remediation level identified in the cleanup action plan constitutes a substantial change to the plan, requiring additional public notice and opportunity to comment. See WAC 173-340-400(7)(b) and 173-340-600(15)(b).



**Issue 142: May a groundwater conditional point of compliance be set at the property boundary even if the groundwater does not meet cleanup levels at that point when the cleanup action is selected?**

- Commenters: Western States Petroleum Association (24-17)
- Rule Sections: WAC 173-340-355(6)(c)  
WAC 173-340-720(8)

**Response:**

Yes. A groundwater conditional point of compliance may be established at the property boundary even if the groundwater does not meet cleanup levels at that point when the cleanup action is selected, provided that the cleanup action is designed to achieve cleanup levels at that point and all of the conditions in the rule for setting such a conditional point of compliance are met. See WAC 173-340-720(8). Ecology does not believe that the example of remediation levels in WAC 173-340-355(6)(c) needs clarification. Ecology will consider clarifying this matter when updating the groundwater cleanup standard in WAC 173-340-720 in a future rulemaking. Those rules are outside the scope of this rulemaking.

## 6.19 Section 360

**Issue 143: Does the new structure and stepwise procedures in WAC 173-340-360 improve the clarity and flow of the requirements?**

- Commenters: Port of Seattle (9-11)
- Rule Sections: WAC 173-340-360

**Response:**

Yes. Ecology agrees that the new structure and stepwise procedures in WAC 173-340-360 improve the clarity and flow of the requirements. Thank you for your support.

**Issue 144: Should Ecology eliminate the existing requirement as to when a cleanup action may rely primarily on institutional controls and monitoring?**

- Commenters: Port of Seattle (9-13)
- Rule Sections: WAC 173-340-360(3)(a)(vii) and (x)

**Response:**

No. Ecology does not believe the existing requirement in WAC 173-340-360(3)(a)(vii) as to when a cleanup action may rely primarily on institutional controls and monitoring should be eliminated. The requirement does not conflict with or duplicate the separate requirement in WAC 173-340-360(3)(a)(x) that a cleanup action must be permanent to the maximum extent practicable. In fact, the requirement intentionally establishes a higher standard for allowing

primary reliance on institutional controls and monitoring. The requirement does not allow consideration of cost. Cleanup action alternatives that do not meet this requirement should not be considered when conducting a disproportionate cost analysis under WAC 173-340-360(3)(a)(x) and (5).

**Issue 145: Should Ecology eliminate the existing requirement as to when a cleanup action may rely primarily on dilution and dispersion?**

- Commenters: Port of Seattle (9-14)
- Rule Sections: WAC 173-340-360(3)(a)(viii) and (x)

**Response:**

No. Ecology does not believe the existing requirement in WAC 173-340-360(3)(a)(viii) as to when a cleanup action may rely primarily on dilution and dispersion should be eliminated. The requirement does not conflict with or duplicate the separate requirement in WAC 173-340-360(3)(a)(x) that a cleanup action must be permanent to the maximum extent practicable. The focus of the requirement is different: it establishes a preference for active (over passive) remedial measures as opposed to a preference for permanent (over non-permanent) remedial measures. The requirement also intentionally establishes a different and higher standard (grossly exceed vs. disproportionate). Cleanup action alternatives that do not meet this requirement should not be considered when conducting a disproportionate cost analysis under WAC 173-340-360(3)(a)(x) and (5). As needed and appropriate, Ecology may develop guidance as to how to conduct the evaluation.

**Issue 146: Request for clarification of the need for monitoring groundwater and surface water contamination and role of institutional controls.**

- Commenters: Washington State Department of Transportation (16-21, 16-22)
- Rule Sections: WAC 173-340-360(3)(a)(vi) and 173-340-410  
WAC 173-340-720(9) and 173-340-730(7)  
WAC 173-340-360(3)(b)(ii) and 173-340-440

**Response:**

The rule amendments do not affect the need for monitoring groundwater contamination or the need for institutional controls.

The need for compliance monitoring is specified in WAC 173-340-360(3)(a)(vi) and 173-340-410. Specific needs for groundwater and surface water monitoring are identified in WAC 173-340-720(9) and 173-340-730(7).

The need for institutional controls is specified in WAC 173-340-360(3)(b)(ii) and 173-340-440. Institutional controls may not be used in place of monitoring. The purposes are different.

**Issue 147: Should the rule require that nonpermanent groundwater cleanup actions provide an alternative water supply or treatment if the cleanup action does not protect an existing use of the groundwater?**

- Commenters: J.R. Simplot Company (6-12)
- Rule Sections: WAC 173-340-360(3)(c)(iii)(C)  
WAC 173-340-720(8)(d)(ii)

**Response:**

In response to the comment, Ecology eliminated the proposed rule amendment in WAC 173-340-360(3)(c)(iii)(C) requiring that that nonpermanent groundwater cleanup actions provide an alternative water supply or treatment if the cleanup action does not protect an existing use of the groundwater.

Ecology is deferring further consideration of the proposed rule amendment to a subsequent rulemaking that addresses groundwater cleanup standards under WAC 173-340-720, including the conditions for allowing a conditional point of compliance. Ecology has determined that those conditions, which are outside the scope of this rulemaking, would need to be changed to reflect the proposed requirement. In addition, the comment raised questions that will need further public input.

Note that the existing rule already requires that, to set an off-property conditional point of compliance for groundwater, the affected property owners must agree in writing. If an affected property owner's existing use is not protected by the cleanup action, the property owner could condition their approval on being provided an alternative water supply or treatment. See WAC 173-340-720(8)(d)(ii).

**Issue 148: Is a disproportionate cost analysis used to determine whether an active remedial measure with a shorter restoration time frame is practicable?**

- Commenters: Commenters: Landau Associates (38-8)
- Rule Sections: WAC 173-340-360(4)(c)(ii)  
WAC 173-340-200: definition of "practicable"

**Response:**

No. A disproportionate cost analysis is not used to determine whether an active remedial measure with a shorter restoration time frame is practicable.

The current rule provides that a restoration time frame is not reasonable if an active remedial measure with a shorter restoration time frame is "practicable." In this rulemaking, Ecology moved, but did not change the provision. See WAC 173-340-360(4)(c)(ii). The current rule also defines the term "practicable" in WAC 173-340-200. In this rulemaking, Ecology only edited the definition for clarity.

The provision does not conflict with or duplicate the separate requirement in WAC 173-340-360(3)(a)(x) that a cleanup action must be permanent to the maximum extent practicable. The focus of the provision is different: it establishes a preference for active remedial measures with shorter restoration time frames (over passive remedial measures with longer restoration time frames), as opposed to a preference for permanent (over non-permanent) remedial measures. The provision also establishes a different standard. The provision relies on the definition of “practicable” in WAC 173-340-200. The disproportionate cost analysis in WAC 173-340-360(5) is only used to determine whether a cleanup action is “permanent to the maximum extent practicable.” Cleanup action alternatives that do not meet the restoration time frame requirement should not be considered when conducting a disproportionate cost analysis under WAC 173-340-360(3)(a)(x) and (5).

**Issue 149: Should the requirement in WAC 173-340-360(4)(d) only apply to sites where Method C cleanup levels are below technically possible concentrations?**

- Commenters: Commenters: Landau Associates (38-9)
- Rule Sections: WAC 173-340-360(4)(d)  
WAC 173-340-706(1)(a)(iii)

**Response:**

Yes. The requirement in WAC 173-340-360(4)(d) should only apply to sites where Method C cleanup levels are below technically possible concentrations. Where Method A or B cleanup levels are not technically possible to achieve, Method C cleanup levels may be established at the technically possible concentrations, but in no case greater than levels specified in WAC 173-340-706(2). See WAC 173-340-706(1)(a)(iii). Where Method C cleanup levels are not technically possible to achieve, then the cleanup is an interim action and you need to meet technically possible concentrations within a reasonable restoration time frame. This is a current rule requirement that Ecology did not propose changing. Ecology only made clarifying edits in the rule amendments.

**Issue 150: Why does the disproportionate cost analysis prioritize permanence over protectiveness?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-43)
- Rule Sections: WAC 173-340-360(3)(a)(ix) and (5)

**Response:**

The MTCA statute requires Ecology to “give preference to permanent solutions to the maximum extent practicable.” See RCW [70A.305.030](#)(1)(b).<sup>164</sup> The MTCA statutory requirement is based

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<sup>164</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

on the similar federal statutory requirements in 42 U.S.C. 9621(b)(1) and regulatory requirement in 40 CFR 300.430(f)(1)(ii)(E).

The MTCA statutory requirement is reflected in the amended MTCA Cleanup Regulations in WAC 173-340-360(3)(a)(x). The rule establishes the procedure for making the determination. That procedure is logically determined by the statutory mandate. Ecology does not have the statutory discretion to prioritize protectiveness over permanence in the disproportionate cost analysis. As a practical matter, though, a more permanent cleanup action alternative (one that permanently reduces more of the toxicity, mobility, or mass of hazardous substances) is likely to be more protective over the long term.

**Issue 151: Are the steps for conducting a disproportionate cost analysis needed to implement the statutory requirement that cleanup actions must be permanent to the maximum extent practicable?**

- Commenters: Geosyntec Consultants Inc. (37-3)
- Rule Sections: WAC 173-340-360(5)(c)(iv)

**Response:**

Yes. The MTCA statute requires Ecology to “give preference to permanent solutions to the maximum extent practicable.” See RCW [70A.305.030](#)(1)(b).<sup>165</sup> The statutory requirement is reflected in the MTCA Cleanup Regulations in WAC 173-340-360(3)(a)(x). The rule establishes the procedure for making the determination. See WAC 173-340-360(5)(c). That procedure is determined by the statutory mandate. The rule amendments clarify that procedure.

Ecology does not believe the procedure outlined in Step 4 is time-consuming or inefficient. The procedure involves a successive pair-wise comparison of the current baseline alternative with only the next most permanent alternative, not all the other alternatives. For each pair-wise comparison, the evaluator must determine whether the incremental costs are disproportionate to the incremental degree of benefits:

- If they **are not** disproportionate, then the baseline alternative is permanent to the maximum extent practicable and the analysis ends.
- If they **are** disproportionate, then the baseline alternative is eliminated, and the evaluator must repeat the pair-wise comparison with the next most permanent alternative as the baseline. The pair-wise comparisons continue until the baseline alternative is determined to be permanent to the maximum extent practicable.

Ecology also does not believe that the procedure amplifies differences between similar cleanup action alternatives. The procedure also allows for best professional judgment in cases where

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<sup>165</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

the marginal differences between two alternatives are small in comparison to the uncertainties in the benefit and cost estimates.

In response to the comment, Ecology edited text the proposed rule text in WAC 173-340-360(5)(c)(iv)(A)(I) to clarify that, in the disproportionate cost analysis, the baseline cleanup action alternative is only compared against the next most permanent alternative, not any of the other cleanup action alternatives.

**Issue 152: Should Ecology define the term “disproportionate” in the rule?**

- Commenters: Port of Seattle (9-15)
- Rule Sections: WAC 173-340-360(5)(c)(iv)(B)(I)

**Response:**

Ecology does not believe the term “disproportionate” needs to be defined in the rule. The term is a common term defined in the dictionary.

When developing the proposed rule, Ecology chose to just rely on the term “disproportionate” and its dictionary definition instead of defining that term more precisely to mean “exceed,” as in the current rule, or “substantially exceed,” as some stakeholders had proposed. Ecology believes both definitions of “disproportionate” are problematic. The term “exceed,” which could mean just one cent, does not reflect the inherent difficulty and uncertainty in estimating and comparing costs and benefits. The term “substantially exceed” arguably changes the test altogether, allowing Ecology in some cases to select a more permanent alternative even when its incremental costs clearly exceed its incremental benefits.

Ecology believes the term “disproportionate” allows Ecology to use best professional judgment in cases where the estimated incremental costs do not clearly exceed the estimated incremental degree of benefit due to uncertainties in the cost and benefit estimates. As needed and appropriate, Ecology may develop guidance to help explain this further.

**Issue 153: For the disproportionate cost analysis, should the rule include a more detailed list of the benefits of a cleanup action?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-42)  
Olympic Environmental Coalition (34-1)  
Form letter comments (11-2, 13-2 to 15-2, 17-2, 20-2, 21-2, 23-2, 25-2 to 31-2, 33-2, 35-2, 36-2, 39-2 to 53-2, 55-2 to 213-2)
- Rule Sections: WAC 173-340-360(5)(d)

**Response:**

No. For the disproportionate cost analysis (DCA), Ecology does not believe that it is necessary or appropriate to include in the rule a more detailed list of the benefits of a cleanup action. Ecology believes such a list would be more appropriate for guidance.

The amended rule includes 5 categories of benefits, including:

- Protectiveness.
- Permanence.
- Effectiveness over the long-term.
- Management of implementation risks.
- Technical and administrative implementability.

For each of those categories, the amended rule specifies what must be considered when estimating benefits. For example, when assessing protectiveness, the rule requires consideration of **at least** the following:

- The degree to which the alternative reduces existing risks.
- The time required for the alternative to reduce risks at the site and attain cleanup standards.
- The on-site and offsite risks remaining after implementing the alternative.
- Improvement of the overall environmental quality.

Note that the amended rule allows for consideration of additional or more specific factors when assessing protection of human health and the environment. See WAC 173-340-360(5)(d).

Ecology plans to develop guidance for conducting a DCA and will emphasize in the guidance the need to consider the wide range of benefits to human health and the environment. Ecology will provide the public an opportunity to comment on a draft of any such guidance.

**Issue 154: For the disproportionate cost analysis, should Ecology develop standardized means or sources of information for monetizing the benefits of a cleanup action?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-44)  
Olympic Environmental Coalition (34-1)  
Form letter comments (11-2, 13-2 to 15-2, 17-2, 20-2, 21-2, 23-2, 25-2 to 31-2, 33-2, 35-2, 36-2, 39-2 to 53-2, 55-2 to 213-2)
- Rule Sections: WAC 173-340-360(5)(c)(i) and (d)

**Response:**

Ecology believes that, for the purposes of the disproportionate cost analysis (DCA), the rule should continue to allow both quantitative and qualitative estimates of the benefits and costs of cleanup action alternatives. See WAC 173-340-360(5)(c)(i). As discussed more fully below, it is rarely possible to fully monetize public health benefits and ecosystem services. Consequently, requiring monetization of benefits would lead to underestimates of benefits. To ensure that all the benefits of a cleanup action alternative are considered in the DCA, the rule needs to allow both quantitative and qualitative estimates and the use of best professional judgment. This approach is consistent with the approach established by the Legislature for estimating the benefits and costs of proposed rules under the Administrative Procedure Act. See RCW [34.05.328\(1\)\(d\)](#).<sup>166</sup>

The amended rule does not preclude attempts to monetize benefits, and Ecology has used methods of monetizing benefits in some contexts. However, given the difficulty of monetizing benefits, Ecology believes it would be premature to establish requirements or procedures in the rule for monetizing public health benefits and ecosystem services for the purposes of the DCA. Ecology will continue to consider how these benefits can be monetized and utilized in a DCA.

Regarding the difficulty of monetizing ecosystem services, we note that such monetization usually requires quantification of causally linked events. This is often difficult for projects that involve incremental changes or that are geographically specific (as opposed to valuations of an entire system in a particular geography). Data or quantified relationships may not be available for all the steps in the causal process required for full quantification. For example:

- A project that would restore a wetland would require understanding the prospective services provided by that wetland, knowing the timing of partial or full restoration of those services, understanding what and who would benefit from those services, and forecasting site-specific variables (such as flooding frequency, size, and duration, value of areas that would be protected, and habitat uptake of relevant species). These would also need to be understood for the baseline case of the absence of the project. In all cases, the inherent uncertainty of the monetized estimates would still require the use of best professional judgement to both make and compare these benefits.
- A project involving benefits related to cultural, spiritual, existence, bequest, and similar non-use values may not have monetizable values.

**Issue 155: In the disproportionate cost analysis, should Ecology replace the separate “public concerns” criterion in the current rule with a requirement to consider public concerns and tribal rights and interests both when determining and when weighting each of the criteria?**

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<sup>166</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328>



- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-38)  
Olympic Environmental Coalition (34-1)  
Geosyntec Consultants Inc. (37-4)
- Rule Sections: WAC 173-340-360(5)(c)(i)(C) and (d)  
WAC 173-340-351(6)(f)(vii)  
WAC 173-340-380(5)(c)

**Response:**

Yes. For the disproportionate cost analysis (DCA), Ecology continues to believe that the separate “public concerns” criterion in the current rule should be replaced with a requirement to consider “public concerns and tribal rights and interests” both when determining and when weighting each of the DCA criteria. See WAC 173-340-360(5)(c)(i)(C).

The change clearly allows the public and Indian tribes to have input on how to subjectively weight each DCA criterion and to provide Ecology information to help objectively score each DCA criterion. The change also eliminates the unintended competition between the old “public concerns” DCA criterion and the other DCA criteria and the confusion as to how to consider public concerns. When developing the proposed change, Ecology considered and discussed with stakeholders several other factors, including the risk of minimizing concerns, how to address conflicting concerns, whether public and tribal concerns should be grouped together, whether concerns fit under other DCA criteria, and ease of implementation.

To help ensure that such concerns are considered, the rule also requires the feasibility study report to document the detailed evaluation process and the cleanup action plan to summarize how public concerns and tribal rights and interests were considered when selecting the cleanup action. See WAC 173-340-351(6)(f)(vii) and 173-340-380(5)(c).

**Issue 156: When evaluating the permanence of a cleanup action alternative, should reductions in exposure be considered?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-39)
- Rule Sections: WAC 173-340-360(5)(d)(ii)

**Response:**

No. Ecology agrees with the commenter that reductions in exposure should not be considered when evaluating the permanence of a cleanup action alternative in the disproportionate cost analysis.

- Adding “exposure” to the “permanence” criterion blurs the distinction between the “permanence” and the “protectiveness” criteria.

- The focus of the “permanence” criterion is on the toxicity, mobility, and mass the hazardous substance itself, while the focus of the “protection” criterion is on the risk posed by the substance. One should consider exposure or potential exposure to a hazardous substance as part of the “protection” criterion.
- To achieve a “permanent reduction in exposure” to a hazardous substance, one would need to achieve a permanent reduction in toxicity, mobility, or mass of that substance, which is already considered under the “permanence” criterion. Containment of a hazardous substance does not permanently reduce exposure to that substance.

Accordingly, Ecology eliminated the proposed rule amendment in WAC 173-340-360(5)(d)(ii) that defined the “permanence” criterion to include the degree to which the alternative permanently reduces the “exposure to” hazardous substances.

**Issue 157: When evaluating the relative degree of long-term effectiveness of cleanup action components, is “reuse or recycling” generally preferred over “destruction or detoxification”?**

- Commenters: Port of Seattle (9-16)
- Rule Sections: WAC 173-340-360(5)(d)(iii)(B)

**Response:**

Yes. When assessing the relative degree of long-term effectiveness of cleanup action components in a disproportionate cost analysis, Ecology continues to believe that “reuse or recycling” is generally preferred to “destruction or detoxification.”

The comment refers to a provision in the current rule that Ecology did not propose changing. The rule provides a hierarchical list of components in WAC 173-340-360(5)(d)(iii) that may be used as a guide when assessing the relative degree of long-term effectiveness. That list is:

- Reuse or recycling;
- Destruction or detoxification;
- Immobilization or solidification;
- On-site or offsite disposal in an engineered, lined and monitored facility;
- On-site isolation or containment with attendant engineering controls; and
- Institutional controls and monitoring.

The continued use of this hierarchical list as a guide for this purpose was agreed to by the legislatively mandated Policy Advisory Committee in 1995.<sup>167</sup> “Reuse or recycling” is generally preferred for several reasons, including the prevention of pollution from acquiring and managing additional hazardous materials.

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<sup>167</sup> MTCA Policy Advisory Committee, 1996. *Final Report of the Model Toxics Control Act Policy Advisory Committee*, Dec. 15, 1996. See Priority Issue #5, pp. 74-75.

**Issue 158: When estimating the cost of a cleanup action alternative, should postconstruction costs always be discounted using present worth analysis?**

- Commenters: Landau Associates (38-10)
- Rule Sections: WAC 173-340-360(5)(d)(vi)(B)(II)

**Response:**

Yes. Ecology believes that, when estimating the cost of a cleanup action alternative, postconstruction costs should always be discounted using present worth analysis. The current rule always requires discounting. In the proposed rule amendments, Ecology proposed making discounting optional. In response to the comment and to more effectively and efficiently achieve statutory goals and objectives, Ecology eliminated the proposed change and made discounting mandatory as under the current rule. By maintaining the current requirement, the rule amendments will apply a consistent approach for considering future costs in disproportionate cost analyses.

**Issue 159: How should postconstruction costs be discounted using present worth analysis?**

- Commenters: Landau Associates (38-11)
- Rule Sections: WAC 173-340-360(5)(d)(vi)(B)(II)

**Response:**

Ecology made changes to the proposed rule amendment that specified how to discount post-construction costs. Specifically, compared to the proposed rule, Ecology changed how the analysis accounts for inflation. Instead of requiring use of a construction cost index to estimate future costs in future dollars and the U.S. Treasury **nominal** interest rate to discount those costs, the amended rule requires use of constant dollars to estimate future costs and the U.S. Treasury **real** interest rate to discount those costs.

The US Treasury real interest rate is based on the current U.S. Office of Management and Budget's inflation and interest rate assumptions for the federal budget, which are updated annually. This approach is consistent with longstanding federal guidance for cost-effectiveness studies and assures that comparisons of post-construction costs in disproportionate cost analyses (DCAs) will reflect up-to-date and consistent inflation and discount rates.

Ecology believes these changes are necessary to more effectively and efficiently achieve statutory goals and objectives. By specifying the relevant discount rates to use in calculating the present value of postconstruction costs, the rule amendments apply a consistent approach for considering future costs in DCAs. The changes are anticipated to have the following benefits:

- Potential reductions in time spent determining the correct approach to present value calculations, including identifying appropriate inflation and discount rates.

- A universal discounting structure applied to all sites, reducing the variance across sites, of cost estimates used in remedy selection. This supports consistent and equitable decision-making across the universe of sites regulated by the rule, and reduces potential opportunities for independently chosen inflation and discount rates to affect remedy selection.
- Using the appropriate discount rate to reflect the relatively low-risk or risk-free, inflation-adjusted opportunity costs faced by the public. This ensures cost-effectiveness decisions regarding environmental and public health objectives are based on efficiency rather than private return.

The changes were prompted by public comment.

## 6.20 Section 370

### **Issue 160: How do you determine whether any non-conformance of the selected cleanup action with the expectations is justified?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-45)
- Rule Sections: WAC 173-340-370

#### **Response:**

As stated in the rule, “the expectations represent the likely results of the cleanup action selection process described in WAC 173-340-350 through 173-340-390.” This includes evaluation of whether the cleanup action selected meets the requirements in Section 360.

As also stated in the rule, “conformance with the expectations may not be appropriate at some sites” due to site-specific circumstances. For example, under WAC 173-340-370(2), a permanent cleanup may not be appropriate for small volumes of contaminated material due to practical considerations (such as location under a building). In other words, compliance with the cleanup action requirements in WAC 173-340-360 may not always result in conformance with the cleanup action expectation in WAC 173-340-370.

The guardrails on Ecology’s or another person’s professional judgment as to when non-conformance with the expectations in WAC 173-340-370 should be allowed are the cleanup action requirements in WAC 173-340-360. Ecology or another person would need to point to the requirements in that section that justify any non-conformance with the expectations.

### **Issue 161: What is the focus of the expectation in Section 370(8)?**

- Commenters: Geosyntec Consultants Inc. (37-5)
- Rule Sections: WAC 173-340-370(8)

**Response:**

The focus of the cleanup action expectation in WAC 173-340-370(8) is the **threat posed by the contamination**, either at the site being cleaned up or at another site involved with the cleanup action. Examples of cleanup actions where this might be an issue include:

- Removing contaminated soil and taking it to a poorly designed or operated landfill that already has contamination issues.
- Taking the waste to a poorly operated treatment facility.
- Pumping contaminated groundwater and discharging it without adequate treatment to a location where exposure is more likely.
- Spreading the waste out in a field to dilute the concentration and contaminating a much larger area.

The focus of the cleanup action expectation in WAC 173-340-370(8) is **not the threat posed by conducting the cleanup**, such as the risk of traffic accidents resulting from transporting waste to a properly operated and maintained waste facility or the effect of greenhouse gas emissions generated by the removal or treatment of wastes.

As discussed under Issue 42, greenhouse gas emissions may not be considered when evaluating cleanup action alternatives in a feasibility study, including in the disproportionate cost analysis, or when selecting a cleanup action. However, greenhouse gas emissions may and should be considered when optimizing the selected cleanup action.

In response to comment, Ecology decided to eliminate one of the edits in the proposed rule amendments, which had replaced the term “overall” with the term “long-term.” The use of the term “overall” is consistent with the focus of the expectation, which is the threat posed by the contamination, either at the site being cleaned up or at another site involved with the cleanup action. The hazards posed by the contamination could be short-term or long-term.

## 6.21 Section 380

**Issue 162: Should an independent cleanup action plan include the same information, as appropriate, as for Ecology-conducted or Ecology-supervised cleanup action plan?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-47)
- Rule Sections: WAC 173-340-380(2)(a) and (4)(b)  
WAC 173-340-515(3)(c) and (4)

**Response:**

Yes. An independent cleanup action plan must include the same information, as appropriate for the site, as for an Ecology-conducted or Ecology-supervised cleanup action plan. This is an existing requirement that we clarified in the rule amendments.

For independent remedial actions, a cleanup action must still be selected and a cleanup action plan must still be developed. However, a separate cleanup action plan does not need to be submitted to Ecology for review and approval before conducting the cleanup action.

A person may submit an independent cleanup action plan for Ecology review and opinion under the Voluntary Cleanup Program (VCP) before conducting the cleanup, seeking an “No Further Action (NFA) likely” opinion (WAC 173-340-515(5)). In such cases, the independent cleanup action plan must include sufficient information to serve the same purpose as the plan required under this section (WAC 173-340-515(3)(c) and (4)).

Upon completing an independent cleanup action, a person must submit an independent cleanup action report to Ecology regardless of whether they are seeking Ecology’s review and opinion under the VCP. The report must include sufficient information to serve the same purpose as all of the remedial action plans and reports required under this chapter, including the plan required under this section (WAC 173-340-515(3)(c) and (4)).

**Issue 163: For Ecology-conducted or supervised cleanup actions, if Ecology determines that substantial changes to the cleanup action plan are needed, will Ecology provide the public with notice and opportunity to comment?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-48)
- Rule Sections: WAC 173-340-380(4)(a)  
WAC 173-340-420(5) and (6)  
WAC 173-340-600(14) and (18)

**Response:**

Yes. For Ecology-conducted or supervised cleanup actions, if Ecology determines that substantial changes to the cleanup action plan are needed, Ecology will provide the public with notice and opportunity to comment both when:

- Conducting a periodic review resulting in such a determination (WAC 173-340-420(5) and 173-340-600(18)); and
- Proposing any substantial changes to the cleanup action plan (WAC 173-340-420(6) and 173-340-600(14)).

This is an existing rule requirement that we clarified in the rule amendments. Ecology eliminated the duplicative requirement in WAC 173-340-380 that required public notice of

Ecology's determination that cleanup action can't achieve cleanup standards or remediation levels (i.e., remedy failure). That determination would be documented in a period review, which would be subject to public comment, and require substantial changes to the cleanup action plan, which would also be subject to public comment.

## 6.22 Section 390

### **Issue 164: Should the rule further define the term “model remedy” to clarify what types of sites qualify for model remedies?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-50)
- Rule Sections: WAC 173-340-390(1) and 173-340-200

#### **Response:**

No. Ecology does not believe the rule should further define, and thereby limit, for what types of sites model remedies may be established. As noted, the term “model remedy” is a statutorily defined term. Ecology needs to maintain its statutory authority and discretion to develop model remedies as appropriate. Ecology will provide the public an opportunity to comment on each proposed model remedy, including whether Ecology should even identify a model remedy for a particular type of site. See WAC 173-340-390(2)(c).

### **Issue 165: Should the rule further define what constitutes common categories of sites or types of hazardous substances?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-51)
- Rule Sections: WAC 173-340-390(2) and 173-340-200

#### **Response:**

No. Ecology does not believe the rule should further define, and thereby limit, for what categories of sites or types of substances Ecology may establish model remedies. As noted, the term “model remedy” is a statutorily defined term. Ecology needs to maintain its statutory authority and discretion to develop model remedies as appropriate. Ecology has and will continue to provide the public an opportunity to comment on each proposed model remedy, including whether Ecology should even identify a model remedy for a particular category of site or type of substance. See WAC 173-340-390(2)(c). As appropriate, Ecology may provide further explanation in a focus sheet or on its website.

**Issue 166: Should the remedial investigation collect sufficient information to demonstrate that the site meets the conditions established by Ecology for using a model remedy and should that information be included in the RI report?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-52)
- Rule Sections: WAC 173-340-390(4)  
WAC 173-340-351(2)(a)(ii)  
WAC 173-340-350(6)(j)(ii) and (5)(f)(ii) and (g)(vii)

**Response:**

Yes. As specified in the proposed rule amendments, you must collect sufficient information during the remedial investigation to demonstrate that the contaminated site meets the conditions established by Ecology for using a model remedy. See WAC 173-340-351(2)(a)(ii) and 173-340-350(6)(j)(ii) and (5)(f)(ii) and (g)(vii). To emphasize this point, Ecology changed the proposed rule to reiterate the requirement in WAC 173-340-390(4).

## 6.23 Section 440

**Issue 167: Should Ecology retain the guidance that quantitative, scientific analyses should be used to evaluate whether institutional controls demonstrably reduce risks?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-40)
- Rule Sections: WAC 173-340-440(5)  
WAC 173-340-360

**Response:**

The guidance provides that quantitative, scientific analyses should be used to evaluate whether institutional controls demonstrably reduce risks. Ecology originally added the provision to the rule in 2001 based on the recommendations of the legislatively mandated Policy Advisory Committee.<sup>168</sup> The provision, along with others, was intended to increase the scrutiny and reliability of institutional controls. In practice, however, while periodic reviews are regularly conducted to assess compliance with and effectiveness of institutional controls, quantitative scientific analyses are not typically used.

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<sup>168</sup> MTCA Policy Advisory Committee, 1996. *Final Report of the Model Toxics Control Act Policy Advisory Committee*, Dec. 15, 1996. See Priority Issue #5, pp. 33-34.



Ecology agrees that the provision eliminated in the proposed rule amendments should be retained to maintain focus on the reliability of institutional controls, even if such analyses are not typically used. Accordingly, Ecology changed the proposed rule text to restore the provision in WAC 173-340-440(5). However, Ecology did not restore the same provision in WAC 173-340-360 since it was duplicative.

## 6.24 Section 450

### **Issue 168: Does Ecology implement the state’s free product removal requirement consistent with U.S. Environmental Protection Agency’s guidance?**

- Commenters: GHD Inc. (22-26)  
Western States Petroleum Association (24-21)
- Rule Sections: WAC 173-340-450(5)(c)(i)

#### **Response:**

Yes. Ecology implements the state’s free product removal requirement in WAC 173-340-450(5)(c)(i) consistent with the U.S. Environmental Protection Agency guidance in its [UST Technical Compendium](#),<sup>169</sup> Question 6. Ecology did not change the substance of the state’s requirement in this rulemaking.

### **Issue 169: Does the definition of the term “practicable” apply to the requirement that free product be removed to the maximum extent practicable?**

- Commenters: GHD Inc. (22-6)
- Rule Sections: WAC 173-340-450(5)(c)(i)  
WAC 173-340-200: definition of “practicable”

#### **Response:**

Yes. The definition of the term “practicable” in WAC 173-340-200 applies to the requirement in WAC 173-340-450(5)(c)(i) that UST owners and operators “conduct free product removal to the maximum extent practicable.”

The amended rule clarifies how the defined term “practicable” may be used as appropriate within the context of the rule. The amended rule also emphasizes that the procedures in WAC 173-340-360(5) apply only when determining whether a cleanup action alternative is “permanent to the maximum extent practicable.” See WAC 173-340-200.

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<sup>169</sup> <https://www.epa.gov/ust/ust-technical-compendium-release-investigation-confirmation-and-corrective-action>

**Issue 170: Should the rule allow Ecology to reduce the frequency of free product monitoring at leaking underground storage tank sites?**

- Commenters: Western States Petroleum Association (24-22)
- Rule Sections: WAC 173-340-450(5)(c)(iv)

**Response:**

Yes. Ecology agrees that the rule should provide Ecology the discretion to reduce the frequency of free product monitoring at leaking underground storage tank sites. The proposed rule required UST owners and operators to monitor free product quarterly. In response to the comment, Ecology changed the proposed rule to provide Ecology the discretion to modify the frequency of monitoring. See WAC 173-340-340-450(5)(c)(iv). The change is consistent with the requirement governing the frequency of progress reports on free product recovery in WAC 173-340-450(5)(c)(v). The change meets the intent of the authorizing statute (which requires Ecology to establish rules that are at least as stringent as federal requirements) using the least burdensome alternative.

**Issue 171: Should the rule's interim action requirements for leaking underground storage tank sites apply to newly discovered legacy contamination?**

- Commenters: GHD Inc. (22-27)
- Rule Sections: WAC 173-340-XXX

**Response:**

Yes. As under the current rule, the amended rule's interim action requirements for leaking underground storage tank sites should apply to newly discovered legacy contamination. Ecology did not change the applicability of the requirements in this rulemaking. The applicability of the state's requirements is also consistent with the applicability of the federal requirements.

The interim action requirements are designed to apply to all types of releases, including newly discovered legacy contamination.

- The initial response actions are only as needed. For a release described by the commenter, no action would likely be needed since there would be no product in the tank, no fire or explosive hazard, and no product above or below ground seen by your eyes with the potential to migrate.
- The initial site characterization is part of the remedial investigation and is needed to make the judgment that the commenter is making, that the release is old and not ongoing, and the contamination plume is stable or reducing. Note also that the characterization may be conducted as part of the earlier site assessment conducted under Chapter 173-36A WAC, which is used to confirm a release.
- The free product recovery requirements apply only if you identified free product as part of the initial site characterization. If the plume is declining, it is unlikely there would be

free product. If there were, you should eliminate as much as the source as soon as practicable.

**Issue 172: Should the state’s Underground Storage Tank regulatory program be approved by the U.S. Environmental Protection Agency?**

- Commenters: Carroll (5-3)
- Rule Sections: WAC 173-340-450  
Chapter 173-360A WAC

**Response:**

Yes. The U.S. Environmental Protection Agency last approved Washington state’s Underground Storage Tank (UST) Program on December 20, 2021. See [86 Fed. Reg. 57757-57763](#)<sup>170</sup> (Oct. 19, 2021), codified at [40 C.F.R. 282.97](#).<sup>171</sup> This most recent approval came after Ecology incorporated the 2015 federal rule updates.

## 6.25 Section 510

**Issue 173: Do the rule amendments provide a more complete overview of administrative options for remedial action?**

- Commenters: Washington State Department of Transportation (16-24)
- Rule Sections: WAC 173-340-510

**Response:**

Yes. Ecology reorganized and updated WAC 173-340-510 to provide a more complete overview of administrative options for remedial action, including different types of Ecology-supervised remedial actions. As part of the reorganization, Ecology integrated the overview included in WAC 173-340-120(8) of the current rule. Thank you for your support.

## 6.26 Section 515

**Issue 174: May reports of independent investigations, interim actions, and cleanup actions be submitted together to Ecology at the end of a cleanup instead of separately upon completion of each such action?**

- Commenters: Washington State Department of Transportation (16-20)

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<sup>170</sup> <https://www.govinfo.gov/content/pkg/FR-2021-10-19/pdf/2021-22596.pdf>

<sup>171</sup> <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-I/part-282#282.97>

- Rule Sections: WAC 173-340-515(4)(a)

**Response:**

Under the amended rule, reports of independent investigations, interim actions, and cleanup actions may be submitted together to Ecology at the end up a cleanup instead of separately upon completion of each such action **only if** less than 90 days elapses between the “completion” of any such action and the initiation of another such action. An independent investigation, interim action, or cleanup action is considered “**complete**” if no remedial action **other than** compliance monitoring has occurred at the site for 90 days. See WAC 173-340-515(4)(a).

For example, two independent site investigations must be reported separately to Ecology if the second investigation is initiated more than 90 days after the end of the first investigation. Likewise, an independent site investigation and an independent cleanup action must be reported separately to Ecology if the cleanup action is initiated more than 90 days after the end of the investigation.

**Issue 175: Should the rule require reporting of an independent site investigation within 90 days of completion of the investigation?**

- Commenters: GHD Inc. (22-17, 22-20)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-21)
- Rule Sections: WAC 173-340-515(4)(a)(i)  
WAC 173-340-350(4)(b)(i)

**Response:**

Yes. Ecology believes the rule should require reporting of an independent site investigation within 90 days of completion of the investigation. Ecology needs this information to:

- Determine whether emergency or other interim actions are necessary at a site.
- Prioritize further remedial action at the site.
- Communicate to the public and Indian tribes the threat posed by the site.
- Update SHARP assessments to facilitate all of the above.
- Update the status of the site.

The public and Indian tribes have also asked for this information to be made available so they can understand the threats posed by the site.

Under the current rule, there are many sites for which Ecology has limited information even though one or more independent site investigations may have been conducted over the years by a property owner, prospective purchaser, or other person. Unless and until an independent interim action or cleanup action is completed, the results of the earlier site investigations will not be reported to Ecology. This may be years after an investigation is conducted.

In the amended rule, Ecology is only requiring the person conducting an independent site investigation to report the results to Ecology. Environmental consultants already report those results to their clients. So, Ecology does not expect this reporting requirement to be a significant burden.

Notably, this requirement is aimed at sites where there are long periods between site investigations or between site investigations and interim actions or cleanup actions. This requirement is not aimed at sites where persons are actively and continuously investigating and cleaning up a site. At such sites, a combined report of site investigations, interim actions, and cleanup actions may be submitted to Ecology at the end up a cleanup instead of separately upon completion of each such action. For additional details about when independent remedial action reports may be combined, see our response to Issue 174.

**Issue 176: When should an independent site investigation be considered “complete” for the purpose of triggering the deadline for reporting the investigation?**

- Commenters: GHD Inc. (22-21)
- Rule Sections: WAC 173-340-515(4)(a)(i) and (ii)  
WAC 173-340-350(4)(b)(i)

**Response:**

For the purpose of triggering the deadline for reporting an independent site investigation, Ecology believes the investigation should be considered “complete” if no remedial action other than compliance monitoring has occurred for 90 days. This is consistent with the requirements for both independent interim actions and independent cleanup actions under the current rule. Notably, you do not need to actually submit the independent site investigation report to Ecology until 90 days after “completion” of the investigation. See WAC 173-340-515(4)(a)(i) and (ii).

Ecology discussed the timeframes for reporting independent remedial actions with its Stakeholder and Tribal Advisory Group (STAG). The current timeframes were judged to be reasonably balanced. Ecology will monitor implementation and determine whether the timeframes should be revisited in a future rulemaking.

**Issue 177: Should Ecology notify the public of an independent site investigation report received by Ecology?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-22)
- Rule Sections: WAC 173-340-515(4)(d)  
WAC 173-340-350(4)(b)(ii)  
WAC 173-340-600(20)(a)(iv), (5)(e)(i), and (6)

**Response:**

Yes. Ecology believes it should notify the public of its receipt of an independent site investigation report. This is consistent with the requirements for notifying the public of the receipt of independent interim actions and cleanup actions under the current rule. See WAC 173-340-515(4)(d) and 173-340-340-350(4)(b)(ii). Thank you for your support.

Under the amended rule, Ecology will make any independent investigation, interim action, or cleanup action report it receives publicly available on its website. Ecology will also provide a person, if requested, a site-specific electronic alert when the report is publicly available. See WAC 173-340-600(20)(a)(iv), (5)(e)(i), and (6).

**Issue 178: May Ecology delist a portion of a site from the contaminated sites list?**

- Commenters: Port of Seattle (9-18)
- Rule Sections: WAC 173-340-515(5)(b)  
WAC 173-340-330(5)

**Response:**

No. While Ecology may determine that no further remedial action is necessary within a portion of a site (commonly referred to as a cleanup unit), Ecology may not delist the cleanup unit from the contaminated sites list (CSL) by redefining the site. However, Ecology will continue to track its determinations and a site's status on its site database and make those determinations and statuses publicly available on its website to show progress.

Under the current and amended rules, Ecology may remove a site from the CSL only if Ecology (or now also the Pollution Liability Insurance Agency (PLIA)) determines the listing of the site was erroneous or that the site meets the applicable criteria in WAC 173-340-330(5). Ecology eliminated the conflicting statement in WAC 173-340-515(5)(b).

Under the Model Toxics Control Act (MTCA) statute, Ecology does not have the authority to delist portions of a site, which would effectively redefine the site and a person's liability.

- Liability

Under MTCA, each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from a release or threatened release of hazardous substances at a site (RCW [70A.305.040\(2\)](#)).<sup>172</sup> This means that the scope of a person's liability is affected by how you define a site. If you change how a site is defined, you also change a person's liability under MTCA.

- Settlement of Liability

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<sup>172</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

Under MTCA, the state may only settle a person's liability through a settlement agreement that is entered as a consent decree by a court of competent jurisdiction (RCW 70A.305.040(4)). If Ecology delisted a portion of a site from the CSL, Ecology would effectively redefine the site and thereby the scope of a person's liability, including whether some persons even remain liable. That could effectively constitute a settlement of liability, which is not allowed under MTCA.

Consider the following example: A person is liable under MTCA due to their current ownership of a parcel of real property where the release occurred. The release also contaminates several adjacent parcels owned by other persons. The owner of the source property cleans up their own property, but not any of the other affected properties. If Ecology delisted the source property and redefined the site to exclude that property, the owner of that property might argue they are no longer liable under MTCA because they no longer currently own property within the site. Likewise, future owners of the source property might make the same argument. This is not allowed under MTCA.

## 6.27 Section 600

### Issue 179: What is the statutory or regulatory basis for the *What's in My Neighborhood and Cleanup and Tank Search* applications on Ecology's website?

- Commenters: City of Tacoma (8-5, 8-7)
- Rule Sections: WAC 173-340-600(4) and (5)  
WAC 173-340-330  
WAC 173-340-335

#### Response:

The Model Toxics Control Act (MTCA) statute requires Ecology to maintain and report every two years to the legislature on a list of contaminated sites and their status (RCW 70A.305.030(4)(d) and 5(a)). More generally, the statute authorizes Ecology to "take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under this chapter" (RCW [70A.305.030\(1\)\(k\)](#)).<sup>173</sup> The MTCA statute, adopted by public Initiative I-97 in 1988, includes several declarations of policy, including the following:

Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up (RCW [70A.305.010\(6\)](#)).<sup>174</sup>

To carry out both the general policies and specific requirements of the statute, Ecology has determined it necessary to develop and maintain databases of information about sites regulated

<sup>173</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

<sup>174</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.010>

under MTCA, to make this information accessible to the public and the legislature, and to adopt rules for collecting, updating, and reporting this information.

To update and clarify Ecology's practices and systems of maintaining and communicating information about contaminated sites, the amended rule:

- Establishes the Contaminated Sites List and the No Further Action Sites List (WAC 173-340-330 and 173-340-335). For additional discussions of these lists, see response to Issue 56.
- Establishes minimum requirements for the public availability of site-specific information on Ecology's website (WAC 173-340-600(5)). The *What's In My Neighborhood?* and *Cleanup and Tank Search* web applications are different methods Ecology uses to communicate this information. These web applications are also authorized as "additional methods" under WAC 173-340-600(4).

**Issue 180: May Ecology use additional methods for informing the public about contaminated sites and cleanups in their communities, especially those without easy access to the internet?**

- Commenters: Twin Harbors Waterkeeper (7-1)
  - Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-53)
  - Olympic Environmental Coalition (34-1)
  - Form letter comments (11-3, 13-3 to 15-3, 17-3, 20-3, 21-3, 23-3, 25-3 to 31-3, 33-3, 35-3, 36-3, 39-3 to 53-3, 55-3 to 213-3)
- Rule Sections: WAC 173-340-600(2), (4) through (7), and (9)

**Response:**

Yes. Ecology may use additional methods for informing the public about contaminated sites and cleanups in their communities, including those without easy access to the internet. See WAC 173-340-600(4). Ecology believes additional methods should be identified on a site-specific basis instead of mandated for all sites.

Ecology is committed to informing the public about contaminated sites and cleanups in their communities. The amended rule updates and expands the methods Ecology will use to inform the public. For all sites, Ecology will use the following methods:

- Site-specific webpages containing key site information (WAC 173-340-600(5)).
- Site-specific electronic alerts about changes to key site information (WAC 173-340-600(6)).



- [Contaminated Site Register](#)<sup>175</sup> (WAC 173-340-600(7)).

Ecology has also developed the following web applications to inform the public about contaminated sites:

- [What's in My Neighborhood](#).<sup>176</sup>
- [Cleanup and Tank Search](#).<sup>177</sup>

For Ecology-conducted or supervised remedial actions at specific sites, Ecology will also provide or require the following additional notice under the rule:

- Written notice to persons requesting notice or residing in the potentially affected vicinity (WAC 173-340-600(2)(a)(iv) and (v)). Ecology may use electronic or other means of providing such written notice, depending on the needs of the community.
- Appropriate news media and newspapers (WAC 173-340-600(2)(a)(vi) and (vii)).

For these sites, Ecology will develop a site-specific public participation plan (PPP) that is tailored to the public's needs at a site, including the needs of vulnerable populations and overburdened communities. The purpose of the plan is to facilitate meaningful and equitable participation by the public (WAC 173-340-600(9)(a)). As needed, Ecology may use or require notification methods in addition to those required by the rule to facilitate such participation, including methods that do not require use of the internet (WAC 173-340-600(4)).

Ecology agrees that, to ensure that the most effective communication strategies are being used, information should be gathered about the affected communities to determine the best modes of communication to reach them. This is consistent with the guidance in the current and amended rules. See WAC 173-340-600(9)(b).

#### **Issue 181: Do the site-specific webpage and electronic alerts requirements apply to listed sites managed by the Pollution Liability Insurance Agency?**

- Commenters: GHD Inc. (22-4)
- Rule Sections: WAC 173-340-600(5) and (6)

#### **Response:**

Yes. The site-specific webpage and electronic alerts requirements apply to listed sites managed by the Pollution Liability Insurance Agency (PLIA). As specified in the amended rule,

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<sup>175</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Site-Register-lists-and-data#SiteRegister>

<sup>176</sup> <https://apps.ecology.wa.gov/neighborhood/>

<sup>177</sup> <https://apps.ecology.wa.gov/cleanupsearch/>

the requirements apply to all sites included on either the contaminated sites list or the no further action sites list (WAC 173-340-600(5) and (6)).

**Issue 182: Should Ecology track and make publicly available how long a site has been on the contaminated sites list?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-12)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-10)
- Rule Sections: WAC 173-340-600(5)(a)

**Response:**

Yes. Ecology agrees that it should track and make publicly available how long a site has been on the contaminated sites list. However, Ecology does not think this information should be tracked in the Site Hazard Assessment and Ranking Process (SHARP). Ecology already tracks this information its site database. In response to the comment, Ecology changed the proposed rule to make this information publicly available. The amended rule requires Ecology to include on its webpage for each contaminated site “the date ecology or PLIA discovered or received notice of the release or, if this date is not known, the earliest date of administrative activity in ecology’s site database” (WAC 173-340-620(5)(a)). This change is needed to meet the intent of the authorizing statute by making more information about contaminated sites readily available to the public. Ecology may use this information when prioritizing funding or resources under WAC 173-340-340.

**Issue 183: Does the rule require Ecology to make remedial action plans and reports that it issued or received before the effective date of the rule publicly available on its website?**

- Commenters: Western States Petroleum Association (24-23)
- Rule Sections: WAC 173-340-600(5)

**Response:**

No. The amended rule does not require Ecology to make remedial action plans and reports that it issued or received before the effective date of the rule publicly available on its website. The rule is not retroactive. See WAC 173-340-600(5).

However, Ecology already has an automatically generated site page (GSP) or other webpage for each site, and many remedial action plans and reports are already accessible through those GSP pages. Ecology will determine what documents submitted before the effective date (and not already posted) should be added to facilitate Ecology management and public understanding of a site.

**Issue 184: Should the rule specify how to sign up to receive site-specific electronic alerts?**

- Commenters: City of Tacoma (8-11)
- Rule Sections: WAC 173-340-600(5)(h), (6), and (7)(b)(x)  
WAC 173-340-310(6)

**Response:**

No. For practical reasons, Ecology does not believe the rule should specify how to sign up to receive site-specific electronic alerts provided under WAC 173-340-600(6). The sign-up method will depend on the system Ecology develops for providing the alerts. Instead, the amended rule requires Ecology to provide the public instructions on how to request these alerts. See WAC 173-340-600(6)(b).

Under the amended rule, Ecology will provide a person, if requested, a site-specific electronic alert of changes to the publicly available site information on Ecology's website (WAC 173-340-600(6)). The information subject to these alerts is specified in WAC 173-340-600(5). At a minimum, Ecology will provide the public with instructions on how to request these alerts:

- When notifying the public of any initial investigation determination under WAC 173-340-310(6) resulting in the listing of a site (WAC 173-340-600(7)(b)(x)).
- When notifying owners and operators of an initial investigation determination that further remedial action is necessary at a site (WAC 173-340-310(6)(e)(iv)(F)).
- On each site's webpage (WAC 173-340-600(5)(h) and 173-340-600(6)(b)).
- In any public notice required under the rule (WAC 173-340-600(6)(b)).

**Issue 185: What public notification or involvement is required for independent remedial actions? Does the rule provide any flexibility?**

- Commenters: Washington State Department of Transportation (16-19)
- Rule Sections: WAC 173-340-600(20)

**Response:**

The amended rule consolidates the minimum public notification and involvement requirements applicable to independent remedial actions in WAC 173-340-600(20). Ecology does not have any discretion to alter the notification requirements. However, Ecology determines whether to provide opportunities for public comment on a site-specific basis. See WAC 173-340-600(20). Notably, the person conducting the independent remedial actions at a site controls the pace of those actions.

## 6.28 Section 620

### Issue 186: Should tribal rights and interests be limited to “tribal lands” as defined in the HEAL Act?

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-4, 10-5)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-54)
- Rule Sections: WAC 173-340-620(2)  
WAC 173-340-200  
WAC 173-340-360(3)(d), (4)(c)(xi), and (5)(c)(i)(C)  
WAC 173-340-380(5)(c)

#### Response:

No. Ecology agrees that tribal rights and interests should not be limited to “tribal lands” as defined in the HEAL Act, Chapter [70A.02](#) RCW.<sup>178</sup> The proposed rule removed the definition of the term (which relied on the definition in RCW [70A.02.010](#)(13))<sup>179</sup> and its use throughout the rule to acknowledge that tribal rights and interests extend beyond reservation boundaries. Ecology made this change in response to [Stakeholder and Tribal Advisory Group](#)<sup>180</sup> (STAG) comments on Preliminary Draft 2 of the rule amendments and discussions with Ecology’s Tribal Liaison.

The amended rule does not highlight any specific interests. As needed, Ecology will develop guidance to assist staff understand the breadth of tribal rights and interests.

### Issue 187: Should the tribal engagement requirements apply only to Ecology-conducted or supervised remedial actions, not independent remedial actions?

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-55)
- Rule Sections: WAC 173-340-620(2)

#### Response:

Yes. Ecology believes the tribal engagement requirements apply only to Ecology-conducted or supervised remedial actions, not independent remedial actions. Independent remedial actions are conducted without Ecology supervision or approvals. When deciding whether to allow independent remedial actions at a contaminated site and enrollment in the [Voluntary Cleanup](#)

<sup>178</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

<sup>179</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>

<sup>180</sup> [https://www.ezview.wa.gov/site/alias\\_\\_1988/37514/overview.aspx](https://www.ezview.wa.gov/site/alias__1988/37514/overview.aspx)

[Program](#) (VCP),<sup>181</sup> Ecology considers several factors, including the extent of both public and tribal interest in the site. If there were significant tribal interest in a site, Ecology would likely supervise the cleanup under an order or decree to appropriately engage the affected Indian tribes on a government-to-government basis. In such cases, Ecology (not the potentially liable person) would consult with affected Indian tribes.

**Issue 188: Do the tribal engagement requirements apply to ongoing Ecology-conducted or supervised remedial actions?**

- Commenters: Western States Petroleum Association (24-24)
- Rule Sections: WAC 173-340-620(2)

**Response:**

Yes. The tribal engagement requirements apply to ongoing Ecology-conducted or supervised remedial actions. See WAC 173-340-620(2). For such sites, Ecology should have already consulted affected Indian tribes on cultural resources matters before initiating remedial actions. Ecology may incorporate any existing agreement with an Indian tribe into a site-specific tribal engagement plan. Ecology will comply with tribal engagement requirements and any related policies throughout the remainder of the cleanup process. For example, whenever Ecology provides an opportunity for public comment during the remaining phases of a cleanup action, Ecology will also seek to engage tribes. As needed, Ecology will develop guidance for staff to address tribal engagement for ongoing cleanups.

**Issue 189: For Ecology-conducted or supervised remedial actions, is Ecology responsible for tribal engagement? Do potentially liable persons have any obligations?**

- Commenters: Western States Petroleum Association (24-24)  
Geosyntec Consultants Inc. (37-6)
- Rule Sections: WAC 173-340-620(3)

**Response:**

Yes. For Ecology-conducted or supervised remedial actions, Ecology is responsible for tribal engagement, including:

- Identifying Indian tribes that may be adversely affected by the site.
- Developing tribal engagement plans to engage those Indian tribes.
- As needed, consulting Indian tribes under Chapter 43.376 RCW.

However, Ecology may require potentially liable persons (PLPs) to assist Ecology with tribal engagement. As needed, Ecology will develop guidance for staff to clarify the appropriate roles

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<sup>181</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

of Ecology and PLPs and explain what site managers can require or request PLPs to do to support and assist meaningful tribal engagement. See WAC 173-340-620(3).

**Issue 190: For Ecology-conducted or supervised remedial actions, when and how will Ecology engage Indian tribes during the cleanup process?**

- Commenters: J.R. Simplot Company (6-4)  
Western States Petroleum Association (24-2, 24-24)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-56, 32-57, 32-58)
- Rule Sections: WAC 173-340-620(1), (3), and (4)  
WAC 173-340-120(13)(b)  
WAC 173-340-130(6)

**Response:**

For Ecology-conducted or supervised remedial actions, the amended rule requires Ecology to seek to initiate meaningful engagement with affected Indian tribes before initiating a remedial investigation or an interim action at a site. The amended rule also requires Ecology to maintain meaningful engagement with Indian tribes throughout the cleanup process. In response to public comment, Ecology edited the proposed rule text to clarify this requirement. See WAC 173-340-620(3)(b). As specified in the amended rule:

Ecology's goal is to provide Indian tribes with timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site (WAC 173-340-620(1)).

Ecology will seek to engage affected Indian tribes during the cleanup process whenever it provides the public an opportunity to comment. The engagement will be in addition to and independent of any public participation process (WAC 173-340-620(4)). Consistent with the agency's best practices, Ecology plans to engage Indian tribes before seeking public comment and to provide up to 60 days for tribal engagement instead of the 30 days typically provided for public comment. The additional time is needed to allow for possible tribal consultations. Under this plan, Ecology would seek to engage Indian tribes 30 days before seeking public comment and both time periods would end on the same date.

In accordance with the amended rule, Ecology will outline when and how it will engage Indian tribes in policies that will be reflected in a tribal engagement plan. See WAC 173-340-620(3)(a). Ecology intends to invite consultation on its tribal engagement plans, including those developed

for the cleanup program, under the Healthy Environment for All (HEAL) Act. See RCW [70A.02.100](#)(1).<sup>182</sup>

**Issue 191: How will Ecology work with other potentially impacted agencies when engaging Indian tribes?**

- Commenters: Washington State Department of Transportation (16-25)
- Rule Sections: WAC 173-340-620(3)

**Response:**

Consistent with Ecology's interagency coordination policy in WAC 173-340-130(7), when engaging with Indian tribes, Ecology will coordinate with appropriate local, state, and federal agencies and ensure they are kept informed and, as appropriate, involved. As needed, Ecology will develop guidance for staff.

**Issue 192: Should tribal engagement be independent of any public participation process?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-59)
- Rule Sections: WAC 173-340-620(4)

**Response:**

Yes. Consistent with the HEAL Act, Ecology agrees that tribal engagement should be independent of any public participation process. See RCW [70A.02.100](#)(3).<sup>183</sup> Furthermore, as discussed under Issue 190, engaging Indian tribes prior to a public comment period allows additional time for government-to-government consultations, if needed, and is consistent with Ecology's practice of consulting with other state or federal government agencies before seeking public comment. Individual members of Indians tribes and other indigenous peoples may still get involved in the cleanup process through Ecology's public participation process.

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<sup>182</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.100>

<sup>183</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.100>

**Issue 193: For Ecology-conducted or supervised remedial actions, how does Ecology plan to incorporate input received from Indian tribes?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-56)
- Rule Sections: WAC 173-340-620(3) and (4)  
WAC 173-340-360(3)(d), (4)(c)(xi), and (5)(c)(i)(C)  
WAC 173-340-380(5)(c)

**Response:**

For Ecology-conducted or supervised remedial actions, the amended rule requires Ecology to:

- Consider the rights and interests of Indian tribes when evaluating cleanup action alternatives in a feasibility study, including when evaluating the reasonableness of a restoration time frame and when conducting a disproportionate cost analysis. See WAC 173-340-360(3)(d), (4)(c)(xi), and (5)(c)(i)(C).
- Document in the draft cleanup actions plan how Ecology considered those rights and interests when selecting the cleanup action. See WAC 173-340-380(5)(c). This is intended to increase transparency and accountability.

As discussed under Issue 190, Ecology will seek to engage affected Indian tribes during the cleanup process whenever it provides the public an opportunity to comment, including on the draft cleanup action plan. The engagement will be in addition to and independent of any public participation process. See WAC 173-340-620(3) and (4).

**Issue 194: For Ecology-conducted or supervised remedial actions, should Ecology notify affected Indian tribes when it identifies a potentially liable person?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-2)
- Rule Sections: WAC 173-340-620(3)  
WAC 173-340-500

**Response:**

Yes. For Ecology-conducted or supervised remedial actions, Ecology agrees that it should notify affected Indian tribes when it identifies a potentially liable person (PLP) under WAC 173-340-500. Ecology will provide notice of any known PLPs when it initially seeks to engage affected Indian tribes at a contaminated site. Ecology will include this procedure in its tribal engagement plan under WAC 173-340-620(3).



**Issue 195: Should the rule interpret or clarify the rights of Indian tribes to recover response costs and natural resource damages from potentially responsible parties under the federal cleanup law? How will Ecology facilitate compliance by potentially responsible parties?**

- Commenters: Confederated Tribes and Bands of the Yakama Nation (10-1, 10-2)
- Rule Sections: WAC 173-340-620

**Response:**

No. Ecology does not believe the amended rule should interpret or clarify the rights of Indian tribes to recover response costs and natural resource damages from potentially responsible parties under 42 U.S.C. Sec. [9607](#)(a)(4)(A) and (f)<sup>184</sup> and Sec. [9626](#)(a)<sup>185</sup> of the federal cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Ecology's focus is to ensure that potentially liable persons clean up contaminated sites in accordance with the requirements of the state cleanup law, the Model Toxics Control Act (MTCA). Ecology welcomes the engagement of Indian tribes in the cleanup process to help ensure that cleanups comply with those requirements.

## 6.29 Section 815

**Issue 196: Should the purpose of the cultural resource protection requirements in the rule reflect those in Executive Order 21-02?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-61)
- Rule Sections: WAC 173-340-815(1)

**Response:**

Yes. Ecology agrees that the purpose of the cultural resource protection requirements in the amended rule should reflect those in the Governor's Executive Order [21-02](#).<sup>186</sup> As stated in the rule, the requirements are intended to:

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<sup>184</sup> <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section9607&num=0&edition=prelim>

<sup>185</sup> <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section9626&num=0&edition=prelim>

<sup>186</sup> [https://governor.wa.gov/sites/default/files/exe\\_order/eo\\_21-02.pdf](https://governor.wa.gov/sites/default/files/exe_order/eo_21-02.pdf)

... avoid, minimize, or mitigate adverse effects from remedial actions on archaeological and historic archaeological sites, historic buildings and structures, traditional cultural places, sacred sites, and other cultural resources (WAC 173-340-815(1)).

For all remedial actions, the amended rule requires compliance with all applicable state and federal cultural resource laws and regulations to protect our state's cultural resources (WAC 173-340-815(2)).

For Ecology-conducted, Ecology-supervised, and Ecology-funded independent remedial actions, the amended rule requires additional steps to ensure cultural resources are protected, including consultations with affected Indian tribes and the Department of Archaeology and Historic Preservation and the development and use of an Inadvertent Discovery Plan (WAC 173-340-815(3)).

Ecology's cultural resource guidance will further detail how to comply with these requirements.

**Issue 197: Should the cultural resource consultation and inadvertent discovery planning requirements apply to independent remedial actions not funded by the state?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-62)
- Rule Sections: WAC 173-340-815(3)(a)

**Response:**

No. Ecology does not believe the cultural resource consultation and inadvertent discovery planning requirements apply to independent remedial actions not funded by the state. This is consistent with the Governor's Executive Order [21-02](#).

For all remedial actions, including all independent remedial actions, the amended rule requires compliance with all applicable state and federal cultural resource laws and regulations to protect our state's cultural resources (WAC 173-340-815(2)).

For sites where Ecology is conducting, supervising, or funding remedial actions, Ecology has chosen to take or require additional precautionary measures to ensure cultural resources are protected, including consultations with affected Indian tribes and the Department of Archaeology and Historic Preservation and the development and use of an Inadvertent Discovery Plan (IDP) (WAC 173-340-815(3)).

At sites where there is significant tribal interest, Ecology may decide to supervise remedial actions instead of allowing independent remedial actions so that it can appropriately engage and consult with affected Indian tribes on a government-to-government basis and consider their rights and interests during the cleanup process. In the future, Ecology will consider whether to

require an IDP for independent cleanups entering the [Voluntary Cleanup Program \(VCP\)](#)<sup>187</sup> under a VCP agreement.

**Issue 198: Should the rule specify under what circumstances a cultural resources work plan would be necessary?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-63)
- Rule Sections: WAC 173-340-815(3)(b)(i)

**Response:**

No. Ecology does not believe the rule should specify under what circumstances a cultural resources work plan, such as survey or monitoring plan, would be needed to avoid, minimize, or mitigate adverse impacts to cultural resources at a contaminated site. The amended rule authorizes Ecology to require such a plan on a site-specific basis based on the outcome of cultural resource consultations with affected Indian tribes and the Department of Archaeology and Historic Preservation (WAC 173-340-815(3)(b)(i)). Ecology needs the discretion to make such determinations on a site-specific basis. Ecology cannot anticipate all the circumstances where such a plan might be needed based on the consultation outcomes. Ecology will consider providing examples in agency guidance.

**Issue 199: For Ecology-conducted, supervised, or funded remedial actions, should an inadvertent discovery plan always be prepared, even if cultural resources are not suspected to be present at the site?**

- Commenters: Port of Seattle (9-17)  
Western States Petroleum Association (24-10, 24-25)
- Rule Sections: WAC 173-340-815(3)(b)

**Response:**

Yes. For Ecology-conducted, supervised, or funded remedial actions, Ecology believes an inadvertent discovery plan (IDP) should always be prepared before conducting a field activity capable of affecting a cultural resource, even if cultural resources are not suspected to be present at the site. Based on public comments, Ecology edited the proposed rule text to further clarify the applicability of the requirement in WAC 173-340-815(3)(b).

This requirement is consistent with agency policy. It is difficult to confidently predict the presence or absence of cultural resources at a contaminated site prior to field activities. An IDP provides field workers steps to take to protect cultural resources if they are discovered at a site,

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<sup>187</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

whether they are suspected or not. Ecology has prepared a template to expedite the development of an IDP. Ecology does not anticipate IDP development to delay actions.

**Issue 200: When preparing an inadvertent discovery plan, may you use a document equivalent to Ecology’s form? What information does it need to include?**

- Commenters: Washington State Department of Transportation (16-8)
- Rule Sections: WAC 173-340-815(3)(b)(ii)(A)

**Response:**

Yes. When preparing an inadvertent discovery plan (IDP), the amended rule explicitly allows you to use either “the applicable form provided by Ecology or an equivalent document that includes the same or more comprehensive information” (WAC 173-340-815(3)(b)(ii)(A)). Ecology will further specify what constitutes an equivalent document in guidance.

**Issue 201: Should remedial investigation work plans, construction plans, operation and maintenance plans, and interim action plans include an inadvertent discovery plan meeting the requirements in WAC 173-340-815?**

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-23)
- Rule Sections: WAC 173-340-815(3)(a) and (b)(ii)  
WAC 173-340-350(5)(b)(i)(F)  
WAC 173-340-400(4)(b)(x) and (c)(xii)  
WAC 173-340-430(7)(f)

**Response:**

Yes. Ecology agrees that remedial investigation work plans, construction plans, operation and maintenance plans, and interim action plans should include an inadvertent discovery plan (IDP) meeting the requirements in WAC 173-340-815. The requirement to include an IDP in these plans is specified in the following sections of the amended rule:

- Remedial investigations work plans: WAC 173-340-350(5)(b)(i)(F)
- Construction plans: WAC 173-340-400(4)(b)(x)
- Operation and maintenance plans: WAC 173-340-400(4)(c)(xii)
- Interim action plans: WAC 173-340-430(7)(f)

The amended rule requires IDPs for all Ecology-conducted, Ecology-supervised, and Ecology-funded independent remedial actions. See WAC 173-340-815(3)(a). Ecology added the IDP requirement consistent with agency policy. One may use the IDP form provided by Ecology or an equivalent document. Unlike for cultural resource consultations, Ecology may require another party to prepare an IDP. Consistent with program policy, the IDP must be kept at the site during all remedial actions and persons conducting remedial action must be familiar with its

contents and its location at the site. The plan must be kept up to date based on any discoveries at the site. See WAC 173-340-815(3)(b)(ii).

## 6.30 Section 830

### **Issue 202: Should the rule replace the list of Ecology-approved sampling and analytical methods with a requirement to maintain and make publicly available a list of Ecology-approved methods outside of the rule?**

- Commenters: Western States Petroleum Association (24-19)  
Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-64)
- Rule Sections: WAC 173-340-830(4)(a)

#### **Response:**

Yes. Ecology believes the rule should replace the list of Ecology-approved sampling and analytical methods with a requirement to maintain and make publicly available a list of Ecology-approved methods outside of the rule. Under the amended rule, Ecology may add or remove methods from the list without changing the rule. Ecology must maintain a record of any such decision and notify the public of its decision in the *Contaminated Site Register*. As under the current rule, when Ecology has not identified an approved method, a standard method (such as those specified by ASTM) may be used, if available. See WAC 173-340-830(4)(a).

Ecology strives to stay current with updated science and technology that drives its decision-making. While this rule amendment makes it easier to change the list in terms of administrative process requirements (a shorter timeframe when compared to multi-year rule making process), it will not replace the Ecology's internal procedures for adding or deleting a particular sampling and analytical method.

### **Issue 203: Does Ecology plan to review and, as needed, update its list of approved sampling and analytical methods on a regular basis? Does Ecology plan to provide the public an opportunity to comment on any proposed updates?**

- Commenters: Western States Petroleum Association (24-19)
- Rule Sections: WAC 173-340-830(4)(a)

#### **Response:**

Ecology anticipates reviewing, and as needed, updating its list of approved sampling and analytical methods on a regular basis. However, Ecology reserves the right to update the list as needed or appropriate. Ecology's overarching goal is to stay current with updated science and

technology. Ecology expects this process will be similar to how it reviews and updates the [Cleanup Levels and Risk Calculation](#) (CLARC) tools,<sup>188</sup> which is also regularly updated.

The amended rule provides the public the opportunity at any time to propose additional methods for Ecology review and approval (WAC 173-340-815(4)(a)(iv)). Ecology will consider whether and how to provide the public additional opportunities to provide input when it reviews or updates the list of approved sampling and analytical methods.

Ecology plans to develop internal procedures to guide future reviews and updates, the frequency of such reviews, and whether and how to provide the public additional opportunities to provide input. Ecology will also consider developing factors to guide Ecology's reviews.

**Issue 204: Could Ecology's approval a more sensitive analytical method effect ongoing remedial investigations at a site?**

- Commenters: Western States Petroleum Association (24-19)
- Rule Sections: WAC 173-340-830(4)(a)

**Response:**

Yes. Ecology's approval of a more sensitive analytical method could sometimes affect ongoing remedial investigations, which could then affect the cleanup levels set and cleanup action selected for a site. Ecology is aware of the implications and will use best professional judgement when determining whether to require the use of a new, more sensitive analytical method during ongoing remedial investigations. If the older method is incapable of achieving risk-based target concentrations, then the new more sensitive analytical method could provide better information on the nature and extent of contamination. In general, while the old data would still be useful and could be used in decision-making, new data based on the updated analytical method would also likely be necessary. This will be a site-specific decision based on many factors, including the phase of investigation, the contaminant type and behavior, uncertainty about the nature and extent of contamination, background levels, and overall protectiveness of human health and environment.

**Issue 205: Could Ecology's approval of a more sensitive analytical method effect the establishment of a cleanup level based on practical quantitation limits?**

- Commenters: Western States Petroleum Association (24-19)
- Rule Sections: WAC 173-340-830(4)(a)  
WAC 173-340-702(12)(a) through (c)

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<sup>188</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Contamination-clean-up-tools/CLARC>

**Response:**

Yes. Ecology's approval of a more sensitive analytical method could affect the establishment of a cleanup level based on the practical quantitation limit (PQL) of an analytical method. Such levels are above the risk-based target concentrations.

However, under the WAC 173-340-702(12), Ecology's approval of a more sensitive analytical method would not change such cleanup levels at sites where a cleanup action is already ongoing or completed. This rule is commonly referred to as the "grandfather clause."

In response to public comments, Ecology edited the grandfather clause to ensure that the removal of Ecology-approved analytical methods from the rule in WAC 173-340-830 did not alter the effect of the clause:

- (a) For cleanup actions conducted by the department, or under an order or decree, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect under this chapter at the time the department issues a final cleanup action plan for that release.
- (b) In reviewing the adequacy of independent remedial actions, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect at the time the final cleanup action for that release began or in effect when the department reviews the cleanup action, whichever is less stringent.
- (c) A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provisions in this chapter on cleanup levels or subsequent availability of more sensitive analytical methods, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.

## 6.31 Section 840

**Issue 206: When electronic documents are submitted to Ecology under the rule, do they need to meet applicable accessibility requirements? Will Ecology provide guidance?**

- Commenters: Western States Petroleum Association (24-23)
- Rule Sections: WAC 173-340-840

**Response:**

The amended rule does not establish accessibility requirements for remedial action plans, reports, or other documents submitted to Ecology under the rule. See WAC 173-340-840.

Ecology will consider updating the general submission requirements to address accessibility in a future rulemaking. In the meantime, Ecology is implementing the following policy:

- **Ecology conducted, supervised, or funded remedial actions.**

For Ecology-conducted, supervised, or funded remedial actions, Ecology requires persons who submit electronic documents to Ecology under the rule (including Ecology contractors, potentially liable persons, and grant or other funding recipients) to comply with the accessibility requirements of Title II of the Americans with Disabilities Act, [42 U.S.C.12101 et seq.](#) (ADA).<sup>189</sup> This includes independent remedial actions funded by Ecology.

This policy is not retroactive. That means Ecology does not require persons to resubmit documents that Ecology made publicly available on its website over the years solely to make them more accessible.

Ecology does not plan to issue its own separate guidance for compliance with the ADA. However, existing technical standards provide helpful guidance concerning how to ensure accessibility of website features. These include [Web Content Accessibility Guidelines](#)<sup>190</sup> published by the World Wide Web Consortium, and the [Section 508 Standards](#)<sup>191</sup> published by the U.S. Government Services Administration assure ADA compliance for its own websites.

- **Independent remedial actions that are not funded by Ecology.**

For independent remedial actions that are not funded by Ecology, Ecology does not require persons who submit electronic documents to Ecology under the rule (including independent remedial action plans and reports) to comply with the ADA's accessibility requirements. This includes independent remedial action plans and reports submitted for Ecology's review under the Voluntary Cleanup Program (VCP). Ecology will consider in the future whether to amend the VCP Agreement to require compliance with the ADA.

Ecology strongly encourages persons conducting independent remedial actions to make their documents accessible using the available guidance noted above.

When Ecology makes such submittals publicly available on its website, Ecology may make practical efforts to enhance their accessibility and offer to assist persons in need of accommodations to access this information. Ecology is developing best practices and guidance on the accessibility of third-party publications presented on its website.

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<sup>189</sup> <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

<sup>190</sup> <https://www.w3.org/WAI/standards-guidelines/wcag/>

<sup>191</sup> <https://www.section508.gov/>



## 6.32 Rulemaking Process

### Issue 207: Support for collaborative rulemaking.

- Commenters: Oulwa Research Studio (4-1)
- Rule Sections: Not applicable

#### Response:

We appreciate your support. Ecology set out to promote a dynamic and interactive dialogue throughout the rulemaking process.

### Issue 208: Support concurrent opportunity for public review of proposed rule and SHARP Tool.

- Commenters: Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, & Twin Harbors Waterkeeper (32-7)  
Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, & Washington Conservation Action (STC4-20)
- Rule Sections: Not applicable

#### Response:

We appreciate your interest and support. As we moved the detailed site hazard assessment and ranking process (SHARP) from the current rule to agency-developed policies and procedures, Ecology's goal was to ensure the public and Indian tribes had a clear understanding of, and opportunity to provide meaningful input on, the revised procedures.

### Issue 209: Request more time for public review of the proposed rule.

- Commenters: Western States Petroleum Association (24-1)
- Rule Sections: No applicable

#### Response:

Ecology began the process of updating the MTCA Cleanup Regulations, Chapter 173-340 WAC, in April 2017 with an internal review of the current rule. Staff generated more than 300 suggestions for rule updates. These ranged from very general suggestions to specific proposed rule changes and were about evenly divided between the cleanup process and the technical cleanup standards.

In early 2018, Ecology initiated a public exploratory rulemaking ([AO# 17-03](#))<sup>192</sup> to engage stakeholders, Indian tribes, other agencies, and the general public in planning and scoping a series of rulemakings to update the MTCA Cleanup Regulations. Ecology received 176 public comments between February 15 and April 15, 2018. About half addressed the cleanup process and the remainder addressed the technical cleanup standards.

In December 2018, Ecology filed a preproposal statement of inquiry ([CR-101](#))<sup>193</sup> for the first of several planned rulemakings ([AO# 18-09](#)),<sup>194</sup> which focuses on procedural and administrative changes. Ecology recruited and facilitated a [Stakeholder and Tribal Advisory Group](#)<sup>195</sup> (STAG) to serve for at least the first and second planned rulemakings. Working with the STAG and an internal advisory team of Ecology staff, Ecology developed two preliminary drafts of key sections of the rule. The STAG meetings were open to the public and the preliminary drafts were publicly available on the STAG website. STAG member comments were also posted on the website. After considering comments by internal staff and STAG members on the second preliminary draft, Ecology prepared a full set of proposed rule amendments for public review.

On February 15, 2023, Ecology filed and published for public review a notice of proposed rulemaking ([CR-102](#)),<sup>196</sup> including the text of the proposed rule amendments. On March 1, 2023, the notice was published in the Washington State Register. The Washington Administrative Procedure Act requires regulatory agencies to adopt a final rule within 180 days (6 months) after publishing their proposed rule in the Washington State Register ([RCW 34.05.355\(3\)](#)).<sup>197</sup> Based on that requirement, Ecology needs to adopt the final rule by August 28, 2023. Ecology provided a 60-day public comment period following the public notice (2 months), holding public hearings on March 23 and 25 and receiving public comments through April 16, 2023. This schedule provided Ecology the time necessary after the close of the comment period to review and consider the comments received, to make decisions about each and incorporate any changes into the final rule, to complete several mandatory regulatory analyses of the final rule, to prepare the final rule for publication, and to respond in writing to public comments.

Ecology recognizes that the current rulemaking includes complex rule amendments of concern to regulated parties, public advocacy and industry organizations, Indian tribes, governmental agencies, and the general public. We appreciate the insights, questions, and suggestions provided by all who submitted comments on the proposed rule, as well as by members of the STAG.

Considering the already extensive rule development process, Ecology determined that the public interest is best served by adopting the final rule amendments without further prolonging the public involvement process for this rulemaking. Where appropriate, Ecology will provide

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<sup>192</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking>

<sup>193</sup> <https://ecology.wa.gov/getattachment/fef79f34-4328-44cc-8ed4-146013ac1228/WSR-19-02-013.pdf>

<sup>194</sup> <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340>

<sup>195</sup> [https://www.ezview.wa.gov/site/alias\\_\\_1988/37514/overview.aspx](https://www.ezview.wa.gov/site/alias__1988/37514/overview.aspx)

<sup>196</sup> <https://ecology.wa.gov/getattachment/f52c30d3-e30a-4338-8993-475cf7818156/WSR-23-05-092.pdf>

<sup>197</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.335>

opportunities for public input on future policies, procedures, and guidance necessary to implement the adopted amendments.

Ecology anticipates undertaking one or more rulemakings focused on the technical cleanup standards beginning in 2024 or 2025. Subsequent rulemakings may then include deferred topics or those that emerge during the earlier rulemakings. In the future, in addition to maintaining the STAG process, Ecology will consider how best to notify and involve other stakeholders in future rulemakings. Ecology may limit the scope of each future rulemaking to create a more practical workload for both agency staff and the reviewing public, within the framework of the Administrative Procedure Act.

**Issue 210: Was page 46 of the proposed rule document missing?**

- Commenters: Port of Seattle (9-9)
- Rule Sections: Not applicable

**Response:**

No. Neither the Ecology-format version nor the state Order Typing Service-format version of the proposed rule with tracked changes appears to be missing page 46.

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**Appendix A:  
Index of Public Comments on  
Proposed Rule Amendments**

## A.1 Purpose of Index

The Rule Commenter Index on the following page identifies the people who commented on Ecology's proposed amendments to Chapter 173-340 WAC, Model Toxics Control Act Cleanup Regulations, and where you can find Ecology's response to their comments.

## A.2 Commenters

In total, 212 individuals and organizations submitted comments on the proposed rule amendments.

Ecology assigned each commenter a unique identification number (from 1 to 213) in the order comments were submitted. Commenter #12 (Washington Conservation Action) submitted form letters on behalf of 174 people (Commenters 40 through 213). The commenters are identified in the Rule Commenter Index (Appendix A) by:

- Number;
- Name and affiliation; and
- The date comments were submitted.

The Commenter number is also inserted on the first page of the Commenter's written comments (see Appendix B).

## A.3 Comments

Ecology identified a total of 811 separate comments. Ecology assigned each of those comments a number. The Comment number is identified in:

- The Rule Commenter Index (Appendix A); and
- The margins of the Commenter's written comments (Appendix B).

## A.4 Issues

For each those 811 comments, the Rule Commenter Index (Appendix A) identifies the Issue number in the Concise Explanatory Statement where Ecology responded to the comment.

## A.5 Rule Commenter Index

Commenter				Response to Comment		
#	Name	Affiliation	Date	Comment #	Issue #s	
1	Elaine Bailey		02/21/23	1-1	111, 112	
2	Andrea Moore		02/21/23	2-1	112	
3	Judith Taylor		02/21/23	3-1	112	
4	Octavia Parker	Oulwa Research Studio	03/22/23	4-1	207	
				4-2	44	
5	Lauren Carroll		03/30/23	5-1	51	
				04/04/23	5-2	50
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6	Alan Prouty	J.R. Simplot Company	04/13/23	6-1	46, 47, 106	
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				6-9	14	
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7	Lee First	Twin Harbors Waterkeeper	04/14/23	7-1	180	
				7-2	14	
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				7-4	19	
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8	Merita Trohimovich	City of Tacoma	04/14/23	8-1	14, 26	
				8-2	8, 28	
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				8-12	59	
				8-13	70, 71	
				8-14	57, 58	
				8-15	65	
9	Sandra Kilroy	Port of Seattle	04/14/23	9-1	14, 26	

Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
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				9-19	68
<b>10</b>	Laura Shira	Confederated Tribes and Bands of the Yakama Nation	04/14/23	10-1	195
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				10-9	91
<b>11*</b>	Rachel Haxtema		04/14/23	11-1	10, 16, 30
				11-2	153, 154
				11-3	180
<b>12</b>	Katie Byrnes	Washington Conservation Action on behalf of 174 individuals → see Commenters #40 to #213	04/14/23	--	--
<b>13*</b>	Chistina Jackson		04/14/23	13-1	10, 16, 30
				13-2	153, 154
				13-3	180
<b>14*</b>	Barbara Church		04/14/23	14-1	10, 16, 30
				14-2	153, 154
				14-3	180
<b>15*</b>	Steven Storms		04/14/23	15-1	10, 16, 30
				15-2	153, 154
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<b>16</b>	Patrick Svoboda	Washington State Department of Transportation	04/14/23	16-1	52
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				16-26	43
<b>17*</b>	Kenneth Zirinsky		04/14/23	17-1	10, 16, 30
				17-2	153, 154
				17-3	180
<b>18</b>	Janeen Provazek		04/15/23	18-1	14
<b>19</b>	Roberta Mantooth		04/15/23	19-1	112
<b>20*</b>	Carolyn Janette		04/15/23	20-1	10, 16, 30
				20-2	153, 154
				20-3	180
<b>21*</b>	Felicity Janette		04/15/23	21-1	10, 16, 30
				21-2	153, 154
				21-3	180
<b>22</b>	Brian Peters	GHD Inc.	04/15/23	22-1	84
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Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
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<b>23*</b>	Elly Claus-McGahan		04/15/23	23-1	10, 16, 30
				23-2	153, 154
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<b>24</b>	Jim Verburg	Western States Petroleum Association	04/15/23	24-1	209
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<b>25*</b>	Judith Kay		04/16/23	25-1	10, 16, 30
				25-2	153, 154
				25-3	180
<b>26*</b>	Meagan Galacgac		04/16/23	26-1	10, 16, 30
				26-2	153, 154
				26-3	180
<b>27*</b>	Moriah Galacgac		04/16/23	27-1	10, 16, 30
				27-2	153, 154

Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
				27-3	180
28*	Mark Galacgac		04/16/23	28-1	10, 16, 30
				28-2	153, 154
				28-3	180
29*	Kirk Kirkland	Tahoma Audubon Society	04/16/23	29-1	10, 16, 30
				29-2	153, 154
				29-3	180
30*	K Anderson		04/16/23	30-1	10, 16, 30
				30-2	153, 154
				30-3	180
31*	Stacy Oaks		04/16/23	31-1	10, 16, 30
				31-2	153, 154
				31-3	180
32	Jamie Hearn	Duwamish River Community Coalition	04/16/23	32-1	16, 30
	Eleanor Hines	RE Sources		32-2	16, 30
	Erin Dilworth	Communities for a Healthy Bay		32-3	16, 30
	Katie Byrnes Mindy Roberts	Washington Conservation Action		32-4	81
	Sue Joerger Lee First	Twin Harbors Waterkeeper		32-5	79
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<b>33*</b>	David Friscia		04/16/23	33-1	10, 16, 30
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<b>34</b>	Darlene Schanfald	Olympic Environmental Coalition	04/16/23	34-1	10, 14, 16, 111, 112, 153, 154, 155, 180
<b>35*</b>	Phil Harty		04/16/23	35-1	10, 16, 30
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<b>36*</b>	Michelle Mood		04/16/23	36-1	10, 16, 30
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<b>37</b>	Ben Starr Anne Fitzpatrick Luke Smith	Geosyntec Consultants Inc.	04/16/23	37-1	8, 28
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38	Piper Roelen	Landau Associates	04/16/23	38-1	54
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39*	Carolyn Robinson		04/16/23	39-1	10, 16, 30
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40*	Nancy Shimeall		04/14/23	40-1	10, 16, 30
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41*	Jonathan Betz-Zall		04/14/23	41-1	10, 16, 30
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42*	Felicity Devlin		04/14/23	42-1	10, 16, 30
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43*	Paul Sampson		04/14/23	43-1	10, 16, 30
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44*	Sara Bhakti		04/14/23	44-1	10, 16, 30
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45*	Lehman Holder		04/14/23	45-1	10, 16, 30
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				45-3	180
46*	Marian Wineman		04/14/23	46-1	10, 16, 30
				46-2	153, 154
				46-3	180
47*	Dagmar Fabian		04/14/23	47-1	10, 16, 30
				47-2	153, 154
				47-3	180
48*	Kathryn Ryan		04/14/23	48-1	10, 16, 30
				48-2	153, 154
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49*	Fleener Teresa		04/14/23	49-1	10, 16, 30
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50*	Jean Waight		04/14/23	50-1	10, 16, 30

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51*	Carole Burger		04/14/23	51-1	10, 16, 30
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52*	Carrie Heron		04/14/23	52-1	10, 16, 30
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53*	Matthew Boguske		04/14/23	53-1	10, 16, 30
				53-2	153, 154
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54*	Rebecca Durr		04/14/23	54-1	10, 16, 30
55*	Judith Thierry		04/14/23	55-1	10, 16, 30
				55-2	153, 154
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56*	Barbara Citko		04/14/23	56-1	10, 16, 30
				56-2	153, 154
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57*	Virginia Davis		04/14/23	57-1	10, 16, 30
				57-2	153, 154
				57-3	180
58*	Priscilla Martinez		04/14/23	58-1	10, 16, 30
				58-2	153, 154
				58-3	180
59*	Derek Benedict		04/14/23	59-1	10, 16, 30
				59-2	153, 154
				59-3	180
60*	Gloria McClintock		04/14/23	60-1	10, 16, 30
				60-2	153, 154
				60-3	180
61*	Kathleen Allen		04/14/23	61-1	10, 16, 30
				61-2	153, 154
				61-3	180
62*	Jennifer Hickey		04/14/23	62-1	10, 16, 30
				62-2	153, 154
				62-3	180
63*	Julia McLaughlin		04/14/23	63-1	10, 16, 30
				63-2	153, 154
				63-3	180
64*	Ken Lederman		04/14/23	64-1	10, 16, 30
				64-2	153, 154
				64-3	180
65*	Virginia Metcalf		04/14/23	65-1	10, 16, 30
				65-2	153, 154
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66*	Emily Van Alyne		04/14/23	66-1	10, 16, 30
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67*	Pawiter Parhar		04/14/23	67-1	10, 16, 30
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68*	Thomas Frenock		04/14/23	68-1	10, 16, 30
				68-2	153, 154
				68-3	180
69*	Stephen Green		04/14/23	69-1	10, 16, 30
				69-2	153, 154
				69-3	180
70*	Lucy Flanagan		04/14/23	70-1	10, 16, 30
				70-2	153, 154
				70-3	180
71*	Rein Attemann		04/14/23	71-1	10, 16, 30
				71-2	153, 154
				71-3	180
72*	Selim Uzuner		04/14/23	72-1	10, 16, 30
				72-2	153, 154
				72-3	180
73*	Lisa Ceazan		04/14/23	73-1	10, 16, 30
				73-2	153, 154
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74*	Michael Garten		04/14/23	74-1	10, 16, 30
				74-2	153, 154
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75*	John Shirlock		04/14/23	75-1	10, 16, 30
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76*	Julia Paulsen		04/14/23	76-1	10, 16, 30
				76-2	153, 154
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77*	Frank Kroger		04/14/23	77-1	10, 16, 30
				77-2	153, 154
				77-3	180
78*	Suzanne Nevins		04/14/23	78-1	10, 16, 30
				78-2	153, 154
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79*	Daniel Henling		04/14/23	79-1	10, 16, 30
				79-2	153, 154
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80*	John Paladin		04/14/23	80-1	10, 16, 30
				80-2	153, 154
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81*	Margaret Woll		04/14/23	81-1	10, 16, 30
				81-2	153, 154
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82*	J K		04/14/23	82-1	10, 16, 30
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83*	Rebecca Kempton		04/14/23	83-1	10, 16, 30
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84*	Kristen Bakken		04/14/23	84-1	10, 16, 30
				84-2	153, 154
				84-3	180
85*	Greg Espe		04/14/23	85-1	10, 16, 30
				85-2	153, 154
				85-3	180
86*	Diane Sullivan		04/14/23	86-1	10, 16, 30
				86-2	153, 154
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87*	Richard Osmun		04/14/23	87-1	10, 16, 30
				87-2	153, 154
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88*	John Thompson		04/14/23	88-1	10, 16, 30
				88-2	153, 154
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89*	Frances Marquart		04/14/23	89-1	10, 16, 30
				89-2	153, 154
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90*	Anita Scheunemann		04/14/23	90-1	10, 16, 30
				90-2	153, 154
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91*	Nancy Ellingham		04/14/23	91-1	10, 16, 30
				91-2	153, 154
				91-3	180
92*	Ben Moore		04/14/23	92-1	10, 16, 30
				92-2	153, 154
				92-3	180
93*	Linda Hall		04/14/23	93-1	10, 16, 30
				93-2	153, 154
				93-3	180
94*	Barbara Blackwood		04/14/23	94-1	10, 16, 30
				94-2	153, 154
				94-3	180
95*	Grace Padelford		04/14/23	95-1	10, 16, 30
				95-2	153, 154
				95-3	180
96*	Matthew White		04/14/23	96-1	10, 16, 30
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97*	Janet Riordan		04/14/23	97-1	10, 16, 30
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98*	James Williams		04/14/23	98-1	10, 16, 30
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99*	Lucia Faithfull		04/14/23	99-1	10, 16, 30
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100*	Tiffany Brace		04/14/23	100-1	10, 16, 30
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101*	James Mulcare		04/14/23	101-1	10, 16, 30
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102*	Betty McNeil		04/14/23	102-1	10, 16, 30
				102-2	153, 154
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103*	Joseph Yencich		04/14/23	103-1	10, 16, 30
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104*	Noah Ehler		04/14/23	104-1	10, 16, 30
				104-2	153, 154
				104-3	180
105*	Phuong Nguyen		04/14/23	105-1	10, 16, 30
				105-2	153, 154
				105-3	180
106*	Carolyn Boatsman		04/14/23	106-1	10, 16, 30
				106-2	153, 154
				106-3	180
107*	Sarah Bauman		04/14/23	107-1	10, 16, 30
				107-2	153, 154
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108*	Tim Wandell		04/14/23	108-1	10, 16, 30
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109*	Ronald Lovell		04/14/23	109-1	10, 16, 30
				109-2	153, 154
				109-3	180
110*	Cheryl Speer		04/14/23	110-1	10, 16, 30
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111*	Mary N		04/14/23	111-1	10, 16, 30
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112*	Ann May		04/14/23	112-1	10, 16, 30
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113*	Alfred Ferraris		04/14/23	113-1	10, 16, 30
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114*	Adina Parsley		04/14/23	114-1	10, 16, 30
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115*	Asphodel Denning		04/14/23	115-1	10, 16, 30
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116*	Elizabeth Lengel		04/14/23	116-1	10, 16, 30
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117*	Jamie Kitson		04/14/23	117-1	10, 16, 30
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118*	Scott Bishop		04/14/23	118-1	10, 16, 30
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119*	Bee Evans		04/14/23	119-1	10, 16, 30
				119-2	153, 154
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120*	Barbara Fristoe		04/14/23	120-1	10, 16, 30
				120-2	153, 154
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121*	Amy Mower		04/14/23	121-1	10, 16, 30
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122*	Norman Baker		04/14/23	122-1	10, 16, 30
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123*	Elmer Preston		04/14/23	123-1	10, 16, 30
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124*	Richard Johnson		04/14/23	124-1	10, 16, 30
				124-2	153, 154
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125*	Shary B		04/14/23	125-1	10, 16, 30
				125-2	153, 154
				125-3	180
126*	Gena DiLabio		04/14/23	126-1	10, 16, 30
				126-2	153, 154
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127*	Phebe Schwartz		04/14/23	127-1	10, 16, 30
				127-2	153, 154
				127-3	180
128*	Emily Thompson		04/14/23	128-1	10, 16, 30
				128-2	153, 154
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129*	Lorelette Knowles		04/14/23	129-1	10, 16, 30
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130*	Michelle Pavcovich		04/14/23	130-1	10, 16, 30
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131*	Elena Rumiantseva		04/14/23	131-1	10, 16, 30
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132*	Sally Neary		04/14/23	132-1	10, 16, 30
				132-2	153, 154
				132-3	180
133*	John Cruz		04/14/23	133-1	10, 16, 30
				133-2	153, 154
				133-3	180
134*	Celia Cruz		04/14/23	134-1	10, 16, 30
				134-2	153, 154
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135*	David Arntson		04/14/23	135-1	10, 16, 30
				135-2	153, 154
				135-3	180
136*	Jennifer Vining		04/14/23	136-1	10, 16, 30
				136-2	153, 154
				136-3	180
137*	Linda Golley		04/14/23	136-1	10, 16, 30
				136-2	153, 154
				137-3	180
138*	Kristi Weir		04/14/23	138-1	10, 16, 30
				138-2	153, 154
				138-3	180
139*	Ken Benoit		04/14/23	139-1	10, 16, 30
				139-2	153, 154
				139-3	180
140*	Victoria Urias		04/14/23	140-1	10, 16, 30
				140-2	153, 154
				140-3	180
141*	Carole Henry		04/14/23	141-1	10, 16, 30
				141-2	153, 154
				141-3	180
142*	Jennifer Valentine		04/14/23	142-1	10, 16, 30
				142-2	153, 154
				142-3	180
143*	William McGunagle		04/14/23	143-1	10, 16, 30
				143-2	153, 154
				143-3	180
144*	Susan Loomis		04/14/23	144-1	10, 16, 30
				144-2	153, 154
				144-3	180
145*	James Cronin		04/14/23	145-1	10, 16, 30
				145-2	153, 154
				145-3	180
146*	Debbie Spear		04/14/23	146-1	10, 16, 30
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147*	Lorraine Hartmann		04/14/23	147-1	10, 16, 30
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148*	Gerald Iyall		04/14/23	148-1	10, 16, 30
				148-2	153, 154
				148-3	180
149*	Jeannie Keyes		04/14/23	149-1	10, 16, 30
				149-2	153, 154
				149-3	180
150*	Lucy Larkin		04/14/23	150-1	10, 16, 30
				150-2	153, 154
				150-3	180
151*	Andrea Speed		04/14/23	151-1	10, 16, 30
				151-2	153, 154
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152*	Lucy Ostrander		04/14/23	152-1	10, 16, 30
				152-2	153, 154
				152-3	180
153*	Don Williams		04/14/23	153-1	10, 16, 30
				153-2	153, 154
				153-3	180
154*	Michael Hill		04/14/23	154-1	10, 16, 30
				154-2	153, 154
				154-3	180
155*	Sandra Ciske		04/14/23	155-1	10, 16, 30
				155-2	153, 154
				155-3	180
156*	Tom Craighead		04/14/23	156-1	10, 16, 30
				156-2	153, 154
				156-3	180
157*	Frederick Duhring		04/14/23	157-1	10, 16, 30
				157-2	153, 154
				157-3	180
158*	Kevin Davis		04/14/23	158-1	10, 16, 30
				158-2	153, 154
				158-3	180
159*	Bob Schuessler		04/14/23	159-1	10, 16, 30
				159-2	153, 154
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160*	Josefina Lopez		04/14/23	160-1	10, 16, 30
				160-2	153, 154
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161*	Peter Baird		04/14/23	161-1	10, 16, 30
				161-2	153, 154
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162*	Thomas Cox		04/14/23	162-1	10, 16, 30
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163*	Steven Trevallee		04/14/23	163-1	10, 16, 30
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164*	Peter Reagel		04/14/23	164-1	10, 16, 30
				164-2	153, 154
				164-3	180
165*	Keegan Wulf		04/14/23	165-1	10, 16, 30
				165-2	153, 154
				165-3	180
166*	Maureen Kill		04/14/23	166-1	10, 16, 30
				166-2	153, 154
				166-3	180
167*	Stephanie Bell		04/14/23	167-1	10, 16, 30
				167-2	153, 154
				167-3	180
168*	Alice Flegel		04/14/23	168-1	10, 16, 30
				168-2	153, 154
				168-3	180
169*	Alyce Fritch		04/14/23	169-1	10, 16, 30
				169-2	153, 154
				169-3	180
170*	Jody Caicco		04/14/23	170-1	10, 16, 30
				170-2	153, 154
				170-3	180
171*	Cheryl Biale		04/14/23	171-1	10, 16, 30
				171-2	153, 154
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172*	George Summers		04/14/23	172-1	10, 16, 30
				172-2	153, 154
				172-3	180
173*	Sharon Anderson		04/14/23	173-1	10, 16, 30
				173-2	153, 154
				173-3	180
174*	Joanne Watchie		04/14/23	174-1	10, 16, 30
				174-2	153, 154
				174-3	180
175*	Dan Rogers		04/14/23	175-1	10, 16, 30
				175-2	153, 154
				175-3	180
176*	Kylie Loynd		04/14/23	176-1	10, 16, 30
				176-2	153, 154
				176-3	180
177*	Jean Pauley		04/14/23	177-1	10, 16, 30
				177-2	153, 154
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178*	Deborah Efron		04/14/23	178-1	10, 16, 30
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#	Name	Affiliation	Date	Comment #	Issue #s
179*	Gianina Graham		04/14/23	179-1	10, 16, 30
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180*	Joyce Grajczyk		04/14/23	180-1	10, 16, 30
				180-2	153, 154
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181*	Sari Schneider		04/14/23	181-1	10, 16, 30
				181-2	153, 154
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182*	Tanara Saarinen		04/14/23	182-1	10, 16, 30
				182-2	153, 154
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183*	Norm Conrad		04/14/23	183-1	10, 16, 30
				183-2	153, 154
				183-3	180
184*	Bruce Shilling		04/14/23	184-1	10, 16, 30
				184-2	153, 154
				184-3	180
185*	James Hipp		04/14/23	185-1	10, 16, 30
				185-2	153, 154
				185-3	180
186*	Philip Bebbington		04/14/23	186-1	10, 16, 30
				186-2	153, 154
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187*	Don Worley		04/14/23	187-1	10, 16, 30
				187-2	153, 154
				187-3	180
188*	Lori Erbs		04/14/23	188-1	10, 16, 30
				188-2	153, 154
				188-3	180
189*	Tika Bordelon		04/14/23	189-1	10, 16, 30
				189-2	153, 154
				189-3	180
190*	Nancy White		04/14/23	190-1	10, 16, 30
				190-2	153, 154
				190-3	180
191*	Margie Heller		04/14/23	191-1	10, 16, 30
				191-2	153, 154
				191-3	180
192*	Jeanie Bein		04/14/23	192-1	10, 16, 30
				192-2	153, 154
				192-3	180
193*	Sandra Russell		04/14/23	193-1	10, 16, 30
				193-2	153, 154
				193-3	180
194*	William Sneiderwine		04/14/23	194-1	10, 16, 30
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				194-3	180

Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
195*	Thomas Hughes		04/14/23	195-1	10, 16, 30
				195-2	153, 154
				195-3	180
196*	Penelope Johansen		04/14/23	196-1	10, 16, 30
				196-2	153, 154
				196-3	180
197*	Dennis Ledden		04/14/23	197-1	10, 16, 30
				197-2	153, 154
				197-3	180
198*	Katherine Nelson		04/14/23	198-1	10, 16, 30
				198-2	153, 154
				198-3	180
199*	Suzanne Blair		04/14/23	199-1	10, 16, 30
				199-2	153, 154
				199-3	180
200*	Colleen Curtis		04/14/23	200-1	10, 16, 30
				200-2	153, 154
				200-3	180
201*	Angie Dixon		04/14/23	201-1	10, 16, 30
				201-2	153, 154
				201-3	180
202*	Therese L		04/14/23	202-1	10, 16, 30
				202-2	153, 154
				202-3	180
203*	Lois Eulberg		04/14/23	203-1	10, 16, 30
				203-2	153, 154
				203-3	180
204*	Marquam Krantz		04/14/23	204-1	10, 16, 30
				204-2	153, 154
				204-3	180
205*	Diane Marks		04/14/23	205-1	10, 16, 30
				205-2	153, 154
				205-3	180
206*	R Wood		04/14/23	206-1	10, 16, 30
				206-2	153, 154
				206-3	180
207*	Barbara DuBois		04/14/23	207-1	10, 16, 30
				207-2	153, 154
				207-3	180
208*	Kathy Golic		04/14/23	208-1	10, 16, 30
				208-2	153, 154
				208-3	180
209*	Claire Sagen		04/14/23	209-1	10, 16, 30
				209-2	153, 154
				209-3	180
210*	Linda Heckman		04/14/23	210-1	10, 16, 30
				210-2	153, 154
				210-3	180

Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
211*	Mary Denny		04/14/23	211-1	10, 16, 30
				211-2	153, 154
				211-3	180
212*	Mark Canright		04/14/23	212-1	10, 16, 30
				212-2	153, 154
				212-3	180
213*	Rebecca Canright		04/14/23	213-1	10, 16, 30
				213-2	153, 154
				213-3	180

\* Comment letter based on form letter provided by Washington Conservation Action.



**Appendix B:  
Public Comments on Proposed Rule Amendments  
annotated with Comment Numbers**

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## Elaine Bailey

1

the proposed updates to Toxic Cleanups is an excellent addition. The unfortunate side of this is will it take even more time for actual cleanup to begin on the Port Angeles site? It is long overdue!

## Andrea Moore

I live near a toxic site owned by Rayoneir Forest Products. This site is reviewed every two years and yet nothing has been done. It's a waterfront property in my town, which is a small town that relies on tourism income and an adjacent trail to the site for yearly revenue. This is also a site just north of a National Park.

The town is living in the shadow of an era where the forest industry once created livelihoods but now has left behind toxic oceanfront property and lost livelihoods. Port Angeles is in need and many of its residents have not recovered from the loss of industries which rely on natural resources. First Nations tribes in the area of restored a damned river ecology and made an incredible example of what can be done to reverse damage done from previous times.

1 The Rayonier site presents a similar opportunity and would benefit from the proposed rule amendments. I am in favor of the rule amendments because the state of Washington will benefit from cleaning up toxic sites, supporting the areas and people and the tourist economy and relations between First Nations people, the lands we have left to restore and our reputation as an "Evergreen" state.

## Judith Taylor

1

All the state Ecology Dept ever seems to do is TALK about planning and how they need more time to do develop a plan -- at least that's their history since Rayonier left waterfront property a toxic waste zone, from soil to sediment, 26 years ago. We need and have a right to have the site CLEAN, SAFE and available to Port Angeles residents, workers, and visitors. DO SOMETHING! NOW. PLEASE.

## Oulwa Research Studio

Acknowledgments. As international civil servants, we must avoid situations and activities that may reflect adversely on the Organisation or compromise operations. I would like to express my gratitude to the Washington State Department of Ecology and other stakeholders for their action which fosters a dynamic and interactive dialogue that has contributed to improving the pollution prevention efforts of the United States.

Signed,

Year: March 21, 2023 1:00 P.M. EST

Octavia Parker,

Octavia@oulwa.xyz

**Project Title:** Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations

**Year: March 21, 2023 1:00 P.M. EST**

**Site Conditions:** Discussion

**Company:** Oulwa Research Studio

**Public comment notice:** February 15, 2023 12:00AM PT **Comment Period Ends:** April 16, 2023 11:59PM PT.

1 **Acknowledgments. As international civil servants, we must avoid situations and activities that may reflect adversely on the Organisation or compromise operations. I would like to express my gratitude to the Washington State Department of Ecology and other stakeholders for their action which fosters a dynamic and interactive dialogue that has contributed to improving the pollution prevention efforts of the United States.**

2 **Enquires to the Department. My hope is that the period of sustainability will not be sustained for more than 10 or 15 years but that we will move beyond that to the idea of regeneration, where what we are really doing with the American Land is not only producing our food but regenerating, improving, reforming to a higher level the American landscape and the Bi Coastal Spirit.**



Signed,

**Year: March 21, 2023 1:00 P.M. EST**

**Octavia Parker, Director**

Oulwa Research Studio

Octavia@oulwa.xyz



## Lauren Carroll

1

Comment 1: The Proposed Rule must include a section on Ecology's commitment to transparency, fair and equal treatment to all parties, ethical character, and adherence to the rule of law in all of its interactions. The Washington State Legislature should assign an Inspector General to whom complaints regarding Ecology's ethics may be submitted for review and appropriate action. I provide the following example to support this necessity.

On August 19, 2020, I received documents in response to a public records request (PRR) for a cleanup site known as the "Uptown Bakery Site". Ecology's project manager at that time was Heather Vick, her supervisor, Louise Bardy. Emails in that file disclosed that my firm, my name and work product had been used as an example of unscrupulous consulting practices at an Ecology meeting in 2016. This meeting included the entire Voluntary Cleanup Program (VCP) team and members of the attorney general's office. This "example" was based on a request for No Further Action (NFA) determination following a year of clean groundwater sampling. The condition of NFA had been discussed and agreed upon in a meeting with Ms. Vick in 2014. In the 2014 meeting, and as presented in a Remedial Investigation Report in Ecology's files, it was discussed that there was a small area of soil contamination present, but which was not impacting groundwater, so there was no risk to human health or the environment.

On August 19, 2020, following review of this malicious slander, I sent an email to Ms. Vick, Ms. Bardy, and other persons at Ecology stating that I was the victim of Defamation of Character by the department.

In early 2021, I received additional public records showing that on August 19, 2020, twenty minutes after I sent the Defamation of Character email to Ms. Vick, she sent a "High Importance" message to Public Records Officer Michael Hart, stating, "I thought I was going to get to review the list of emails to be sent prior to them being sent....What happened?"

In early 2021, I submitted a PRR to Ecology for the Aoki Site, for which Ms. Vick and Ms. Bardy were installed in similar capacity as the Uptown Bakery Site.

In an email from Ms. Vick to Ms. Bardy dated January 19, 2021, Ms. Vick stated that she "removed the Site name from the forwarded email", instead referring to it as the "A" Site, and stating that "I plan to delete this email to you after sending it." An additional email string between Ms. Vick and Mr. Brad Augustine (a real estate developer and owner of adjacent parcels) also refer to the site as the "A Site". It is only because Ms. Bardy did not delete her email, and later included in a string that included the work "Aoki", that I received this information.

Conclusion: Instead of making an effort to revise its ethics following my Defamation of Character email in August 2020, Ecology chose to adopt even more unscrupulous practices to avoid public disclosure, including coaching select outside parties on its methods. These activities constitute injury to public record, which is a crime under RCW 40.16.010 - Injury to public record. As stated, "Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by



imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.[ 2003 c 53 § 214; 1992 c 7 § 34; 1909 c 249 § 95; RRS § 2347.]"

## Lauren Carroll

2

A meaningful appeals process must be established in the MTCA Cleanup Regulation as a check on Ecology's integrity in its decision-making process. It is my hope that this would be overseen by the state legislature, as they are at least accountable to voters.

Under the existing structure, Ecology personnel may act in bad faith without consequence, and are at risk of becoming motivated by corrupt purposes. Opinion letters issued by Ecology carry the following disclaimer: "The state, Ecology, and its officers and employees make no guarantees or assurances by providing this opinion, and no cause of action against the state, Ecology, its officers or employees may arise from any act or omission in providing this opinion."

I provide the following information by way of example:

In June 2014, Nnamdi Madakor, the former technical manager of the Voluntary Cleanup Program (VCP) sent out an email to his team requesting examples of sites at which a consultant was attempting to establish a non-potability determination. Ms. Heather Vick responded by providing the Aoki Site as an example, and provided a false and defamatory statement behind the technical reason we were seeking this determination: "The case with Aoki is that the consultants were attempting to show that there is non-potable ground water on the Site...in order to preclude cleanup."

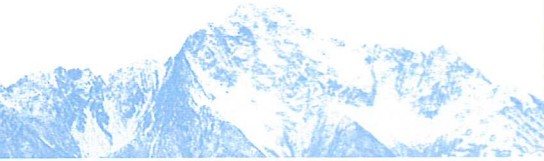
Mr. Madakor took Ms. Vick at her word and utilized my firm's work as an example in a VCP-wide Steering Committee meeting held on June 11, 2014. Unfortunately, my firm's reputation was diminished by this act. We were provided no means to which to reply or clarify this wrong-doing, and instead only learned of it incidentally through a public records request.

The effort to obtain the non-potability determination for the Aoki Site was to establish a groundwater cleanup level based on vapor migration to indoor air, the only viable pathway for receptors to groundwater contamination during the cleanup process. Further, Miss Vick provided a false and misleading statement to Mr. Madakor. Groundwater cleanup has been on-going at the Aoki Site since 2006. A fact that Miss Vick was surely aware of: as project manager she testified in King County Superior Court on behalf of the plaintiff, Madrona Real Estate Investors (Madrona) in 2013.

The outcome of the trial found that Madrona had a 15% liability for cleanup due to contribution of tetrachloroethene (PCE) contamination source on an adjacent property. Accordingly, the judge named the property the "Aoki/Madrona Site". However, Ecology refused to accept the courts findings. Ecology's Attorney General responded to my inquiry as to how to administer the project going forward with the following response forwarded by Vick dated August 16, 2016: "As promised, I spoke with VCP Unit Supervisor Louise Bardy and Ecology's Assistant Attorney General, Allyson Bazan, today about the legal document you provided. Both stated that the order contained in the document is not applicable to Ecology's determination."

Ecology has apparently determined that it is not accountable to court rulings, and insisted that the site name remain the "Aoki Site".

This situation is unjust and untenable.



## PACIFIC CREST ENVIRONMENTAL

1531 BENDIGO BOULEVARD NORTH · PO Box 952 · NORTH BEND, WA · 98045  
T 425.888.4990 F 425.888.4994

February 14, 2017

Ms. Heather Vick  
Voluntary Cleanup Program – NWRO  
Washington State Department of Ecology  
3190 160<sup>th</sup> Avenue SE  
Bellevue, Washington 98008

**RE: ROBBINS PROPERTY PIPE STUB INVESTIGATION  
JURGENSEN TRUST AND ROBBINS PROPERTY (AKA UPTOWN BAKERY)  
513-525 QUEEN ANNE AVENUE NORTH  
SEATTLE, WASHINGTON 98109  
VCP NO.: NW 2261**

**PACIFIC CREST PROJECT NO: 108-004**

Dear Ms. Vick:

This letter report has been prepared by Pacific Crest Environmental, LLC (Pacific Crest) for the Washington State Department of Ecology (Ecology) to present the results of an investigation into the nature of three pipe stubs (Pipe Stub Investigation) identified in the northern portion of the Robbins Property, which is within the Jurgensen Trust and Robbins Property Site (the Site) (Figure 1). The three pipe stubs (Pipe 1, Pipe 2, and Pipe 3) were identified during subsurface investigation activities conducted at the Site in 2011 (Figure 2). The objective of the Pipe Stub Investigation was to determine the function and nature of the pipes and whether they may be associated with a potential contaminant source.

### **BACKGROUND**

In December 2015, Pacific Crest submitted the *Compliance Groundwater Monitoring Report and Property-Specific No Further Action Request* (NFA Request) to Ecology requesting a Property-Specific NFA determination for the Robbins Property based on four consecutive quarters of groundwater data compliant with the Model Toxics Control Act (MTCA) (Chapter 173-340 WAC). In response to the NFA Request, Ecology issued an advisory opinion letter (Opinion Letter), dated May 18, 2016, providing comment that an NFA was not possible at that time based on the deduction that the pipe stubs may represent fill ports related to three alleged 1910s-era “gasol” underground storage tanks (USTs), and as such, may represent a source of soil contamination. The alleged USTs were identified on Sanborn Maps of the area dated 1917 and 1950, in association with a former building on the Jurgensen Trust Property.

A summary of the development history of the Jurgensen Trust and Robbins Properties is as follows:

- The properties were first developed between 1893 and 1905. The Jurgensen Trust Property was initially developed with single family dwellings, and the Robbins Property with a small store and residential dwelling.
- The dwellings on the Jurgensen Trust Property were removed and replaced with a commercial building in the southern portion, and a residential (apartment) building in the northern portion in 1910. From the 1910s through 1957, “Queen Anne Dye Works” (QADW), a clothes dyeing and dry cleaning business, operated in the commercial building (southern portion), in which the alleged “gasol” USTs were located. In 1958, the three story QADW building was demolished and replaced by the existing single story building, which has a dissimilar footprint.<sup>1</sup> The construction of the building included a 5-foot grade cut on the Jurgensen side, necessitating the construction of a retaining wall between the Jurgensen Trust and Robbins properties.
- In 1926, the original structure in the northern portion of the Robbins Property was demolished and replaced with the existing commercial building. Between 1950 and 1969, an addition was added to the western portion of the Robbins Property (Building Addition).

### **SCOPE OF WORK**

Pacific Crest conducted the following scope of work to conduct the Pipe Stub Investigation:

- The locations of underground utilities in the vicinity of the pipe stubs were identified using a public One-Call locating service and a private utility locating company.
- A conductible locating device and metal detector were used to trace the extent of subgrade portions of the pipes.
- An air/vacuum excavation was conducted to expose subgrade portions of the pipes, and to identify the nature of subgrade attachments.
- The investigation area was documented with photographs, and identified objects were described and recorded on a scaled site plan.
- The excavated soil and accessible subsurface areas were field analyzed using visual and olfactory observations and a photoionization detector (PID) to assess the potential for petroleum impacts.
- The excavation area was backfilled with the removed material.

---

<sup>1</sup> It is notable that the only historical documents referencing the “gasol” USTs were 1917 and 1950 Sanborn “Fire Insurance” Maps. The 1969 Sanborn map, with the existing building, does not show the USTs.

## SITE ACTIVITIES

The field activities were conducted in the northwest portion of the Robbins Property on October 26, 2016. The features in the northwest portion of the Robbins Property include a gravel parking area, a covered patio, and a Building Addition with a fenced walkway located north-adjacent of the Building Addition. The pipe stubs are located west-adjacent of the northwest corner of the Building Addition (Figure 2).

The field activities were directed by Pacific Crest and are presented in chronological narrative form below. CDM Smith, the environmental consultant for the Robbins Property, was also on-site to observe the activities. A photographic log is provided as Attachment A.

- Applied Professional Services (APS) performed a utility locate prior to the excavation activities. As part of this work, APS attached a conductible locator to the top of each pipe stub and explored the signal trace in all directions to the extent of each pipe. Based on magnetic readings, APS followed the signal from the surface location of each pipe, detecting that the signal trace from all three pipes extended to the east, to the Building Addition and walkway. Due to the walkway north of the Building Addition being fenced and locked, APS was limited in following the full signal extent, but stated that the pipes appeared to connect to the northwest corner of the Building Addition, and likely extended directly east along the northern wall of the Building Addition. In addition, wiring present extending from the Robbins Property building at the southeast corner of the Building Addition was determined to be conductively grounded to the same source as the three exposed pipe stubs. APS also examined the area between the pipe stubs and the retaining wall/Jurgensen Trust Property to the north and found no indication of a conductible signal trace to the north. Upon completion of the conductible locate, the APS locating crew departed the Site.
- Following departure of the APS locating crew, the APS vacuum excavation crew arrived on site with a System 4000 Air/Vacuum Excavation truck. Excavation began around Pipe 1. At a depth of approximately 3.3-feet below ground surface (bgs), APS discovered that Pipe 1 was connected to a flat, steel surface. Excavation continued towards Pipe 3, which exposed a fourth pipe (Pipe 4) between Pipe 1 and Pipe 2. Pipe 4 terminated at approximately 3-inches bgs, preventing observation prior to excavation. All four pipes were connected to the flat surface of a cylindrical steel UST approximately 4.0-feet in diameter by 4.5-feet in height (approximately 420 gallons in capacity). When struck, the UST sounded hollow or partially-hollow. Loose piping that was not connected to the UST was discovered within the excavation area, which included a 1-foot long pipe and a 4-foot long pipe. The excavation was advanced to the north to the retaining wall area. No subgrade connections from the UST to the Jurgensen Trust Property were observed.
- Soil samples were collected for field screening throughout the advancement of the excavation, including along the pipes, at the pipe connections to the UST, and below the east and north sides of the UST. The field screening results did not indicate evidence of

petroleum odor, discoloration, sheen, or elevated PID readings in association with the soil.

- Pacific Crest was given permission to access the Building Addition and north-adjacent walkway from the building tenant. The Building Addition was observed to contain a sink and to be used for restaurant storage. Pacific Crest did not observe features indicating a “daylight” connection with the pipes in the Building Addition. In the walkway, two drums apparently dedicated to the storage of used cooking oil were moved and a 1.5-inch diameter pipe was observed beneath one of the drums. The pipe appeared to be in good condition and without rust, corrosion, or debris. Pacific Crest was able to push a stiff wire approximately 9-feet into the pipe. The historical use and purpose of the pipe discovered in the walkway is unknown.
- Field screening yielded no observation of petroleum-impacted soils. Therefore, APS was instructed to backfill the excavation with the removed soil.

## **FINDINGS**

The findings of the Pipe Stub Investigation indicate the following:

- The Pipe Stub Investigation activities led to the discovery of a 420-gallon “orphan” UST located on the Robbins Property. The UST is not registered with Ecology and has been out of service for more than one year. The content and historical use of the UST are unknown. Ecology UST regulations (Chapter 173-360 WAC) require that USTs that have been out of service for more than one year undergo permanent decommissioning and site assessment activities by International Code Council (ICC)-certified UST service providers. Pacific Crest suggests that the responsible party (owner) of the UST proceed with the expeditious permanent closure of the UST in accordance with Ecology and City of Seattle regulations.
- The Pipe Stub Investigation did not provide any indication of the presence of the three alleged historical “gasol” USTs on the Jurgensen Trust Property.

## **CLOSING**

We trust that this letter report presents sufficient information to further support Ecology’s understanding of this Site. Please call the undersigned at (425) 888-4990 if you have any questions or comments.

Sincerely,

**PACIFIC CREST ENVIRONMENTAL, LLC**



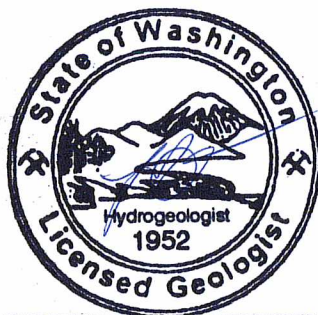
Ellen Harrington  
Staff Geologist



Lauren Carroll, L.G., L.H.G.  
Principal Hydrogeologist

Attachments: Figure 1 – Site Location Map  
Figure 2 – Pipe Investigation and Soil Vacuum Excavation Area  
Appendix A – Photographic Log

cc: Mr. Clark Davis; Davis Law Office, PLLC  
Mr. James Murphy; Murphy Armstrong & Felton, LLP  
Mr. W.C. Twig Mills, JD, CFP; Washington Trust Bank  
Ms. Jo M. Flannery; Ryan, Swanson & Cleveland, PLLC



**Lauren L. G. Carroll**

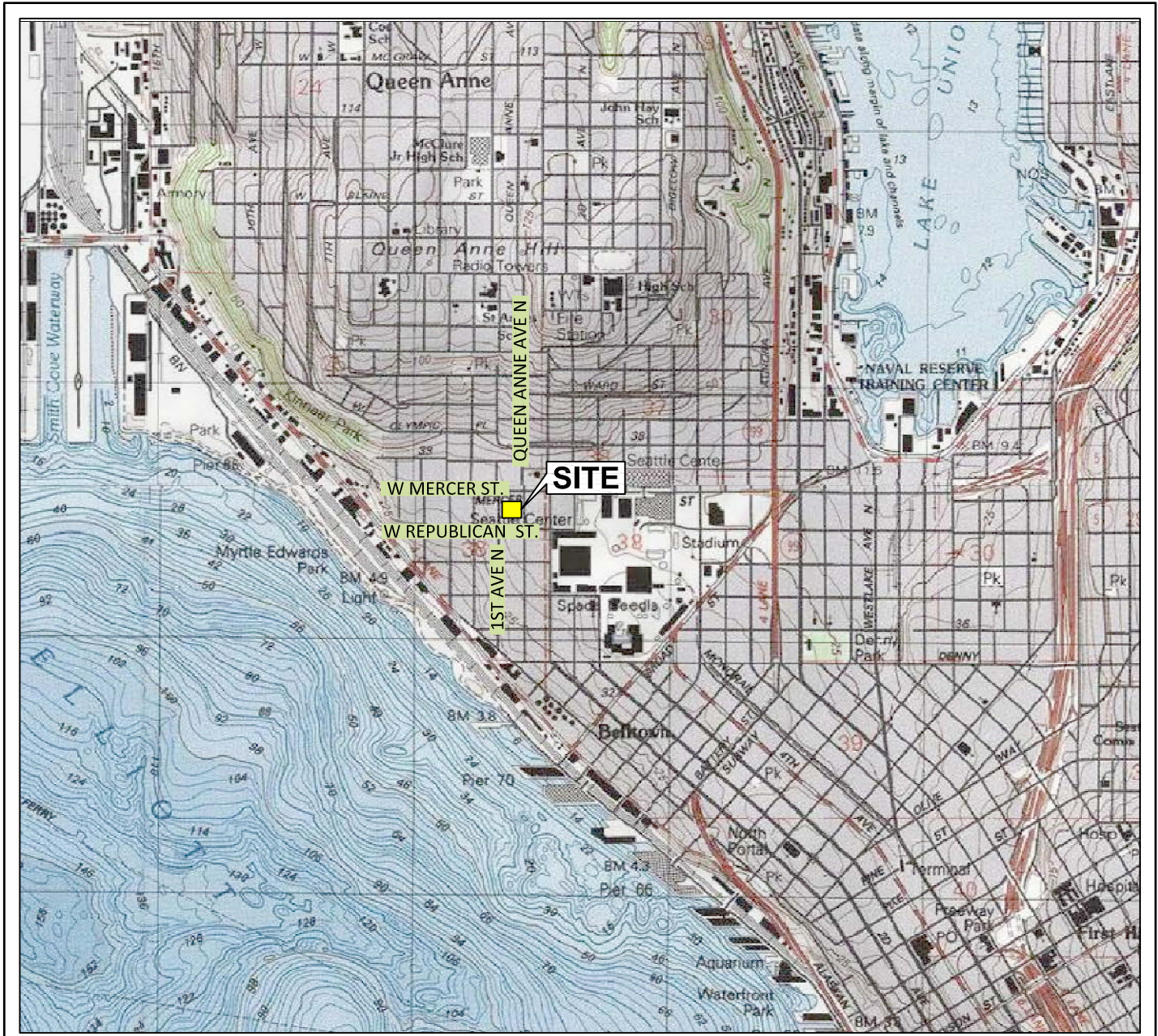


**FIGURES**

**PIPE STUB INVESTIGATION**

JURGENSEN TRUST AND ROBBINS PROPERTIES  
513 TO 525 QUEEN ANNE AVENUE NORTH  
SEATTLE, WASHINGTON

PACIFIC CREST NO. 108-004



Source: TOPO! 2007



0 2000  
Approximate Scale in Feet

4/14/2016 108-004-005.dwg FIG 1

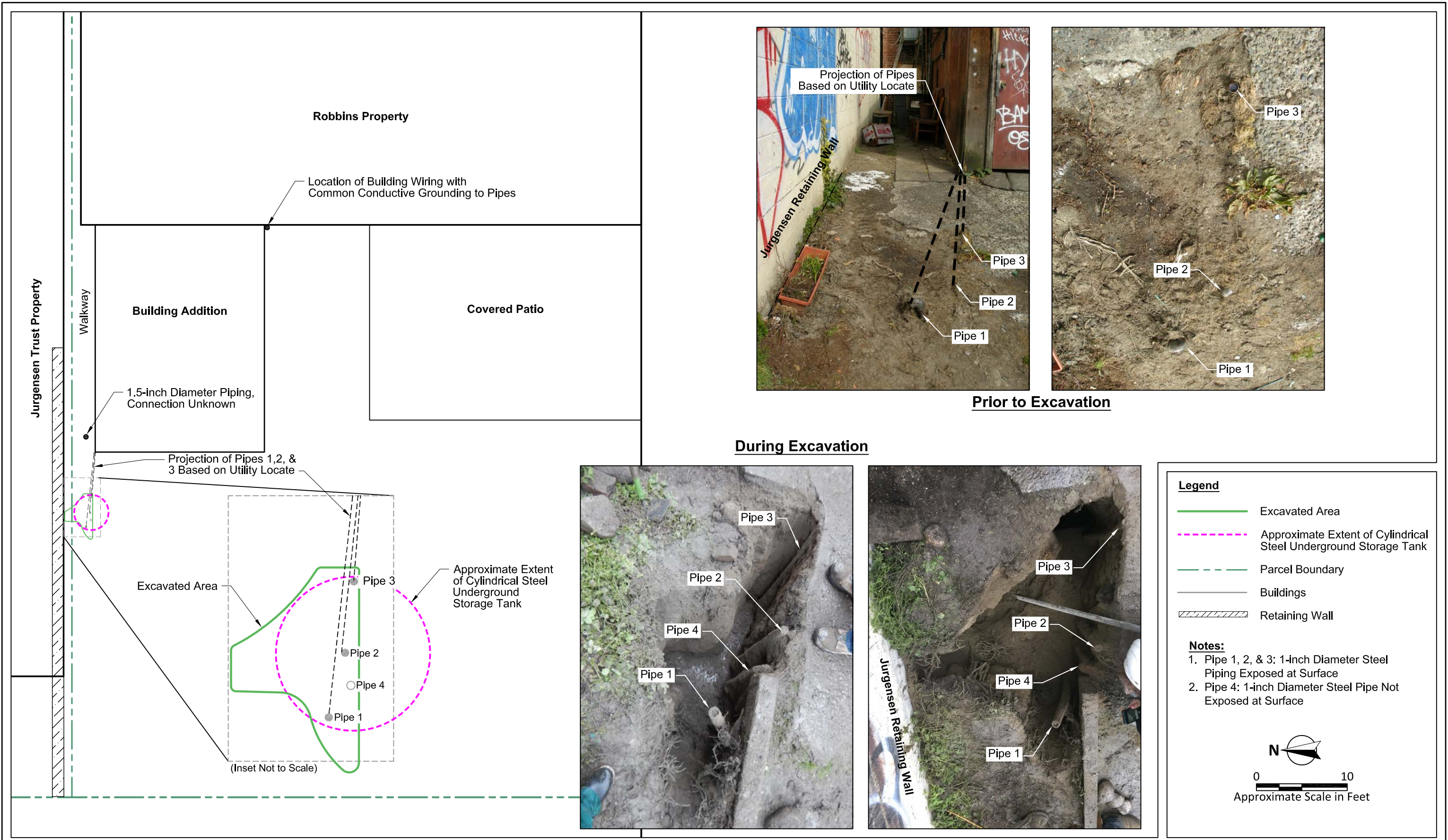


Jurgensen Trust / Robbins Property  
513 to 525 Queen Anne Avenue North  
Seattle, Washington  
  
PN: 108-004

**Figure 1**  
Site Location Map



2/14/2017 108-004-028.dwg FIG 2 Pipe Stubs



**Figure 2**

Pipe Investigation and Soil Vacuum Excavation Area



Jurgensen Trust / Robbins Property  
513 to 525 Queen Anne Avenue North  
Seattle, Washington

PN: 108-004

**APPENDIX A  
PHOTOGRAPH LOG**

**PIPE STUB INVESTIGATION**

JURGENSEN TRUST AND ROBBINS PROPERTIES  
513 TO 525 QUEEN ANNE AVENUE NORTH  
SEATTLE, WASHINGTON

PACIFIC CREST NO. 108-004

# PHOTOGRAPH LOG

**Photograph 1:** View of excavation area, retaining wall, and Jurgensen building prior to excavation activities, facing northwest.

**Photograph 2:** View of fenced alley and Building Addition, facing east. Orange paint marks the continuation of Pipes 2 and 3 identified by the utility locator. The locate marking for Pipe 1 was located directly north of the red brick in view, but was obscured by heavy rainfall.

**Photograph 3:** Southern border of the Building Addition, facing east, showing wiring identified by the utility locator to be conductively grounded to the same location as the three pipes. The wiring led from the window behind the tree pictured, and continued below ground and potentially beneath the Building Addition.

**Photograph 4:** Excavation in progress adjacent to Pipe 3, facing east.

**Photograph 5:** Excavation in progress with four pipes and steel tank surface in view approximately 3.3 feet bgs (Pipe 1 on the far-left [west], followed by Pipe 4, Pipe 2, and Pipe 3). The tank was observed to be cylindrical and have a diameter of approximately 4.0 feet.

**Photograph 6:** View along Pipe 3 and the eastern sidewall of the tank. The tank was determined to be 4.5 feet in height. The excavation reached approximately 8 feet bgs and no groundwater or petroleum impacted soil were observed.

**Photograph 7:** View of total extent of the excavation, with the Jurgensen building retaining wall in view.

**Photograph 8:** Loose pipes discovered within the excavation area, the first being approximately 1.0 feet in length and the second 4.0 feet in length.

**Photograph 9:** View of the northern extent of the excavation area, facing north with the Jurgensen building in the background. There were no features observed extending across the property boundary.

**Photograph 10:** View inside of the Building Addition, facing east. A sink, several boxes, and restaurant supplies were observed.

**Photograph 11:** View of the walkway located north-adjacent to the Building Addition, facing east. Pictured are two drums apparently used to store cooking oil.

**Photograph 12:** A pipe was discovered beneath one of the cooking oil drums, facing west. The pipe was unfilled and appeared to extend to at least 9.0 feet bgs.

**Photograph 13:** View of the excavation area after backfilling, facing west-northwest. Field screening did not indicate the presence of petroleum-impacted materials; therefore, the excavated soil was backfilled into the excavated area.





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**Photograph 2:** View of fenced alley and Building Addition, facing east. Orange paint marks the continuation of Pipes 2 and 3 identified by the utility locator. The locate marking for Pipe 1 was located directly north of the red brick in view, but was obscured by heavy rainfall.





**Photograph 3:** Southern border of the Building Addition, facing east, showing wiring identified by the utility locator to be conductively grounded to the same location as the three pipes. The wiring led from the window behind the tree pictured, and continued below ground and potentially beneath the Building Addition.



**Photograph 4:** Excavation in progress adjacent to Pipe 3, facing east.





**Photograph 5:** Excavation in progress with four pipes and steel tank surface in view approximately 3.3 feet bgs (Pipe 1 on the far-left [west], followed by Pipe 4, Pipe 2, and Pipe 3). The tank was observed to be cylindrical and have a diameter of approximately 4.0 feet.



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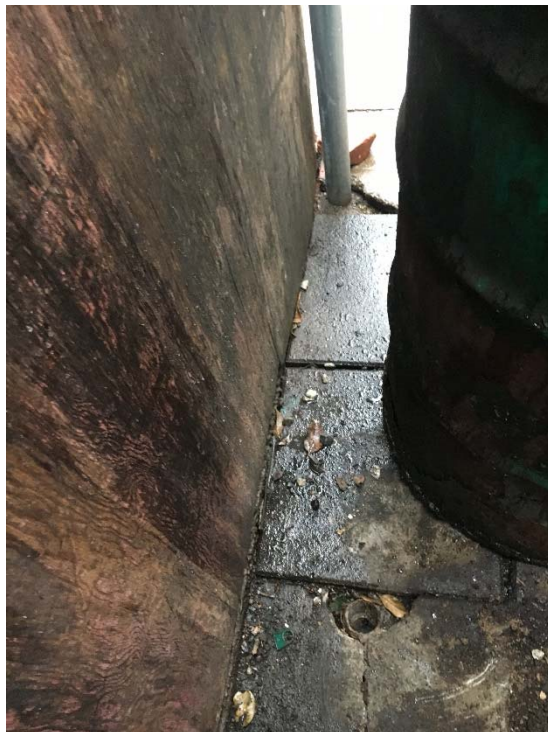


**Photograph 10:** View inside of the Building Addition, facing east. A sink, several boxes, and restaurant supplies were observed.





**Photograph 11:** View of the walkway located north-adjacent to the Building Addition, facing east. Pictured are two drums apparently used to store cooking oil.



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**Photograph 13:** View of the excavation area after backfilling, facing west-northwest. Field screening did not indicate the presence of petroleum-impacted materials; therefore, the excavated soil was backfilled into the excavated area.

## Lauren Carroll

Ecology needs to put science first in its decision-making process, and prioritize true risk from there. From my review of state-wide projects, municipalities and ports receive millions of dollars in taxpayer funded MTCA Remedial Action Grants based on flimsy science. Sites with little to no risk are hyped up so that Ecology will write an Agreed Order that includes an interim action, so that a new park or overpass is funded in the name of a cleanup. OK, but no one got hurt (besides the taxpayer).

Much of the administrative language in the new rule seems to be policy written to make the RAG funding even easier for ports and municipalities to get their hands on.

On the flip side, the lack of thorough scientific oversight at these sites is frightening with regard to what is pushed beneath the radar. Example:

Ecology and Environment conducted a Targeted Brownfield Assessment (TBA) at the Seaport Landing Site in Aberdeen. This site was a former mill donated by Weyerhaeuser for redevelopment as a park. The TBA states that concentrations of thallium in soil samples were "in line with naturally occurring background concentrations". Ecology (WAC 173-340-709) provides detailed procedures for calculating site-specific natural background concentrations. These procedures were not followed; the thallium concentrations are not background. Thallium is known as "the poisoner's poison".

The concentrations of thallium in soil samples collected at the site by E&E ranged from 1.8 milligrams per kilogram (mg/kg) to 6.2 mg/kg, which exceed MTCA's direct contact cleanup level of 0.8 mg/kg. Lethal doses of thallium in humans are within this range.

Thallium was used as a rodenticide and insecticide until it was banned in 1972. It is easily taken up and concentrated in plant tissues. In 1954, Weyerhaeuser participated in a study in which pine forests were treated with thallium sulfate as a rodenticide. It is postulated that thallium in the surface soils is related to the metal being concentrated in wood ash from refuse burners that were spread out on the property.

Seaport Landing is being redeveloped as a park and recreational area with grass and open areas.

## J.R. Simplot Company

The attached comments are on behalf of the J.R. Simplot Company regarding Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations - Proposed Rule Amendments.



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April 13, 2023

**SUBMITTED VIA: <https://tcp.ecology.commentinput.com/?id=uJVx2>  
Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations - Proposed Rule Amendments**

Sarah Wollwage  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Dear Ms. Wollwage:

Washington Department of Ecology (Ecology) proposed a draft rule<sup>1</sup> on February 15, 2023, which will make changes including:

- Update the general provisions and defined terms in Parts 1 and 2 of the chapter.
- Update the requirements for release reporting, initial investigation, site hazard assessment and ranking, site listing, and program planning under Part 3 of the chapter.
- Update the requirements for conducting a remedial investigation and selecting a cleanup action for a site in Part 3 of the chapter.
- Update the requirements for public participation and tribal engagement in Part 6 of the chapter.
- Incorporate changes to the cleanup program specified in Chapter [70A.305](#) RCW, the Model Toxics Control Act.

The J.R. Simplot Company (Simplot) is a privately held agribusiness corporation based in Boise, Idaho. The corporation is engaged in a number of businesses including food processing, farming, fertilizer manufacturing, mining, ranching and other enterprises related to agriculture. Simplot has operations throughout the United States, including a number of operations in Washington state. These operations are or may be subject to many environmental regulatory requirements, including the Model Toxics Control Act (MTCA) Regulations in Chapter 173-340 of the Washington Administrative Code (WAC). Thus, this rulemaking is of direct interest to the company, and we offer the following comments.

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<sup>1</sup> Washington Department of Ecology. 15 February 2022. *MTCA Cleanup Rulemaking, Chapter 173-340 WAC, Proposed Rule, Text with Tracked and Footnoted Changes*. <https://ecology.wa.gov/DOE/files/bf/bfc8fd5c-c009-43cf-a1ef-b695ef63e575.pdf>



## J.R. Simplot Comments on MTCA Cleanup Rulemaking, Chapter 173-340 WAC

### **Specific Comments: Model Toxics Control Act (MTCA), Chapter 173-340 Washington Administrative Code (WAC) Proposed Rule (“the Rule”)**

#### **Part 1**

- 1 WAC 173-430-110(1), Applicability  
Proposed revision replaces “remedy” with “clean up”, as a verb. Simplot recommends that the term “remedy” be maintained throughout, as the results of evaluating alternatives within a Feasibility Study per *WAC-173-340-351* may not result in a “clean up” action, such as soil removal or active groundwater treatment. The same comment applies for *WAC-173-340-330.5(C)(v)*.
  
- 2 WAC 173-340-120, Overview of Cleanup Process  
Proposed revision adds the new paragraph *173-340-120(9)(b), Construction*, with the allowance that, “During and upon completion of construction, ecology may inspect the site and provide construction oversight.” Simplot is concerned that undefined “construction oversight” both “during and upon completion of construction” has the potential to add significant costs to the Responsible Party. Per *WAC 173-340-550, Payment of Remedial Action Costs*, “The department shall charge an hourly rate based on direct staff costs plus support costs.” These proposed construction oversight fees should include a “not to exceed” amount, in line with accepted industry standards, such as “During and upon completion of construction, ecology may inspect the site and provide construction oversight, with cost recovery eligibility not to exceed five percent of total construction costs” (proposed addition emphasized).
  
- 3 WAC 173-340-130(5), Administrative Principles  
Proposed revisions expand on including the interests of “vulnerable populations and overburdened communities”. Simplot understands that this language is included throughout the proposed revisions to MTCA per Revised Code of Washington (RCW), Title 70A, Chapter 02, Environmental Justice (Chapter 70A.02 RCW). As detailed below in the discussion of proposed *WAC 173-340-200*, considering “human health” throughout the MTCA process already includes the “vulnerable populations and overburdened communities” human population subset.
  
- 4 WAC 173-340-130(6), Administrative Principles  
Proposed revisions also include clarification on engaging and collaborating with Indian tribes, including “continuous opportunities for collaboration”. Simplot recommends that the opportunities for collaboration (such as participation in the public comment period opportunities in *WAC 173-340-120*) be applied in a consistent manner across all public stakeholder groups, and that “continuous opportunities for collaboration” does not inadvertently result in substantially and/or unexpectedly changing course outside of the typical MTCA process or causing undue delay in remedy implementation (for example, receiving comments after a Cleanup Action Plan has gone through the public comment process and is finalized, resulting in significant change in selected remedy or substantial delays in implementation).



**Part 2**

*WAC 173-340-200, Definitions*

5 Proposed revisions include a new definition for “Contaminated site”. The associated  
footnote states that the term “hazardous waste site” will be replaced with “contaminated  
site” in the updated Rule. The definition of “contaminated site” includes the detail that  
ecology needs to “confirm whether there is a threat to human health or the environment  
posed by a release or threatened release” (emphasis added). Additionally, a new  
6 definition for “Contaminated sites list” is included, and the footnote mentions that the  
current “Confirmed and suspected contaminated sites list” (emphasis added) will be  
replaced with “Contaminated sites list”. The word “suspected” could indicate a site is in  
an investigative phase and prevent unfounded assumptions by parties not involved in the  
details of the site. Simplot requests that the word “suspected” not be dropped in the  
updated list title. This comment applies to *WAC 173-340-330, Contaminated Site List* as  
well.

*WAC 173-340-200, Definitions*

7 Proposed revisions include an updated definition of “Reasonable maximum exposure”,  
which includes the addition of, “including a vulnerable population or an overburdened  
community.” Previously, the definition read as follows: “the highest exposure that can be  
reasonably expected to occur for a human or other living organisms, at a site under current  
and potential future site use.” By default, characterization of reasonable maximum  
exposure includes “human and other living organisms”, which would include all  
populations of all affected communities, including vulnerable and overburdened  
populations, within and around a project area.

**Part 3**

*WAC 173-340-310, Initial Investigation*

8 Proposed revisions include adding the purpose, “c. Whether the population that may be  
threatened may include a vulnerable population or an overburdened community”, in  
addition to “b. Whether the release or threatened release may pose a threat to human  
health or the environment”. The footnote in the proposed rule also notes that item c. is  
needed to complete an initial SHARP assessment under Section 320 and helps to  
prioritize sites for further action under Section 340. The purpose of the Initial Investigation  
is greatly expanded in the proposed rule, including this redundant language to human  
health risks.

*WAC 173-340-340(1), Program Planning and Assessment – Strategic Plan*

9 This section discusses Ecology’s newly proposed comprehensive and integrated strategic  
plan for cleaning up contaminated sites. As noted in the proposed rule, “The strategic  
plan must prioritize vulnerable populations and overburdened communities that may be  
impacted by a contaminated site, and consider the resource allocation factors in  
subsection (2) of this section.” The resource allocation factors are as follows:

*2. Resource allocation. In fulfilling the objectives of this chapter, ecology  
will allocate staffing and capital funds based on the following factors:*

*a. The threats posed by a contaminated site to human health*

*and the environment;*

*b. Whether the population threatened by a contaminated site may include a vulnerable population or an overburdened community;*

*c. The land reuse potential and planning for a contaminated site; and*

*d. Other factors specific by the legislature or ecology.*

10 As the section of the proposed rule reads, it appears that a subset of the population would be favored in prioritizing resources to contaminated sites. It is unclear the weight of each factor when deciding how resources should be allocated. It seems that item b. would inherently be included in item a., as item a. includes concerns of human health. Similarly, proposed *WAC 173-340-340(3) Program Planning and Assessment – Performance Assessment*, describes “including its progress in cleaning up sites that may impact vulnerable populations and overburdened communities...” as the only criteria emphasized in this section.

11 Similarly, in proposed *WAC 173-340-351(6)(f)(vii), Feasibility Study – Step 6: Report Results*, vulnerable populations and overburdened communities are the only criteria emphasized in this section: “Documentation of the detailed evaluation process in Step 4 of the feasibility study, including how impacts on vulnerable populations and overburdened communities were considered in the evaluation, and the basis for eliminating any alternative from further evaluation.”

12 *WAC 173-340-360(3)(c)(iii)(C), Nonpermanent Groundwater Cleanup*  
Proposed revisions to action requirements include the requirement to “Provide an alternate water supply or treatment if the cleanup action does not protect an existing use of the groundwater. A cleanup action is not protective of an existing use if a hazardous substance concentration exceeds the protective groundwater concentration for that use.” Simplot does not agree that providing an alternate water supply or treatment in every instance that a cleanup action is not protective of an existing use of groundwater should be required or is even feasible for all instances. Proposed *173-340-120(10), Overview of Cleanup Process – Cleanup Completion*, describes an example of “nonpermanent cleanup actions” “such as those involving containment of contamination”. If a contaminated water source is successfully contained, and an alternative water supply is readily available and/or already utilized, such as a deeper aquifer, then providing an alternate water supply or treatment should not be a general requirement included within the proposed rule; this should be determined on a case-by-case basis.

13 *WAC-173-340-360(5)(d)(iii)(A)(III) – Cleanup Action Requirements ... Factors*  
Proposed changes include adding, “The resilience of the alternative to climate change impacts” as a required consideration when evaluating long-term effectiveness of a cleanup alternative. Guidance in evaluating an alternative for

**J.R. Simplot Comments on MTCA Cleanup Rulemaking, Chapter 173-340 WAC**

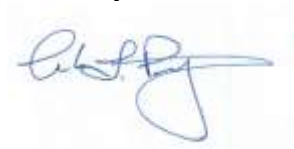
resilience to climate change should be cited here to ensure a scientific and consistent process is used across projects.

**Summary**

In Summary, the proposed revisions to the WAC include a number of items that lack specificity or clarity on implementation, that could result in deviations from the MTCA process resulting in delays in implementing remedial activities, and include language changes that reduce Ecology's ability to tailor remediation activities to a specific site's need.

We appreciate the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan L. Prouty", is centered below the text "Sincerely,".

Alan L. Prouty  
Vice President, Environmental & Regulatory Affairs

## Twin Harbors Waterkeeper

- 1 1. Outreach to communities that are closest to, and affected by contaminated sites should be increased. In my town of Aberdeen and Cosmopolis, cleanup actions should have articles in the local newspaper. Local community groups should be contacted and offered information and presentations.
- 2 2. Cleanup actions in low income communities should be prioritized.
- 3 3. In my area of the Chehalis River Estuary, there are almost no cleanups occurring, yet there are over 161 contaminated sites. The Port of Grays Harbor appears to be an unwilling partner. Why? There are MANY MTCA sites on the Port's properties. Something needs to be done to begin cleanup on the Port's property.
- 4 4. Please increase the award of grant money to projects that incorporate environmental justice. Fund positions for language interpretation to increase language justice.
- 5 5. Cleanup of MTCA sites that are close to green spaces in low income communities should be prioritized.
- 6 6. Please add an equity element into the PPG application and PPG evaluation scoresheet.
- 7 7. Create an environmental justice board be created to ensure that environmental justice is adequately considered.

## City of Tacoma

Please see Tacoma's comments in the attached file.

**City of Tacoma Comments**  
**Proposed Amendments to Chapter 173-340 WAC**

**General comments**

1. Environmental Justice. Ecology has noted in the purpose statement preceding the draft rules that one purpose of the proposal is to “strengthen environmental justice principles when prioritizing and cleaning up sites”. Tacoma supports Ecology’s efforts to incorporate the HEAL Act (Ch. 70A.02 RCW) and notes the following proposed amendments at WAC 173-340 subsections, 100, 130 (5), 200, 340 (1), 340 (3), 350 (6)(g), 350 (6)(h), 351 (6)(b)(i)(B), 351 (6)(f)(vii), 357 (1), 360(3)(a), 360 (3)(d)(i), 360 (4)(c)(i), 360 (3)(d)(i), 360 (3)(d)(iii), 360 (3)(d)(iv), (600) (9)(a)(i), (600) (9)(b). While Tacoma supports these proposed changes, Tacoma has the following concerns:
  - 1.a. Each of the foregoing proposed amendments make reference to “vulnerable populations and overburdened communities.” While the terms “vulnerable populations” and “overburdened communities” are defined in the proposed rules by reference to the HEAL Act, the proposed rules do not establish the process to be used by Ecology to evaluate and determine the presence or existence of a vulnerable population or overburdened community. Nor do the proposed rules establish how a person or entity subject to the proposed regulations will determine the presence or existence of a vulnerable population or overburdened community. Tacoma, for example, has created an equity index map based upon 32 data points in five determinant categories. This map identifies where residents have less access to opportunities. While Tacoma believes that the equity index identifies vulnerable populations and overburdened communities, the proposed rules provide no guidance regarding how Ecology will determine if use of the Tacoma equity index meets Ecology’s requirements under these proposed amendments and whether Ecology will allow for consideration of tools such as the Tacoma equity index to meet the requirements of the proposed new rules.
  - 1.b. Obligations under the above referenced proposed rules include requirements that are triggered when a release or threatened release “may” include a vulnerable population. For example, the proposed amendment to WAC 173-340-320 (1)(e) provides that the site hazard assessment will be used to identify whether the population threatened “may” include a vulnerable population or an overburdened community. Use of the term “may” here and throughout the proposed rule amendments creates uncertainty regarding compliance obligations because the term “may” is synonymous with “possibility” or what is “possible”. Wherever this term is used throughout the proposed rules to create a compliance obligation, it would mean that those obligations are triggered whenever it is “possible” for an impact or event to occur. Because most things are possible, the use of this term as a qualifier for a compliance obligation simply means that if something is possible, the obligation is triggered. In the context of WAC 173-340-320 (1)(e), the proposed rule would require Ecology to determine if it is possible that a threatened population includes a vulnerable population or an overburdened community. Triggering obligations based upon the mere possibility of a release, threat or impact is not a standard at all. For example, Ecology’s proposed resource allocation rule WAC 173-340-340 (3) is triggered when a contaminated site “may” impact vulnerable populations and overburdened communities. Effectively, this proposed rule would trigger prioritization of resources not when a vulnerable population or overburdened community “is” impacted by a contaminated site, but when there is the mere possibility that a vulnerable population or overburdened community will be impacted. Such a rule does not appropriately target resources

because it has such broad application. In other words, the only time when resources would not be prioritized would be when Ecology has determined that it is not possible for a vulnerable population or overburdened community to be impacted. This effectively eviscerates the well-intended and statutorily mandated efforts by Ecology to implement meaningful requirements to address environmental equity.

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1.c. While the proposed rule amendments impose requirements that consider vulnerable populations and overburdened communities, the rules lack any substantive criteria with respect to how and if impacts to vulnerable populations and overburdened communities are evaluated differently than impacts to other populations. For example, proposed amendment to WAC 173-340-360 establishes the requirements for cleanup actions and for determining whether a cleanup action alternative meets those requirements. Subsection (3)(a)(i) provides that a cleanup action must, among other things, “[p]rotect human health and the environment, including vulnerable populations and overburdened communities.” It is unclear how or if this requirement is different than the current requirement that requires the cleanup action to “[p]rotect human health and the environment.” The current language already includes protection of vulnerable populations and overburdened communities. The footnote (No. 367) suggests that this addition, and others like it, “emphasize that cleanup actions must protect vulnerable populations and overburdened communities”. However, because there are no additional criteria or requirements to address what additional obligations this emphasis imposes, there appears to be no substantive difference in the regulations based upon this change and others like it. Further, if there are substantive changes intended, those changes are not reflected in these proposed amendments.

2. On Ecology’s webpage (<https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites>) under the heading “Find cleanup sites”, there appear to be two formats which may or may not be intended to represent the same information. There is a map tool (titled “What’s in my neighborhood” and a list (titled “Cleanup and Tank Search”). The information provided in these two formats is not the same (the list and map tool do not contain the same set of sites) .

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2a. Please clarify where the authorization for the list and the map come from. WAC 173-340 does not appear to mention the map format. Please clarify and add language to the WAC as needed. The webpages do not reference the WAC and/or RCW which is confusing to users.

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2b. City of Tacoma staff have been told by Ecology staff that there is only one way to remove a site from the “what’s in my neighborhood” map and that is to complete a voluntary cleanup, however, WAC 173-340 contains several pathways to remove a site from the Contaminated sites list. Please clarify and add language to the WAC as needed.

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3. Throughout WAC 173-340; including sections: 173-340-120(2) and (4), 173-340-120(13)(a), and other locations, it states that information will be “provided on ecology’s website” Ecology has a large and multipage website with a huge amount of information. When users attempt to locate a specific item referenced in the WAC, it is difficult to find. Please provide more assistance in the WAC and ecology’s website to help users find specific information referenced in the WAC and/or RCW. The specific information on the website should reference back to the appropriate WAC and/or RCW. Tacoma recommends that each webpage indicates the WAC and/or RCW sections that are presented on or related to that webpage.

For example, in 173-340-120(2) it is stated “For sites where remedial action is necessary, ecology also notifies the public in the *Contaminated Site Register* and provides information about the site on ecology’s website under WAC 173-340-600.” (highlighting added) The following webpage was found on ecology’s website: <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites> Does the highlighted text above refer to this webpage? Does the highlighted text refer to the “What’s in My Neighborhood”, the “Cleanup and Tank Search” or the “Site Register”, or does it refer to something entirely different? It is understood that ecology is trying to present its website in “plain language”, however, references to appropriate governing legislature will help users who are attempting to navigate the regulatory environment.

**WAC Specific Section Comments**

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4. WAC 173-340-120(2) Initial investigation. Please clarify in the WAC what happens if Ecology does not undertake the initial investigation.

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5. WAC 173-340-120 (4)(a) Contaminated sites list. Clarify the exact name and location of this list on ecology’s website. Is this list the “Hazardous sites list” available at <https://apps.ecology.wa.gov/publications/SummaryPages/0909042B.html> or “What’s in My Neighborhood”, the “Cleanup and Tank Search” available at webpage <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites> or the Contaminated Site Register referenced in WAC 173-340-120 (13)(a)(iii) or is it another list? The list itself should reference the appropriate authorizing WAC and/or RCW.

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6. WAC 173-340-120 (4)(b) No further action sites list. Clarify the exact name and location of this list on ecology’s website. The list itself should reference the appropriate authorizing WAC and/or RCW.

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7. WAC 173-340-120 (13)(a)(ii) – include how a person would request to be notified under this section and other sections in the WAC that contain similar language.

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8. WAC 173-340-120 (13)(a)(iii) Contaminated Site Register referenced in Please provide a definition of the “Contaminated Site Register” and relate it to the contaminated sites list. A search of ecology’s website found the following item “Site register” on this webpage <https://apps.ecology.wa.gov/publications/UIPages/PublicationList.aspx?IndexTypeName=Topic&NameValue=Site+Register&DocumentTypeName=Newsletter> Is the Site Register intended to be the Contaminated Site Register? Please clarify. If this is intended to be the Contaminated Site Register, please include WAC 173-340 in the title of the document for clarity.

13

9. WAC 173-340-300(2)(a) Exemptions. The section states “An owner or operator does not need to report the following releases under this section”. Item (x) lists an exemption for a release to a permitted wastewater facility. A release by definition means entry of any hazardous substance into the environment. RCW 70A.305.020(32). It is unclear why this exemption is included for a wastewater facility because such facilities do not meet the definition of “environment”. “Environment” means any plant, animal, natural resource, surface water (including underlying sediments), groundwater, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington. WAC 173-340-200. A wastewater facility is none of these things. Please provide an explanation clarifying why these facilities are listed in this section as an exception. Additionally, it is unclear why an exemption is listed for wastewater facilities but not for stormwater systems and



facilities. Please provide an explanation regarding why stormwater systems and facilities are not also exempt.

**10. Definitions Section Comments**

- 14 10.a “Contaminated sites list” called “contaminated sites list” in WAC 173-340 and “hazardous sites list” under RCW Ch 70A.305. If Ecology intends to have one list that is called two different things, please ensure that on the actual list, both names and the WAC and RCW references are included for clarity.
- 15 10.b “Site” Per the definitions in the WAC, “site” means the same as “facility”. In the definition of facility, the word site is used. This creates confusion, please revise language to clarify intent.

## Commenter #9 - Port of Seattle

To: Clint Stanovsky, Rulemaking Lead  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

Date: April 13, 2023

Subject: Comments on the Proposed Revisions to MTCA Cleanup Rulemaking Chapter  
173-340 Washington Administrative Code

Dear Mr. Stanovsky:

Thank you for the opportunity to review and comment on the Washington Department of Ecology's proposed revision to the state cleanup law, the Model Toxics Control Act (MTCA). The Port of Seattle appreciates the effort that has gone into these revisions and looks forward to the ongoing successful implementation of cleanups in Washington under this revised regulation. In general, the Port is in strong support of the changes. There are a few areas where we would like to provide feedback, with the intent of supporting Ecology's efforts to streamline and clarify the process for site cleanup, as well as to clarify some details regarding the state's expectations for investigation and cleanup. The Port provides the following comments for your consideration in finalization of the rule revision:

1. Inclusion of Environmental Justice considerations: The Port of Seattle fully supports revision of the rule to include the consideration of overburdened communities and vulnerable populations more clearly and directly in the cleanup process. We agree that this is a key consideration during the site prioritization by Ecology, and the initial determination of site ranking through the Site Hazard Assessment process. Related to Ecology's changes to include specific consideration of overburdened communities and vulnerable populations within specific site investigations and reports, we strongly encourage Ecology to consider including more specific detail on the following:
  2. a. What specifically is expected during the Remedial Investigation and Feasibility Study process for consideration of these communities and populations, and how this consideration may vary from a standard assessment of human health impacts.
  3. b. Clarity on whether sites located within overburdened communities are expected to modify assumptions used for the evaluation of human health exposure.

- 4 c. Clarity on how the determination of the presence of a vulnerable population is determined for a site. For example, the current language in the Land and Resource Use section of Chapter 173-340-350 states *“Sufficient information must be collected on the present and proposed land and resource uses, comprehensive plan, and zoning for the site and potentially affected areas to determine the exposure or potential exposure of human and ecological receptors, including vulnerable populations and overburdened communities to hazardous substances at the site”*. Please consider providing further direction on what level of information may be considered sufficient, or how data on land use or comprehensive plans or zoning would provide information useful to the determination of the presence of vulnerable populations at a site – it is not clear how land use, zoning, or comprehensive plan information would provide sufficient information to assess exposure to vulnerable populations.
- 5 d. Clarification on expectations for how data related to vulnerable populations is to be collected and included in site reports and documents – for example, is Ecology expecting that demographic information for the worker population at industrial sites would be collected to complete an industrial worker exposure scenario evaluation?
- 6 e. Clarity on how quantitative risk assessments may be used in evaluation of vulnerable populations (WAC 173-340-357(1)). The current process for quantitative risk assessment already considers children and pregnant women as end-points/receptors, so additional information on what Ecology’s expectations are regarding modifications to a risk assessment calculation for consideration of defined vulnerable populations would be very helpful to understand. Currently, there is no specific language regarding this in the discussion of Human Health Risk Assessment parameters detailed in 173-340-357(2).

7 The Port encourages careful consideration of these expectations, as collection and publication of demographic data in cleanup documents could produce information that entities and individuals may find sensitive. Relying on individuals in overburdened communities/vulnerable populations to self-report demographic information unjustly adds to their burden and may not accurately reflect demographics for the site vicinity as a whole (for example, native English speakers may be more likely to respond to demographics surveys).

- 8 2. Ecology Resource Concerns: The proposed rule revisions include multiple new or expanded efforts for Ecology staff. This includes the development and maintenance of a No Further Action Sites List, and re-analysis of all existing MTCA sites for Site Hazard Assessment as primary examples. The Port strongly encourages Ecology to consider the effort required both to initiate these new processes, as well as efforts to maintain

them, given Ecology staff are already supporting extensive workloads. Maintaining these types of registers or lists is critical to their use and relevance; if the lists are not updated and maintained in a timely manner, they may not provide the benefit intended and could inadvertently hinder transparency if they are not correct or up-to-date. Along these lines, we also strongly recommend that any site lists, such as the No Further Action Sites List be caveated that the list may not be an accurate representation of current site status. In instances where financing or business transactions depend on the No Further Action status of a site, having timely accurate listing, or noting that site status may not be accurately represented by the list may be critical to some sites undergoing activity in short timeframes. This comment also applies to the institutional control or periodic review status of sites on the No Further Action Sites List. There are many Ecology site webpages today that do not represent current status and condition. Ecology's ability to maintain accurate status on public-facing lists should be considered before committing to additional staff responsibilities.

- 9 3. Specific comment: Page 46 is missing from the redline document published for review.
- 10 4. Section 173-340-350 has been revised to focus on the purpose and process for completing a Remedial Investigation, however, sections (3) and (6)(j) of this chapter continue to discuss Feasibility Studies. Please consider removal of discussion of feasibility study-related topics in this remedial investigation chapter, as this can lead to confusion, as the Feasibility Study section is now separately detailed in Section 173-340-351.
- 11 5. Cleanup Action Requirements Text Revisions. The Port fully supports the revisions made for clarity and flow of Section 173-340-360 Cleanup action requirements. We strongly encourage Ecology to consider providing additional detail or explanation of the General Requirements included in subsection (3)(a), specifically:
  - 12 a. Section (v) describing expectations for resilience to climate change impacts – please consider including clarification on what Ecology considers or would use to consider what would have a “high likelihood of occurring” and what would be defined as a “severely compromising long-term effectiveness.” It is unclear what the definitions of “high likelihood” and “severely compromising” are, and how this analysis can be done without a consistent understanding of how these terms are defined or determined.
  - 13 b. Section (vii) notes that cleanups may not rely primarily on institutional controls or monitoring if it is technically possible to implement a more permanent cleanup action. We strongly recommend removal or revision of this requirement. The Disproportionate Cost Analysis (DCA) process is conducted in the feasibility study for the purpose of determining what remedial action is permanent to the maximum extent practicable. This evaluation considers many

factors in addition to technicality, and this subsection noting only technical possibility is inconsistent with the DCA and process for selection of a cleanup action. There are many cases, such as active industrial facilities, where institutional controls and monitoring may be the action that provides permanence to the maximum extent practicable. That scenario would be in conflict with this General requirement vii.

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- c. Similarly, Section (viii) is also repetitive of the process conducted in the DCA. Consider revision or removal of this subsection, as it does not appear to provide a requirement that is not already included in other areas, and could lead to confusion or conflict in the same way as subsection vii noted above.

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- d. We applaud your work to clearly define the expected process for completion of a disproportionate cost analysis. In subsection (5)(c)(iv)(B)(I), the decision step of Step 4 of the process introduces the determination on if costs are “disproportionate.” We request additional discussion or detail on what Ecology will consider to be disproportionate. The current footnotes do not provide any indication on how much of an incremental change would be considered “disproportionate.” Without this, the work to revise and clarify this section will not provide the key piece of information needed to complete the DCA process – what threshold Ecology considers to be “disproportionate.”

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- e. Subsection (5)(d)(iii)(B) of the same section provides detail on the criterion of Effectiveness over the long term, including a hierarchy of types of cleanup components. The highest-ranked cleanup component for Effectiveness over the long term is Reuse or Recycling, placing this higher than destruction or detoxification. The Port does not understand or agree with this hierarchy ranking in that, similar to disposal or containment, reuse or recycling does not provide for removal of the chemical from the site or environment/system. We understand Ecology’s interest to encourage reuse/recycling, however, we do not agree that ‘effectiveness over the long term’ is the appropriate place to do this.

17

- 6. Inadvertent Discovery Plans. The Port agrees inclusion of Inadvertent Discovery Plans as part of site investigation and construction plans is critical to proper identification and protection of tribal and historical resources. Currently, the rule does not appear to have any exemptions to the requirement for development of IDPs. We encourage Ecology to consider whether in some situations, such as sites with a known and documented history of filling at extents greater than the proposed work, sites that are not located within an area of any known historical population activity or use, or sites with multiple previous investigations and activities that have not resulted in identification of resources may be exempted from the requirement to develop IDPs. Language added to section 173-340-815 Cultural resource protection indicates IDPs

will be required at sites 'capable of affecting a cultural resource,' but all earlier discussions of IDPs indicate all sites will be required to develop these plans. Please consider clarifying language around IDPs outside of Section 173-340-815 for clarity and consistency.

18

7. Written Opinions on Portions of Sites. Section 173-340-515 describing Independent remedial actions includes a deletion of existing rule text in subsection (5)(a)(ii) that says, *"Provide a written opinion regarding the remedial actions performed at the site and remove the site or a portion of the site from the contaminated sites list if the department has sufficient information..."* The Port strongly disagrees with this deletion. It is not uncommon for sites to include multiple parcels of land or extend over multiple different areas. By this simple deletion, Ecology is restricting the ability to close out individual areas of a site that have achieved cleanup goals to allow for redevelopment or property transfer to occur in those areas simply because they are identified as part of a larger site. We encourage you to rethink the large-scale impact this small deletion could have on the ability of owners to progressively cleanup and move forward on sufficiently cleaned parcels while contamination remains on others. This does not achieve the streamlined process and efficiency that Ecology intends, and it may discourage brownfields redevelopment efforts.

19

8. Part 7 Global Edits. Deletion of the word "potential" from "potential threats" is listed as a global change for Part 7 – Cleanup Standards. It seems that in some instances, when developing cleanup standards, use of "potential" would still be applicable, and that deletion of this term globally may not be appropriate. We support an effort by Ecology to ensure that deletion of potential is appropriate given the specific use of the term in each instance.

It is clear that tremendous effort to clarify, update and improve the cleanup rule has been conducted by Ecology over the past few years, and we appreciate and applaud your efforts. Please let us know if the Port can provide any support to this ongoing effort, or if there are any comments in this letter you would like to discuss in greater detail.

Thank you for your time and consideration of our comments. Please reach out to John Evered ([evered.j@portseattle.org](mailto:evered.j@portseattle.org)) on my staff with any questions or clarification needs on the comments provided above.

Sincerely,



Sandra Kilroy, Senior Director  
Environment and Sustainability  
Port of Seattle

April 14, 2023

**Via Electronic Mail - MTCARule@ecy.wa.gov**

Washington Department of Ecology  
c/o Clint Stanovsky  
P.O. Box 47600  
Olympia, WA 98504-7600

RE: Yakama Nation Preliminary-Draft Comments on the Washington State Department of Ecology's Exploratory Rule Making for the Model Toxics Control Act (MTCA) parts 1-6 and 8 (Public Comment Draft and SHARP Tool)

Dear Mr. Stanovsky:

The Yakama Nation provides the following PRELIMINARY-DRAFT comments as part of the phased approach to reviewing Ecology's draft proposed MTCA and SHARP Tool updates announced on February 15, 2023 and available for public comment through Sunday April 16, 2023. These comments were prepared in consultation with Tom Zeilman of Zeilman Law and Sherrie Duncan of Sky Environmental. The Yakama Nation has also previously provided comments to earlier rule-making phases on 12/30/2020, 1/28/2020, and 7/10/2020, 10/13/2023. The Yakama Nation comments were mostly disregarded by the State, especially regarding Tribal Treaty Resources issues. We appreciate the additional language regarding tribal engagement and cultural resource protection, but they do not fully address the marginalized role of the Tribes in cleanup or ensure adequate cleanup and restoration of Treaty Resources at cleanup sites. This is incredibly concerning to the Yakama Nation. Please see our comments below.

**1. Clear explanation of CERCLA applicability to all MTCA sites and tribes' legal authority is needed.**

Problem - In its earlier comments in 2019-2020 the Yakama Nation expressed concern that the new MTCA rules do not explicitly refer to CERCLA with enough clarity for PLPs or Ecology site managers to understand that Indian tribes' legal authority to participate in MTCA cleanups derives not from state law but federal law. For the most part MTCA refers to CERCLA only as it applies to NPL sites; however, CERCLA also applies to all MTCA sites, even if the state is solely using MTCA. Despite what it says in the new draft WAC 173-340-620(1), nowhere in MTCA's statutory language are tribal governments or interests even mentioned. The current effort to include tribes in the new rules (which indeed is long overdue and



appreciated) only derives from state statutes requiring all state agencies, whatever their duties and authorities, to collaborate with tribes and develop coordination frameworks for implementing environmental justice principles. RCW 43.376.020; RCW 70A.02.100. Indian tribes on the other hand derive their authority to engage in cleanups as support agencies from Sections 107 and 126 of CERCLA. These statutes allow tribes to recover both response costs and natural resource damages, as well as participate in cleanups on an equal basis with states. 42 U.S.C. §§ 9607(a), (f); § 9626(a).

Solution - Somewhere in the revised rules under WAC 173-340-620 the relevant CERCLA provisions should be cited so that PLPs and Ecology site managers have some clear idea of the tribes' legal authority.

## 2. Tribal funding expectations need to be stated.

Problem - As we have pointed out before, the sometimes herculean efforts that the Yakama Nation has had to make to recover its response costs for participating in MTCA cleanups in the Columbia Basin have severely hampered its engagement at some sites – merely because of the lack of knowledge among PLPs and their legal counsel regarding tribal authority in relation to state-led cleanups as already noted. Although Ecology currently has a Memorandum of Understanding with the Yakama Nation for all MTCA sites in Washington, the agency has been reluctant to support tribal efforts to get funding, with predictable results. This has led to, in the most recent case, litigation in U.S. District Court with one particular PLP over a site that should have been obviously of great tribal interest upstream from the Yakama Reservation. See *Confederated Tribes and Bands of the Yakima Nation v. City of Yakima*, E.D. Wash. No. 20-CV-03156, Order Denying Motions for Summary Judgment, ECF No. 87 (Aug. 1, 2022). Despite the directives in state statutes to collaborate with tribes, and to use environmental justice principles in cleanups that affect them, there will continue to be problems with tribal coordination if there is no staff or consultants available to tribes because the PLPs won't cough up the money to fund them. All the wonderful initiatives that are being planned to address Indian tribes' concerns about their health and resources, and to finally achieve true environmental justice, will get nowhere without direct communication between the tribes and the PLPs. This is nowhere to be seen in the new rules.

Solution - We suggest that the revised rules should require in a separate subsection WAC 173-340-130(6)(c) that PLPs immediately contact any affected tribes once Ecology has identified them at all Ecology-led sites, and also that they engage in negotiations for direct funding of tribal engagement if needed pursuant to Section 107(a) of CERCLA.

## 3. Clarity on reportable quantities is needed to ensure timely notification of tribes.

Problem - We have also asked Ecology in this process to make it clear that in Washington State the sheer number and broad geographic interests of Indian governments (especially regarding fishing, hunting, and gathering rights) mandate that PLPs notify the National Response Center (NRC) immediately so that EPA and concurrent federal authority is involved as soon as possible. We understand that the PLPs do not have to notify Ecology if the NRC has also been contacted, but under these rules it does not work the other way around. Which leaves potentially affected tribes in a situation where they may not know of a significant release until 90 days afterward under the new rule. Although for a major spill on a waterway this scenario is unlikely, it is still possible for other more remote areas and is not acceptable. Ecology may not even know of a tribe's status as "affected" under the new rules until some real damage to tribal interests and lands has been done already.

Solution - Therefore, we suggest that the revised rules in WAC 173-340-300 require PLPs to check the EPA's reportable quantities for National Contingency Plan notification of releases in case they may trigger



federal notice to the NRC. This will be helpful in educating PLPs on when national agency involvement is necessary (and help them avoid possible federal criminal prosecution under as well). This will also potentially give tribes an early heads up, which may also assist Ecology's response because it will allow site managers to identify affected tribes earlier through EPA.

#### **4. The definition of "Tribal Lands" is problematic and needs clarification.**

- 4 Problem - As expressed in our STAG webinar comments, the Yakama Nation also has some concerns about the definition of "tribal lands" in the revise rules, which has been lifted *verbatim* from the recent state environmental justice statute. Despite its seemingly broad language, this definition was not well thought out by the Washington Legislature and is poorly worded. First, the inclusion of the term "Indian country" as defined by federal law seems to imply that Ecology has some authority to apply MTCA within tribally-controlled lands and on reservations. However, Ecology has no regulatory authority over hazardous waste within Indian country, and under jurisdictional principles should have no MTCA authority there as well. See *Department of Ecology v. EPA*, 752 F.2d 1465 (9<sup>th</sup> Cir. 1985) (RCRA authority of State of Washington within Indian reservations preempted by EPA and tribal authority). Though that may not be the intent of the rule, any misunderstandings by site managers may cause confusion in the future. The more likely legislative intent was to acknowledge that MTCA cleanups may have impacts within Indian country from outside its boundaries, particularly if those tribal lands are downstream or adjacent to a cleanup site.

Solution - A suggestion would be to note a disclaimer to state jurisdiction somewhere and make sure it is clear that there is no MTCA authority specifically over "Indian country."

- 5 Problem - Second, the definition of "tribal lands" in RCW 70A.02.010(13), which is referenced in the revised rules, makes no mention of some of the most important sites for tribes in Washington - usual and accustomed treaty fishing areas, traditional treaty hunting and gathering areas, and treaty ceded lands. Nowhere are treaties even mentioned in the revised rules, which is astonishing given their significance to off-reservation tribal involvement in cleanups. Although these areas may be implicitly subsumed under the catch-all "other tribal sites protected by federal or state law," the absence of these important qualifications also makes it difficult or impossible for PLPs and site managers to look out for possible impacts to tribal treaty interests.

Solution - The more specific references to fishing and other resource use rights would again assist those at Ecology and others to understand the significance of potential contamination from releases, and the probable effects on resources for which Indian tribes are both traditional users and trustees. At a minimum the definition should include the term "treaty usual and accustomed and ceded areas" in the definition rather than relying exclusively on the statutory language in RCW 70A.02.010.

#### **6 5. Clearly stated habitat restoration and resource recovery goals are needed.**

Problem - When it comes to protecting the resources, the focus of MTCA is mostly limited to reducing/eliminating toxicity exposure pathways to environmental "receptor(s)", which is agreeably an important end-goal. Although habitat improvements are often a bi-product of cleanup, they are not an explicit or clearly stated goal of MTCA, nor is cleanup compatibility with local potential habitat restoration and resource recovery goals/opportunities explicitly considered within MTCA. As a result cleanup conversations surrounding habitat tend to be limited to habitat mitigation requirements resulting from cleanup alternatives permanently compromising habitat (ex. capping, containing, or hardscaping).

The State has a legal obligation to protect Endangered Species Act (ESA)-listed species and treaty-protected species and resources, including Critical Habitat and Essential Fish Habitat. That responsibility does not stop with toxics reduction and State cleanup rules must consider the compatibility of cleanup with habitat. However; the reality is that capping/containing/hardscaping contamination in place at or adjacent to potential habitat improvement areas will often preclude the ability to fund and implement the habitat improvement. It is often too costly to go back and remove contamination and institutional controls or the cleanup end product reduces the net environmental benefit of the project because of design considerations resulting from the proximity to sources of toxicity.

Solution - We are suggesting that Ecology state that habitat restoration and resource recovery are a goal of cleanup. The cleanup process should consider whether the cleanup alternatives are compatible with habitat restoration and resource recovery goals for the vicinity. Another way to say this is that **cleanups should facilitate/support/enable habitat restoration and recovery goals, and not preclude them**. The minimum mitigation requirements should not be the status quo.

For example, suggested edits (underlined) to MTCA include:

- WAC 173-340-360(3) Cleanup Action Requirements - addition of (e) **Future Use. Consider compatibility with current and future human and environmental uses, including climate change resiliency\***, habitat restoration, and resource recovery goals.
- \* (3)(a) climate resilience is more specific to long-term cleanup effectiveness, not habitat.

Something as simple as having a habitat restoration/resource recovery compatibility goal statement within MTCA would help allow for more comprehensive conversations and evaluations to enter the cleanup process. It would allow for consideration of habitat restoration goals and resource recovery beyond cleanup mitigation and NRD.

Examples of Washington sites where Ecology and/or others have done a good job at comprehensively addressing or enabling habitat restoration and resource recovery as an end goal of cleanup:

- Port Gamble
- Commencement Bay

Background There are only a couple places where habitat is mentioned within MTCA WAC and RCW and this language is severally limited.

- WAC 173-340-200 Sensitive Environment definition - includes critical habitat, which is emphasized as a cleanup priority in SHAs 173-340-320(4)(g) and UST release site characterization reports (173-340-450(5)(b)(iii))
- WAC Table 749-1 Simplified TEE Exposure Analysis Procedures - prioritizes higher quality habitat areas for application of terrestrial cleanup criteria
- Reduction of "receptor(s)" exposure to toxicity is the focus of MTCA WAC, not "habitat" restoration or resource recovery
- RCW 70A.305.190(5)(f)(ii) MTCA capitol account - allows for Ecology to provide grants or loans to local governments to fund activities that could include habitat restoration

Other habitat ARARs outside of MTCA: During STAG conversations, a member indicated that habitat was addressed in other ARARs. However, these ARARs typically do not consider or are significantly

limited in their consideration of habitat restoration goals or recovery of ESA listed species, tribally important species, or critical prey resources and habitat. For example:

- Habitat mitigation during cleanup – This is a helpful requirement, but is very limited in what it can provide. Inflexibility in mitigation requirements over time can even impede future natural process-based habitat restoration projects in the area.
- SEPA/NEPA – This process is helpful for protecting some types of existing habitat in a cleanup (unless outweighed in the DCA process). It does not evaluate compatibility of projects with habitat goals and resource recovery for an area.
- SMS/SCUM – Aside from “net adverse environmental impacts” and mitigation requirements, these regulations have similar limitations to upland MTCA cleanup regulations and goals.
- WQ Standards – Anti-degradation requirements and designated/aquatic-life uses prevent further degradation, but do not directly address habitat restoration or resource recovery.
- NRD – Although Ecology encourages the Cleanup and NRD planning processes occur simultaneously, this is rarely the case at cleanup sites. Most cleanups are completed absent the habitat and resource recovery evaluations, visioning or brainstorming that typically occur in the NRD process. In addition, this process results in settlements for pennies on the dollar and is not comprehensive.

- 7 6. Use of the terms tribes vs. vulnerable populations/overburdened communities needs clarification and consistency.

Problem - MTCA does not clarify how tribes do or do not fit into the definitions for vulnerable populations or overburdened communities. In addition, throughout MTCA mentions of vulnerable populations or overburdened communities do not include tribes.

Solution - Clarity needs to be added. Ex. RME, tribes, vulnerable populations, overburdened communities definitions (WAC 173-340-200), 173-340-310, 173-340-340(1), 173-340-360(multiple locations), and elsewhere.

- 8 7. It does not appear that many of these Tribal Treaty Resource and engagement concerns have been addressed in the SHARP Tool either.
- a. Suggest adding a question: “Is the site located on public lands? If site is located on public lands, traditional tribal treaty hunting and gathering rights apply here.”
  - b. Suggest adding a statement: “All of the State of Washington is within some kind of tribal treaty U&A area. Assume all public lands and waters are located within a traditional tribal treaty hunting and gathering area.”
  - c. Suggest adding a question: “Is the Site a tribal treaty usual and accustomed fishing area, or a subsistence fishing area for other populations?”
- 9 8. If biological data is available (ex. fish/clam tissue, plants, etc.), this should be captured in the SHARP tool. Suggest capturing this type of available info within this tool within its own worksheet.

Please do not hesitate to contact me with questions. I can be reached at (509) 985.3561 or [shil@yakamafish-nsn.gov](mailto:shil@yakamafish-nsn.gov)

Sincerely,



Laura Klasner Shira, P.E.  
Yakama Nation Fisheries

## Rachel Haxtema

I am writing to you as a concerned member of the public - an adjunct professor of Christian Ethics and community educator - and it is not my job to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

PLEASE make these changes to ensure that cleanups happen equitably. All communities deserve a strong cleanup rule that keeps them healthy and safe. Your work to make this happen is crucial at this time and in this process.

[Commenter #12 - see individual comment letter #s 40 through 213](#)

## **Washington Conservation Action**

Please find attached 174 public comments from supporters and members of Washington Conservation Action. We expect that each letter to Ecology in this document will be regarded as an individual, unique comment letter.

With regards,  
Katie Byrnes

## Christina M Jackson

I live right near the Tacoma tide flats superfund site and live with the pollution from this every day. I am very concerned on the impacts of this site on my community and this is a very urban and dense area disproportionately housing BIPOC populations. I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong



cleanup rule that keeps them healthy and safe. There is no time to waste.

## Barbara Church

I'm writing to you as a resident of Tacoma who lives within a 2 mile radius of the Port of Tacoma and near many toxic waste sites. A clean and livable environment where toxic waste sites are mediated or completely cleaned up is important to reducing negative impacts in my community, My family already suffers from allergies and asthma related to the polluted air that we breathe. I hope for clean air, water and healthy land for my family, community and generations to come.

More than 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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## Steven Storms

We, as a nation are killing ourselves. As Kurt Vonnegut said, "We'll go down in history as the first society that wouldn't save itself because it was not cost effective".

We produced toxic chemicals, but failed in cleaning them up. The toxic wastes are lingering on for generations and continue to impact the environment and the public. They are rarely even measured and the cumulative impact is ignored. The impact on disadvantaged communities is even worse.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste

## Washington State Department of Transportation

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to review and comment on the proposed changes to the Model Toxics Control Act (MTCA), Chapter 173-340 WAC. WSDOT will submit comments as directed by the Ecology link. WSDOT seeks clarity and consistency in the regulations where Ecology has or been delegated authority. WSDOT will input the following comments onto the Ecology website:

- 1 - Please include an abbreviation and acronym list.
- 2 - Please ensure definitions are consistent among the regulations Ecology has jurisdiction on. For example, a spill to the roadway that has been issued No Further Action (NFA) after the roadway cleanup is different if the spill has also migrated onto the adjacent soil that still requires cleanup. Using the same term NFA when applied is confusing to those wanting to ensure cleanup has been completed. Will both types of the NFA be included on Ecology's website?
- 3 - Clarify and or define "remediation", "mitigation", etc. Please include a definition of emerging contaminants and contaminants of emerging concerns.
- 4 - Please define, within this regulation, how dangerous waste and extremely hazardous waste apply in comparison to the Dangerous Waste Regulations. Chapter 173-303 WAC.
- 5 - Please add a reference to Chapter 173-303 WAC for the disposal of Investigative Derived Waste.
- 6 - WSDOT appreciates the proposal of "sites" as a replacement for "facilities". The term "site" can include linear projects and are more inclusive than the term facility.
- 7 - Please define indigenous/traditional knowledge.
  
- 8 - WSDOT does have an existing "inadvertent discovery plan" that it believes works with the language proposed in the rule.
- 9 - Please define a cleanup/remediation of a waste and further explain the steps for a cleanup alternative. WSDOT appreciates the flexibility being offered when considering human health impacts for cleanup.
- 10 - WSDOT is pleased that Ecology updated from the use of WARM with SHARP tool. Will there be
- 11 additional workshops to further guide potential users of SHARP?
- 12 Is there a way to represent/identify homeless encampment issues? The ability to identify and
- 13 categorize the associated issues will assist landowners that have potential liability.
- 14 - Please insert "environmental/social justice" as a consideration for cleanups. Please define or direct the reader where the associated details will be housed in this regulation, other regulations, or guidance documents.
- 15 - Adds "threatened" release with "discovery of release". Please clarify how threatened will be determined and if this with other such terms requires a process upfront or will be required for all areas.
- 16 - How will Ecology balance its relisting issue with NFA and other waste designations? What are the Cost and implications for third parties?
- 17 - WSDOT appreciates that Ecology proposes to extend the number of days, from 30 to 90, when there is a discovery of a release and the number of days for a report submittal.
- 18 - WSDOT seeks confirmation that cleanups under Independent remedial actions can be done prior to, during, or after the initial investigation. If there is a waiting period, please clarify those circumstances and situations.

- 19 - WSDOT seeks flexibility with notification/publication (i.e. site register) for cleanups, public comment periods, workplans, and cleanup plans addressing cleanups on events on WSDOT right of way.
- 20 - WSDOT seeks clarification if workplans, remedial investigation, and remedial actions can concurrently be submitted.
- 21 - Please clarify the need to monitor for groundwater contamination and the role institutional controls may have in that relationship.
- 22 - Please clarify monitoring requirements for surface water and groundwater contamination and where institutional controls can be used in lieu of them.
- 23 - Please clarify how homeless encampments do or do not apply within MTCA.
- 24 - WSDOT appreciates the definitions of a settlement, with an agreed order, and no settlement.
- 25 - In terms of Tribal engagement, how will Ecology work with other potentially impacted agencies when engaging the Tribes on applicable sites?
- 26 - If Ecology implements the green/resilient approach to clean up, will guidance including examples for specifics like monitoring, fuel usage, and terms like environmentally friendly lube oil be defined or examples of such products with this approach be available in an Ecology guidance?

Thank you again for this opportunity, please let me know if you have any questions.

Pat Svoboda  
WSDOT ESO Hazardous Material and Solid Waste Program Manager  
360-870-9491

## Kenneth Zirinsky

To the Washington State Dept. of Ecology,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the

general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you for reading this comment.

- Kenneth Zirinsky



## Janeen provazek

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I am very concerned about the 14,000 plus toxic waste sites across Washington state that still need cleaning up. They exist in our neighborhoods, disproportionately affecting people of color and Tribes. Despite this, the state's environmental cleanup law does not prioritize cleanups in the neighborhoods most affected. This needs to change! We continue to sacrifice the health of our overburdened communities. We need to invest financially in thorough and more protective cleanups. We need to notify the public about toxic waster cleanups happening in their communities. Polluting companies **MUST** be made to responsibly do a through cleanup when creating toxic waste. We expect you, The Department of Ecology, to be on top of this situation. Lack of action and accountability on the part of many agencies have resulted in the thousands of toxic waste sites that need cleaning up. Thank you.

## Roberta Mantooth

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Friends of Ennis Creek is finding MTCA inadequate for cleaning up toxic materials left in water and on land from Rayonier mill, which closed in 1997. Corporate stockholder profit seems to be prioritized over demand from individuals, governmental entities including tribes, and environmental organizations to remove what amounts to a toxic landfill on the waterfront near downtown Port Angeles. Cleanup team leader has told us the public doesn't get to decide. We and future generation must live with consequences including higher chances of cancer and losing salmon and other plant and animal life. The public needs more power, especially with rising seawater and extreme weather.

## Carolyn Janette

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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## Felicity Janette

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# Commenter #22 - GHD

MTCA Proposed Rule Amendments -  
4/16/23

GHD

	Rule Citation	Electronic Page Number	Comment
1 2 3	WAC 173-340-120(3), "Site Hazard Ranking"	13	Support hazard assessment and ranking of sites for purposes described. What will trigger an update and how will Ecology track the completion of this? Will PLIA complete the re-evaluation if site is in PLIA TAP?
4	WAC 173-340-120(13)(a), "Site specific information and alerts"	16	Will this also apply to PLIA?
5	WAC 173-340-200, "Model Remedy"	33	What is the definition of "lower risk" as it pertains to model remedy applicability? If the site is not "lower risk" does this mean that the site doesn't qualify for model remedy use?
6	WAC 173-340-200, "Practicable"	36	Generally support this definition, and should be included in the context of "maximum extent practicable" in regard to free product removal.
7	WAC 173-340-200, "Total Petroleum Hydrocarbons"	41	We are concerned that the ranges that define NWTPH-Gx and -Dx are lab analyst defined and are not defined in the method, and thus are not consistently applied through time or across sites/projects. Recommend the carbon ranges be defined to distinguish the -GX vs -DX results.
8	WAC 173-340-300(1) Purpose:	46	Purpose is to report a release <b>or threatened release</b> ...to the environment <b>that may pose a threat to human health or the environment (HH&amp;E)</b> . What if a potentially liable person (PLP) determines does not pose a threat to HH&E? What are the criteria to determine may pose a threat to HH&E? Releases many enter into the environment, but not all releases into the environment necessarily pose a threat to HH&E. Not clear how this seemingly flexible language will be implemented, and as such places the PLP in potential compliance jeopardy. Not a defined term in part 200 ("may pose a threat"). Is this defined by the SHARP process and if so, add cross-ref to 340-320? MTCA is predicated on cleanup to cleanup levels, if exceed a cleanup level, then is a threat to HH&E constituted?
9	WAC 173-340-300(2) Applicability and timing:	46	Added/modified requirements for independent remedial actions to report "a release or threatened release of a hazardous substance" within 90 days of discovery (per WAC 173-340-300 (1)). The language in section (2) is "...within 90 days of discovering a release <b>or threatened release</b> of a hazardous substance to the environment that may pose a threat to human health and the environment, an owner or operator <b>must report the release</b> to ecology." What if the owner/operator determines that the threatened release did not in fact actually result in a release? If it did not actually suffer a release to the environment, then there is no posed threat to HH&E? What then are the obligations and what is actually to be reported? Why would there be a reporting obligation in this instance? The addition of "or threatened release" seems problematic and confusing as proposed.
10	WAC 173-340-300(2)(b) Examples:	47	The examples seem to abandon the "may pose a threat" context. Could be released to the ground, but not pose a threat to HH&E, but such is obviated by requirement to report if just found in the ground without considering threat potential (e.g., provision viii). This sets up the PLP to make a judgement not a threat, to be over-ruled after the fact by the agencies, potentially. Concerned more risk-based decision making is implied than will actually be implemented at the agencies, in practice.
11	WAC 173-340-300(4)(a) Releases from regulated UST systems	49	Owners or operators must report a confirmed release of a regulated substance to ecology within 24 hours. The provision goes on to state if already reported under chapter 137-360A WAC, then this release reporting section does not apply. However, if a release is not already reported, then how does this language mesh with the 90-day release reporting deadline clarified in 300(2), or with the 300(2)(b)(ix) LUST example. Seems in conflict, and potentially puts owners or operators in compliance jeopardy.
12	WAC 173-340-310 (2)(c)	52	The provision is written from the context Ecology will conduct an initial investigation " <b>unless Ecology does not have</b> a reasonable basis to believe that there has been a release <b>or threatened release</b> of a hazardous substance <b>that may pose a threat to human health or the environment.</b> " What criteria will Ecology use to determine it does have a reasonable basis to conclude such, and how will they apply these criteria unless they do perform the initial assessment? This is important if this responsibility is delegated or directed to a potentially liable person (PLP).

	Rule Citation	Electronic Page Number	Comment
13	WAC 173-340-310 (6)(b)	54	<p>This language is awkward as the initial investigation should confirm if a threatened release actually occurred, and if not then by default no longer poses a threat. So why is the "or a threatened release" included, here in? If a release did not occur, then no further action would be warranted as a natural outcome, but document a release did not occur, as a separate provision. Recommend strike "or threatened release" from this provision (6) and subprovisions.</p> <p>Also, the definition of remedial action in 173-340-300(2) includes "investigative" actions, so should another term be used in this provision, such as "clean up action" to distinguish from the investigative action that had to occur to confirm if a release occurred or not. Same point for 173-340-310(6)(c).</p>
14	WAC 173-340-330(a)(i) and (ii)	64	"or threatened release" in these subprovisions seems irrelevant by this stage in the process as a release should be confirmed or prevented at this point. Recommend strike "or threatened release" from all 340-330 provisions.
15	WAC 173-340-330(5)(b) & (c)	67	If all cleanups standards have been achieved, then isn't it permanent? Is the context that these conditions apply to areas outside an engineering barrier, for example? Not clear.
16			
17	WAC 173-340-340(3)	74	Support Ecology conducting performance assessments as described. A consideration is that in making the MTCA program more onerous to comply with in terms of process requirements and cost, fewer potentially liable persons (PLPs) will or will be able to comply proactively. And the greater degree of reporting to Ecology, such as for independent remedial actions (e.g., 90 day reporting for initial investigation, interim actions, and cleanup actions) will further overwhelm the capacity of Ecology or PLIA staff to issue opinions, further add to agency backlog. Such will produce no benefit from the increased reporting to the agencies, if the agencies are unable to respond with opinion letters (and not more letters requesting additional information) in a timely manner. Thus, these proposed amendments may likely be creating further disincentives for proactive compliance by PLPs.
18	WAC 173-340-350 (3)(a)	81	Ecology states that a remedial investigation/feasibility study must be completed prior to establishing cleanup levels. Please rephrase as a feasibility study is not needed to establish cleanup levels as defined in WAC 173-340-200 "remedial investigation" and WAC 173-340-350(1) indicating that cleanup standards can be established as a result of the remedial investigation only.
19	WAC 173-340-350 (3)(a)	81	A feasibility study for a run-of-the-mill petroleum LUST site is overkill. Petroleum hydrocarbon remediation is well understood by the industry as to what remedial strategies and technologies work well, almost to the point of a presumptive remedy status. To require an FS increases compliance costs to the PLP and potentially delays progress while awaiting agency review. We recommend petroleum hydrocarbon LUST sites be afforded increased streamline measures to increase the rate of regulatory closure in Washington. Petroleum hydrocarbon matters should not be lumped in the same one-size-fits all regulatory approach with chlorinated hydrocarbons, metals or radionuclide contamination sites, which have much more potential for complexity, greater extent and risk to potential human and ecological receptors and are less well understood at the state, national or global scale than is the case for petroleum hydrocarbons.
20	WAC 173-340-350 (4)(b)(i)	83	The new requirement of independent cleanup site investigation activities be reported within 90 days if no additional activities other than compliance monitoring occurs is onerous to all parties. Ecology resources are already overwhelmed, this adds additional steps to the cleanup process for the PLPs and will not aid in progressing sites to NFA. For sites with potential impacts to groundwater, compliance sampling is needed prior to providing recommendations for next steps. As an independent cleanup, how will these documents be managed and how will the new timing rule be enforced?
21	WAC 173-340-350(4)(b)(i) and 173-340-515(4)(a)(i) and (ii)		The definition of "completion" is too narrow. Off-site access pursuit, laboratory turn around and data review and data issue resolution, workplan development, drilling rig availability, budget availability can all conspire frequently to delay investigation stages by 90 days or more, and as such, should not trigger reporting of an initial assessment or interim action, prematurely. Recommend to strike the requirement or put in time metrics that certain requirements must be met by to put a pace to the process.
22	WAC 173-340-350 (5)(f)	85	Step 6 could be expanded to provide a listed exclusion for petroleum LUST sites.



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Rule Citation	Electronic Page Number	Comment
WAC 173-340-350 (6)(c)(i)	88	Areal extent. In the face of logistical barriers, can areal extent be modeled in lieu of actual sampling locations? Presence of highways and busy roads and inability to obtain off-site access at times can frustrate the areal distribution determination. The industry understands fuel PHC plume behavior very well, they are short and so warrant less assessment than a significant metals, chlorinated hydrocarbon or radionuclide contamination situation, all of which have greater potential transport potential than petroleum hydrocarbons. Numerous big data petroleum hydrocarbon plume studies bear this out. This would greatly shorten the regulatory lifespan of LUST sites in Washington.
WAC 173-340-351 Feasibility Study	92	See comments above regarding WAC 173-340-350 (3)(a). Petroleum LUST sites should be exempted from Feasibility Studies, in order to encourage proactive PLP compliance and to reduce LUST site regulatory lifespan.
WAC 173-340-351 (3)(a)	93	See comments above regarding WAC 173-340-350 (3)(a). A feasibility study should not be required to establish cleanup levels.
WAC 173-340-450 (5)(c)(i)	160	These provisions are reflective of the US EPA 40 CFR Part 280.64 regulations. As such, we recommend that the maximum extent practical provision be implemented by the ecology and PLIA consistent with the intent of the provision as clarified by the US EPA Office of Underground Storage Tanks ( <a href="https://www.epa.gov/ust/ust-technical-compendium-release-investigation-confirmation-and-corrective-action">https://www.epa.gov/ust/ust-technical-compendium-release-investigation-confirmation-and-corrective-action</a> ), Question 6.
WAC 173-340-450 (6)	161	Interim action reports are due within 90 days of release confirmation. This is on top of quarterly reporting required for free product removal actions under WAC 173-340-450(5)(c)(v). Many of the UST system releases reported are of newly-discovered legacy contamination, and not a newly occurring spill or release, and as such there may be no need for an interim action, and thus no interim action report, as the extent of the release is long stabilized and likely declining. Interim action reporting in such instances will rarely be of substantive regulatory benefit and represents a distractive action and unnecessary cost to a potentially liable person (PLP) and unnecessary additional workload for the already backlogged agencies. We understand this is proposed as a streamlining measure, but such represents minimal streamlining. Recommend to strike the requirement.

## Elly Claus-McGahan

I am a Tacoma resident, a retired teacher, and am very concerned about the need to preserve and remediate damage to our earth so that future generations can live and thrive. The rules need updating to increase public awareness and society's valuation of the harm toxic sites do to our communities, especially those communities that have been harmed the most historically. We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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By modifying the rules, we can ensure that cleanups happen equitably and with greater speed. Washington could lead in this area and it fits in well with Washington's current agenda to lead on climate response action. A healthy environment to live, grow, and play in for all promises a bright future for generations to come. Thank you

**Jim Verburg**

Senior Director, NW and SW Climate and Fuels

April 15, 2023

Sent via upload to: <https://tcp.ecology.commentinput.com/?id=uJVx2>

Clint Stanovsky  
Department of Ecology  
Toxics Cleanup Program  
Cleanup Rulemaking Lead

Sarah Wollwage  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: *Proposed amendments to Washington Administrative Code, Chapter 173-340, the Model Toxic Control Act (MTCA) Regulations*

Dear Mr. Stanovsky and Ms. Wollwage,

The Western States Petroleum Association (WSPA) appreciates this opportunity to comment on the proposed amendments to Chapter 173-340, WAC as provided in the Department of Ecology's (Ecology) February 15, 2023, CR-102. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the transport and market petroleum, petroleum products, natural gas, and other energy supplies. WSPA provides the following comments for Ecology's review.

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**Process Concerns**

In December 2018, Ecology filed a CR-101 pre-proposal notice indicating potential amendments to Chapter 173-340 WAC. Following that CR-101 filing, Ecology engaged with stakeholders and developed several preliminary drafts of possible rule amendments over the course of the following four-plus years. For those impacted by these changes that were not part of the Stakeholder and Advisory Group (STAG), the issuance of the CR-102 in February 2023 was abrupt and surprising. WSPA recommends that in the future, after such a significant time period elapses between a CR-101 and CR-102, and where several drafts of possible amendments are developed, the agency should issue a new, updated CR-101 and invite broader input from affected stakeholders on the most current draft rule amendment before filing a CR-102. In addition, given the number and complexity of the proposed amendments, WSPA submits that a longer comment period was warranted here, particularly for those affected stakeholders that were not part of the STAG. WSPA observes that after spending over four years in developing the rule amendments, an additional 60 days for parties to review the proposed amendments in the CR-102 would have not meaningfully extended the rulemaking process.

**Comments on the Proposed Amendments to WAC 173-340**

WSPA provides the following substantive comments on the proposed amendments to Chapter 173-340 WAC. Our comments are grouped by the draft rule Parts as designated by Ecology.

**Part 1 Overall Cleanup Process**

2 **WAC 173-340-120(13)(b) Public notice and participation and tribal engagement**

This rule change summarizes both the public notice and participation requirements along with new requirements for tribal engagement for Ecology-conducted and Ecology-supervised cleanups. Specifically, the rule change includes: “ecology provides the public with notice and opportunity to comment and invites tribal engagement on most steps in the cleanup process.” However, it is unclear what is meant by the phrase “most steps in the cleanup process” and how this compares to the existing public engagement process within MTCA.

WSPA suggests adding a description of what is meant by “most steps” and if that includes major deliverables in the MTCA process, and how public comment and tribal engagement overlap, or not.

### 3 **WAC 173-340-130(4) Administrative Principles: Preparing Documents**

The new rule language and a footnote in the *Proposed Rule Text with Tracked and Footnoted Changes* clarifies that only Ecology can perform the initial investigations and site hazard assessment and ranking (which are to be performed using the site hazard assessment and ranking process (SHARP Tool). The SHARP Tool cannot be used by a potentially liable person(s) (PLP). This change will cause delays in ranking sites and ranking updates.

However, to facilitate site ranking and alleviate some of the burden on Ecology’s resources, WSPA suggests PLPs or consultants, with experience in the industry and often with additional site/property knowledge, could complete the ranking process to be submitted to Ecology for review and approval. This change will help to facilitate the process especially if there is immediate public concern for a given site. As Ecology is aware, cleanups under MTCA already take many years to complete and the agency should balance these proposed changes with further increasing the length and cost of the cleanup process.

## **Part 2: Definitions and Usage**

### 4 **WAC 173-340-200 “Model Remedy”**

The proposed rule adds a new definition for “model remedy” which “means a set of technologies, procedures, and monitoring protocols identified by ecology for use in routine types of cleanup projects at facilities that have common features and *lower risk* to human health and the environment.” (Emphasis added).

The proposed rule text with tracked and footnote changes clarifies that this change reflects Senate Bill 5296, passed 2013. WSPA understands that the addition of this definition was not intended as a change in policy or practice. The term “lower risk” is not explicitly defined in the rule or in Ecology-prepared model remedy documents. However, model remedy guidance defines eligibility criteria that must be met to qualify for a model remedy. This forms the set of conditions that ensure sites that qualify for model remedies are lower risk. As a result, WSPA suggests that “lower risk” should be deleted from the -200 definition section without creating an inconsistency among Ecology documents.

## **Part 3 Site Reports and Cleanup Decisions**

### 5 **WAC 173-340-300 Site Discovery and Reporting: Applicability and timing**

The proposed Section -300(2) requires site owners/operators to report releases to Ecology “within 90 days of discovery a release or threatened release of a hazardous substance to the environment that may pose a threat to human health or the environment.” Section -300(2)(b) then provides examples of releases and threatened releases that should be reported to Ecology. There is also

additional language throughout Section 300 that describes requirements for investigation of releases and threatened releases.

The proposed new rule language lacks clarity regarding what constitutes a reportable threatened release. “Threatened release” is not defined in Section -200; and Section -300(2)(b) only provides examples of releases that *have already occurred* and are observable in environmental media. The inclusion of “threatened releases” in reporting requirements unnecessarily expands the scope of the MTCA rule and will likely increase the scope and number of potential cleanup sites in Washington State and as a result will increase the administrative review burden on Ecology to review and rank sites. This is because whether a release is or is not “threatened” is often not clear and may lead to over-reporting for possible, “threatened” releases.

WSPA proposes that defining “threatened release” in Section -200 is necessary to clarify reporting requirements, which formerly only required reporting releases if impacts to environmental media were observable. WSPA also proposes to remove text in WAC 173-340-300(2) expanding reporting requirements to include reporting of threatened releases because threatened releases have not yet reached environmental media.

**WAC 173-340-310 Initial Investigation; WAC 173-340-340(1)-(2) Program Planning and Assessment: Strategic Plan and Resource Allocation; and WAC 173-340-360(3)(a)(i) Cleanup Action: Requirements**

Section -310(1)(c) includes a new provision as part of the purpose of an initial site investigation to determine “whether the population threatened may include a vulnerable population or an overburdened community.” A footnote in the proposed rule track changes document describes that “[t]his is needed to complete an initial SHARP assessment under Section 320 and help prioritize sites for further action under Section 340. This initial determination *will likely* be based on the site’s location and the environmental health disparities map or other readily available information” (emphasis added). This information is then considered in Ecology’s prioritization of sites and allocation of resources.

- 6 It is unclear whether the EPA EJScreen Tool is what is used within the initial site investigation to meet the objective of determining whether the population threatened may include a vulnerable population or an overburdened community. Is Ecology planning on providing further guidance regarding how the EJScreen Tool is being used by Ecology to determine how communities impacted and informing site ranking, and allocation of Ecology resources as referenced in WAC 173-340-340(2)?
- 7 Further, if a site that is currently undergoing a cleanup does not affect vulnerable populations and overburdened communities, the proposed rule language suggests that further delays in Ecology opinions may be expected because the site would not be as high of a priority as other sites. There is concern that this could lead to further delays in Ecology review and approval for sites that are under an Agreed Order schedule but do not negatively impact vulnerable populations.
- 8 Clarifications within the proposed language are necessary regarding whether use of the EJScreen Tool referenced in SHARP guidance is intended to be the tool used to determine if a vulnerable population or an overburdened community will be affected by a site. And clarifications are necessary for the regulated community to understand how Ecology will evaluate information collated using the EJScreen (or analogous tool), particularly when socioeconomic indicator index percentiles are similar. In particular, a draft guidance, to be reviewed by the public, that is separate from the SHARP Tool Manual and EJScreen link would be beneficial, because the proposed rule

language implies that the SHARP Tool is for use by Ecology staff, rather than PLPs or their consultants.

- 9 Lastly, WSPA suggests Ecology provide additional clarification with respect to how consideration of impacts to vulnerable populations and overburdened communities will influence the allocation of Ecology resources for sites with currently assigned Ecology project managers and that are undergoing cleanup.

10 **WAC 173-340-350(5)(b)(i)(F) Remedial investigation: Steps; and WAC 173-340-400(4)(b)(x) and (c)(xii) Program planning and assessment: Notification**

The proposed rule adds a requirement to include an inadvertent discovery plan (IDP) to meet the requirements in the newly created Section -815 regarding cultural resources. An IDP is also now required throughout the MTCA reporting process from RI work plans through cleanup action implementation plans.

However, an IDP will not be necessary for all sites. From the new language, it is unclear if the IDP will be required based on the outcome of consultation, or if the IDP is required regardless of site circumstances. As a result, WSPA assumes that an IDP is necessary for sites where cultural resources are potentially present, but that an IDP is not needed for all sites. For example, an urban site with a low probability of the presence of cultural resources would not need an IDP. Therefore, WSPA suggests that Ecology add clarification to the proposed rule language to provide examples of what would trigger the IDP requirement. If Ecology intends a blanket requirement for an IDP for all sites, regardless of the potential for cultural resources, Ecology should reconsider that approach because such a blanket requirement will unnecessarily drive additional costs and further lengthen the cleanup process.

11 **WAC 173-340-350(5)(g)(ii) Remedial Investigation: Report Results**

Step 7 of the proposed rule language includes a requirement to include “maps, figures, or diagrams illustrating relevant existing and historic site features,” including utility lines, surface topography, and subsurface structures.

The proposed rule language generally captures the types of site features that are relevant to current and historical contaminant release and transport. However, at many sites, these features are neither well known nor relevant to the conceptual site model or preferential contaminant transport pathways.

As a result, WSPA suggests the following language be added to clarify that current and historical site features should be depicted on “maps, figures, or diagrams illustrating . . . features as relevant to the conceptual site model, including . . .” This clarification negates the need for site owners and operators to create figures that are not relevant to contaminant release and migration pathways at their site, or that yield diminishing returns towards advancing remedy selection and implementation.

12 **WAC 173-340-350(6)(a) Investigations**

The proposed text added to Section -350(6)(a), Hazardous Substance Sources, clarified that confirmed and suspected releases must be investigated to “define the location, quantity, areal and vertical extent, concentration within, and sources of hazardous substances.” This is a separate investigation requirement from soils investigation requirements in Section -350(6)(b).

However, Section -350 or -200 do not define what is considered a “hazardous substance source.”



Greater clarity is needed to reduce potential overlap between soil characterization requirements and requirements more appropriate for manmade structures that contain and may release hazardous materials, such as underground storage tanks. Additionally, it is inherently difficult to estimate the quantity of release for tanks that have been leaking for an indeterminate amount of time, and which may have been refilled more than once during that time. In such cases, it may not be appropriate to define the quantity of hazardous substances directly; instead, it would be more appropriate to characterize the nature of the release or estimate the quantity of releases based on data collected in other media (for example, as described in Section -350(6)(b)). This approach is preferable to performing modeling or quantitative analytical techniques, which can imply a false degree of certainty while unnecessarily increasing the cost to perform the remedial investigation.

WSPA proposes to add a definition of “Hazardous Substance Source” in Section -200. Additionally, WSPA suggests clarifying language to Section -350(6)(a) to state, “estimated quantity.”

### 13 **WAC 173-340-350(6)(d)(iii) Remedial Investigation: Investigations**

The proposed rule adds language specifying that “[s]urface water, sediments, and hydrology must be investigated to adequately characterize . . . properties of surface and subsurface sediments that are likely to affect the type and rate of hazardous substance migration, *the potential for recontamination*, or the ability to implement cleanup action alternatives.” (emphasis added).

This new language expands the scope of upland cleanups at waterfront sites. Many waterfront sites are adjacent to surface waterbodies that include contaminated sediments as a result of activities and releases from multiple sites, which may or may not include the upland subject site. Currently, Ecology does not have an established guidance document or policy describing what factors should be considered in a recontamination analysis, or how to determine what concentrations in stormwater or surface water runoff may cause sediment recontamination. Typically for waterfront sites, the groundwater to surface water pathway is evaluated by demonstrating groundwater compliance with surface water standards at the point of discharge. The rule change does not provide sufficient detail to evaluate the analyses required to evaluate sediment recontamination potential. There is not a clear understanding of what concentrations must be achieved in stormwater and other site discharges at sites located along waterbodies undergoing CERLA and MTCA sediment cleanup. For example, it is unclear if the upland PLP would be required to start analyzing stormwater discharges for TSS and a broad suite of hazardous substances, which may differ from and be inconsistent with an entity’s stormwater NPDES permit sampling and analysis requirements. In addition, the upland PLP may not have any control over stormwater discharge. Thus, this new language may drive inconsistent regulatory requirements (as between Clean Water and MTCA requirements) that upland PLPs may not be able to achieve.

WSPA suggests removing the phrase “the potential for recontamination,” from the proposed changes. This phrase adds unnecessary ambiguity. The existing evaluation of the groundwater to surface water pathway under MTCA is sufficient to ensure protection of receptors associated with adjacent surface water. Further, the existing SMS regulation contains requirements for recontamination analysis that are more specific to sediments within the context of sediment cleanups.

### 14 **WAC 173-340-350(6)(f) Investigations: Climate; WAC 173-340-360(3)(a)(v) Cleanup Action Requirements; and WAC 173-340-360(5)(d)(iii)(A)(III) DCA requirements**

Ecology added requirements to the remedial investigation process to determine “projected . . . climatological characteristics . . . which could affect the migration of hazardous



substances or the resilience of cleanup action alternatives.” Ecology also added language to the cleanup action plan process to ensure resilience against climate change impacts that have a high likelihood of occurring and could compromise the long-term effectiveness of the site’s remedy. Additionally, Ecology added similar language to the description of the DCA process within the rule change, which now includes consideration of climate change in the evaluation of protectiveness, effectiveness over the long-term, and management of implementation risks.

Ecology has issued *Guidance for Sustainable Remediation*, which was revised in January 2023. However, it is unknown if there will be opportunities for public review of future revisions of this guidance, particularly since components of the guidance are now included in the revised MTCA rule and because the guidance is a “living” document. There is a Green Remediation Guidance section in the document that recommends green remediation best management practices, which suggests that cleanup alternatives must consider the environmental impacts during a cleanup.

All of this is very unclear. Given the significance of these new draft requirements, Ecology needs to provide greater clarity regarding how climate change will be used in the DCA scoring and evaluation of alternatives, and whether climate change considerations are considered quantitatively or qualitatively.

#### 15 **WAC 173-340-350(6)(i)(i) Remedial Investigation: Investigations**

The proposed rule language describes phasing of investigations such that “terrestrial ecological evaluations may be conducted so as to avoid duplicative studies of soil contamination that will be remediated to address other concerns, such as protection of human health or aquatic ecological receptors.” This may be accomplished “by evaluating residual threads to the environment after cleanup action alternatives for human health or aquatic ecological protection have been developed” except at some sites. The rule language states that this approach is not appropriate at sites “where the development of a human health based cleanup action is expected to be a lengthy process, and postponing the terrestrial ecological evaluation would cause further harm to the environment.”

The proposed rule language is similar to the current rule language but adds consideration of aquatic receptors that may be impacted by soil contamination. However, it does not provide additional clarity with respect to what concentrations or amounts would be considered a threat to aquatic receptors. It also does not clarify what is considered a “lengthy process,” or who determines when a process is expected to be lengthy enough that further harm would be caused to the environment.

Ecology should add clarity to its Terrestrial Ecological Evaluation guidance describing what factors are considered when determining whether it is appropriate to phase investigations for risk to ecological receptors, particularly when considering cross-media pathway impacts from soil to aquatic receptors. The public should be given an opportunity to comment on this change.

#### 16 **WAC 173-340-351(6)(f)(v)(D)-(E) Feasibility study: Report results**

The proposed rule language requires the feasibility study to include the “estimate[d] amount of each hazardous substance to be removed or treated” and the “estimated amount of each hazardous substance remaining...after implementing the alternative.”

This language implies that Ecology expects feasibility studies to include quantitative estimates of the amount of mass or volume removed for each hazardous substance. However, it is standard practice to estimate the total volume of impacted media removed or treated, not the amount of each hazardous substance removed or treated. While, for example, it is typical to estimate the volume

of soil to be removed that is contaminated (i.e., soil with concentrations above applicable cleanup levels) it is not typical to estimate the amount of the hazardous substance(s) within that volume of excavated soil. Additionally, the value of conducting such an estimate is not clear.

WSPA suggests replacing the language specifying the “amount of each hazardous substance” with the following: “amount of impacted media removed or treated”.

**17 WAC 173-340-355(6)(c) Development of cleanup action alternatives that include remediation levels: Examples**

The proposed rule change uses an example of groundwater meeting cleanup levels (CULs) at a conditional point of compliance (CPOC). The CPOC is established at the property boundary and groundwater exceeding the CUL must be remediated.

The example used in the proposed rule assumes that CULs have not been met at the property boundary (e.g., “This means any groundwater exceeding 500 ug/L at the point of compliance must be treated”), but proposed implementation of a remedial action will help groundwater concentrations to decline to less than the CUL; therefore, a CPOC can be established at the property boundary. In recent experience and consistent with the proposed rule change, some Ecology site managers have agreed to establish the CPOC at the property boundary at sites with groundwater exceedances at the property boundary, in instances when remedy implementation using remediation levels within the property will achieve CULs in wells at the property boundary.

However, there is inconsistency in decisions made by Ecology site managers when establishing CPOCs. Other Ecology site managers have indicated that CPOCs can never be established at the property boundary if groundwater concentrations in wells at the property line do not meet CULs prior to the implementation of the proposed cleanup, even when proposed cleanup will treat all off-property groundwater and soil impacts. Additionally, the next example within the new rule language within 173-340-355 (6)(d) includes text that allows one to assume that a CPOC can be established at the property boundary as long as the CUL will be met at the CPOC after the remedial action is implemented.

Because of this, Ecology should clarify the proposed rule language to indicate that Ecology may allow establishment of a CPOC at the property boundary once the data show that CULs have been met and as long as implementation of the proposed remedial action will achieve CULs at the property boundary.

**18 WAC 173-340-360(d)(iii) Cleanup Action Requirements DCA Criteria for each cleanup action alternative**

This Section includes new text emphasizing that, when assessing the long-term effectiveness of a cleanup action, one must consider impacts on vulnerable populations and overburdened communities. However, this change does not provide any definitive statements regarding how these factors will be incorporated into the DCA process.

WSPA requests clarification with respect to how consideration of impacts to vulnerable populations and overburdened communities will be incorporated into the DCA process.

**19 WAC 173-340-830(4) Sampling and Analysis Procedures: Methods**

In the proposed rule, Ecology removed the list of Ecology-approved methods to make it easier to update the list based on technological changes. Under the new language, Ecology is required to

maintain and make available to the public a list of Ecology-approved methods. This allows Ecology to add or remove methods from the list without the required notice and comment rulemaking.

The removed language provided the regulated community with a consistent and reasonably stable understanding of the quantitation limits that would be expected to become cleanup levels for persistent bioaccumulative chemicals, which tend to have very low risk-based targets in all environmental media. Therefore, the cleanup levels are based on the greater of the practical quantitation limit, natural background, or area background. Ecology's definition of "natural background" in Section -200 recognizes that "PCBs can be found in surficial soils and sediment throughout much of the state due to global distribution of these hazardous substances" and its definition of "area background" recognizes that concentrations present in the environment may be elevated "as the result of human activities unrelated to releases from that site."

Frequent increases in the sensitivity of approved analytical methods is of particular concern for persistent bioaccumulative chemicals, like PCBs and dioxins/furans. For these chemicals, even slight changes in practical quantitation limit can have significant schedule and cost implications to site cleanup because the rule requires selection of a method capable of achieving risk-based targets when available (see WAC 173-340-350(5)(b)(i)(D)) and also requires the use of Ecology-approved methods (WAC 173-340-830(4)). Therefore, for persistent bioaccumulative chemicals, current and proposed rule language indicates the most sensitive Ecology-approved method must be used.

Maintaining a list of Ecology-approved methods on Ecology's website would allow Ecology to update the list of approved methods more frequently, which is expected to lead to more rapid increases in analytical sensitivity. However, this will also increase the uncertainty of the cleanup process. For example, because remedial investigations are often completed using data from multiple investigations and phases of data collection, data collected in an earlier investigation event may become irrelevant prior to completion and approval of the remedial investigation, simply as an artifact of changes to the list of Ecology-approved laboratory methods. The proposed rule language specifies that the public must be notified when methods are added or removed from the Ecology-approved list but does not indicate that the public will be given an opportunity to comment on the change. If Ecology approves a new method in the middle of a cleanup (or removes a method from its list of approved methods), it is unclear if results analyzed by then-current methods will still be considered acceptable for site characterization, or if additional data collection by a newer or more sensitive method will be required in the middle of the investigation process.

Ecology should retain the current rule language in WAC 173-340-830 regarding analytical method selection. If the proposed rule language is kept, Ecology must provide clear and timely guidance identifying what criteria will be used when considering whether to add or remove a method from the list and an expected frequency of when the list will be updated. Ecology must also give the public the opportunity to comment on the addition/removal of methods. Finally, Ecology should provide clarity regarding whether additional data collection will be required if a new method is added or a previously-approved method is removed during the middle of a site's investigation and cleanup. For sites with multi-year RI data collection efforts and long-term monitoring programs, that data collected with previously-approved methods should remain valid during the course of the cleanup action.

## **20 WAC 173-340-350(5)(b)(i)(D) Remedial Investigations: Steps and WAC 173-340-830(4)(d) Sampling and Analysis Procedures: Methods**

The proposed rule language in Section -830(4)(d) states that "Ecology may require an analysis to

be conducted by more than one method in order to provide higher data quality,” and provides an example that “Ecology may require that different separation and detection techniques may be used to verify the presence of a hazardous substance (qualification) and determine the concentration of the hazardous substance (quantification).” Proposed rule language in Section -350(b)(i)(D) requires use of “methods that enable detection of the target concentrations [for each hazardous substance in each environmental medium].”

The proposed rule language does not include considerations for use of two methods in a phased approach to first verify that hazardous substances are or are not present, and to then delineate the extent of any hazardous substances that are present as necessary to inform remedy selection and design. It is currently common practice to analyze for some hazardous substances to verify their absence in site releases, only performing analysis with a more sensitive method to if there is a need to quantify the extent of site impacts more definitively.

Ecology should add flexibility in the proposed rule to allow for and describe the use of a phased analytical approach to perform site investigations with the appropriate analytical sensitivity to meet target concentrations in WAC 173-340-350(b)(i)(D) and WAC 173-340-830(4). Ecology should consider providing another example in the proposed rule language to clarify that the use of two methods can be appropriate to verify that a chemical is not present; in which case, sampling with more sensitive analytical methods is not required. This will help expedite cleanup decisions by allowing the collection of data to confirm media and areas of the site where hazardous substances *are* and *are not* present due to site releases.

#### **Part 4 Site Cleanup and Monitoring**

##### **21 WAC 173-340-450(5)(c)(i) Free product removal**

These provisions are reflective of the US EPA 40 CFR Part 280.64 regulations. As such, WSPA recommends that the maximum extent practical provision be implemented by Ecology and the Pollution Liability Insurance Agency (PLIA) consistent with the intent of the provision as clarified by the US EPA Office of Underground Storage Tanks (<https://www.epa.gov/ust/ust-technical-compendium-release-investigation-confirmation-and-corrective-action>), Question 6.

#### **Part 5 Administrative Procedures for Remedial Actions**

##### **22 WAC 173-340-450 Releases**

Ecology added new requirements, such as investigating vapor intrusion pathways as part of the initial investigation, quarterly monitoring, and light non-aqueous phase liquid (LNAPL) removal activities when LNAPL is present. The vapor intrusion assessment has been a practice in place with Ecology but not specifically defined in the rules. Quarterly sampling is standard, but there should be a mechanism to indicate quarterly sampling can be scaled back.

Ecology should provide an example of when less frequent reporting and LNAPL removal may be appropriate later in the process, such as LNAPL thickness trends and transmissivity data.

#### **Part 6 Public Participation and Tribal Engagement General Provisions**

##### **23 WAC 173-340-600(5) Site specific information on website**

The proposed rule language includes new, required methods of providing notice about each site, including posting site information on Ecology’s website. The information required includes initial

investigation reports and cleanup action plans, and, for independent remedial actions, “any independent investigation, interim action, or cleanup action report.”

Posting and ensuring this information is complete will require significant Ecology resources if performed for all current sites and sites that have already received no further action letters. Additionally, rule language is not clear with respect to how this change could impact electronic document accessibility requirements. In recent months, Ecology has required documents be compliant with Americans with Disabilities (ADA) standards and Section 508 of the Rehabilitation Act (which provides accessibility requirements for electronic and information technology provided by the federal government) for addition to government websites; however, this requirement is often not communicated until the deadline for final document submittal is approaching.

Ecology should clarify that this requirement will be met for future cleanup sites only, as resources allow. Additionally, it would be helpful to have Ecology guidance specifying any ADA or Section 508 accessibility compliance requirements.

## 24 **WAC 173-340-620 Tribal Engagement**

This new Section states that engagement with Indian tribes “must be in addition to and independent of any public participation process.” Under this completely new Section, tribal rights and interests would be defined and documented early in the MTCA process through a tribal engagement plan, rather than under the public participation process. This proposed rule change also calls for “continuous opportunities for collaboration” and states that “Ecology encourages early planning and engagement. Ecology will seek to engage affected Indian tribes before initiating a remedial investigation or an interim action at a site.” The new rule requires Ecology to develop a site tribal engagement plan that “identifies Indian tribes that may be adversely affected by the site, opportunities for government-to-government collaboration and consultation, and protocols for communication.” It is unclear whether this engagement plan will be similar to existing public participation plans.

This new Section provides insufficient detail regarding when and to what extent Indian tribes will be engaged throughout the process. Due to this ambiguity, it is unclear if Indian tribes’ focused review periods for major MTCA deliverables, such as the remedial investigation/feasibility study (RI/FS) and Cleanup Action Plan (CAP), are separate and in addition to the existing, required Ecology and public review periods. If so, this would result in additional revision rounds to cleanup documents, further extending the already long timeframes to clean up sites. It is also unclear if Ecology will lead all early planning and engagement, in addition to government-to-government consultation, or if PLPs will be responsible for some portion of tribal outreach planning and engagement (see WAC 173-340-620(3)(b) wherein “Ecology encourages early planning and engagement”). It is also unclear the extent to which PLPs will engage with Tribal nations in this process.

Additional clarity is needed regarding whether the new Indian tribe engagement and review periods, which are stated to be “in addition to and independent of any public participation process,” are concurrent with the Ecology deliverable review periods and what major MTCA deliverables they will apply to (e.g., RI/FS and CAP). Additional clarity is needed regarding the time frames for this tribal engagement. This clarification is necessary for project planning. Additional clarification is also needed regarding the Indian tribe outreach and planning responsibility and whether that falls to Ecology or to the PLPs. Lastly, it is not clear how this new rule will apply at existing MTCA sites with a tribal Memorandum of Understanding.

## **Part 8 General Provisions**

### **WAC 173-340-815 Cultural Resource Protection**

25 The proposed rule change includes an additional section to address cultural resource protection and actions to avoid, minimize, or mitigate adverse effects from remedial actions on archaeological and historic archaeological sites, historic buildings and structures, traditional cultural places, sacred sites, and other cultural resources. The new rule section mandates consultation with the Department of Archaeology and Historical Preservation, as well as affected Indian tribes, prior to any field activity that may impact cultural resources. This consultation aligns with the Washington State Governor's 2021 Executive Order 22-02, Archaeological and Cultural Resources.

Depending on the consultation outcome, Ecology may require a cultural resources survey or monitoring work plan, which may result in minor cost implications for the project. The requirement also includes the preparation of Inadvertent Discovery Plans (IDPs) for the site. While IDPs are already standard practice on most cleanup sites and consistent with current agency policy, this requirement is now being formalized.

WSPA assumes that an IDP is necessary for sites where cultural resources are potentially present, an IDP is not needed for all sites. For example, an urban site with a low probability of the presence of cultural resources will not require an IDP. WSPA suggests clarification in the proposed rule language to provide examples of what would trigger the requirement of an IDP.

WSPA appreciates the opportunity to comment on the proposed amendments to WAC 173-340. If you have any questions about the information presented in this letter, please contact me at (360) 296-0692 or via email at [jverburg@wspa.org](mailto:jverburg@wspa.org). I would be happy to discuss our comments with you.

Sincerely,



James Verburg  
Senior Director, NW and SW Climate and Fuels





## Judith Kay

I write as a concerned resident of Tacoma. I care deeply about reducing toxic waste sites and their negative effects on my community. Please consider the following changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxins, especially increased risks for cancer and neuro-developmental disorders in children. The environmental cleanup law doesn't currently factor this disparity when prioritizing sites for clean up. Toxic sites that affect our Tribes and people of color deserve to be given priority.

I recommend these changes to the Model Toxics Control Act:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities, especially populated by people of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an over-representation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services, especially to public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.



## Commenter #26 - Galacgac, Meagan

I would like to express my concerns and suggestions as a Washington resident. I also care about reducing toxic waste sites and their impacts on our communities. Here are some suggestions that I have to the documents that was put out for the public to comment:

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make

this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

## Commenter #27 - Galacgac, Moriah

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 • **Cumulative health impacts:** Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 • **Disproportionate Cost Analysis:** The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 • **Public notice:** All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

## Commenter #28 - Galacgac, Mark

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make

this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Commenter #29 - Tahoma Audubon Society

kirk Kirkland

Please see letter from Tahoma Audubon Society attached.



2917 Morrison Road, W.  
University Place Wa. 98466  
(253) 565 9278  
[www.TahomaAudubon.org](http://www.TahomaAudubon.org)

April 16, 2023

Sarah Wollwage  
Department of Ecology  
PO Box 47600.  
Olympia, WA 98504-7600

Dear Ms. Wollwage

Thank you for the opportunity to comment on the Model Toxics Control Act. Tahoma Audubon Society in Pierce county is concerned about the Rule making process as it does not include people of color and low-income communities which bear a disproportionate share of health risks from exposure to toxics.

This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change. In Tacoma the planning department is in the process of approving a distribution center in a superfund site in South Tacoma. This is an environmental injustice and it should be addressed in the new rule making process.

:

- 1 • **Cumulative health impacts:** Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 • **Disproportionate Cost Analysis:** The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 • **Public notice:** All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used,

Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

We need Ecology to work with people instead of represents economic development interests. With your help, we can ensure that cleanups happen equitably..

Kirk Kirkland  
Conservation Committee.



## K Anderson

As the Department of Ecology is updating the Cleanup Rule after nearly 30 years it's time to incorporate environmental justice and climate change considerations to reduce the burden on our most impacted communities. I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
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Commenter #31 - Oaks

Stacy Oaks

My comment is attached

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Commenter #32 - DRCC, RE Sources, CHB, WCA, and THWK

## DRCC, RE Sources, CHB, WCA, and THWK

Thank you again for providing the opportunity to comment on the proposed MTCA rule update. Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, and Twin Harbors Waterkeeper offer the attached comments as members of the Stakeholder and Tribal Advisory Group and as interested parties.



April 16, 2023

Clint Stanovsky  
clst461@ecy.wa.gov  
Rulemaking Lead – Cleanup Rule Update AO# 18-09  
Policy and Technical Support Unit, Toxics Cleanup Program  
Department of Ecology  
*Submitted electronically*

RE: Model Toxics Control Act (MTCA) Cleanup Rulemaking Chapter 173-340 WAC Proposed Rule

Dear Clint,

Thank you again for providing the opportunity to comment on the proposed MTCA rule update. Duwamish River Community Coalition, RE Sources, Communities for a Healthy Bay, Washington Conservation Action, and Twin Harbors Waterkeeper offer these comments as members of the Stakeholder and Tribal Advisory Group and as interested parties. We have invested significant time in this effort since 2019 because MTCA is such a critical element for clean and healthy communities. We urge Ecology to continue ensuring that the public's interests are protected, and that historical inequities are addressed directly and transparently. Our members and communities care deeply about cleaning up toxic pollution expediently and fairly.

We know that a tremendous amount of work has gone into this important rulemaking update. We are pleased to see that some opportunities for improvement were taken; however, we believe there is more room for improvement to help close the gap for communities that are disproportionately impacted. Please see below for our feedback.

**ENVIRONMENTAL JUSTICE:**

- 1 Throughout the updated rule language, we noticed a few themes worth noting before we address specific sections. We appreciate the general inclusion of “vulnerable populations or an overburdened community” throughout this rulemaking update. This inclusion and acknowledgement is a good start towards incorporating environmental justice and closing the gap for communities that are disproportionately impacted, particularly when it comes to legacy contaminated sites. At the same time, there is a lack of clarity in the language on how vulnerable populations and overburdened communities will actually be incorporated or considered beyond just noting whether or not they exist in relation to a MTCA site. *We ask for clarity on how Ecology is making environmental justice actionable, rather than something that is simply noted in the MTCA process.*

Toxic waste sites in Washington are often clustered in low-income communities of color. In

addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.

- 2 *We recommend Ecology consult with the Washington Department of Health on best practices and methods to assess cumulative impacts using the Washington Environmental Health Disparities Mapping tool.* Using existing data, Ecology will be able to utilize the tool to analyze environmental exposures, environmental effects, sensitive populations, and socioeconomic factors. Using this tool is especially important during the MTCA process, including, but not limited to, in the site ranking process, cumulative impacts analysis, and remedial investigation into the effects on highly impacted communities.
- 3 In order to strengthen environmental justice principles, which is an identified purpose of the proposal, *we recommend that the rule include an environmental justice analysis that explicitly requires the use of the Environmental Health Disparities Mapping tool to identify cumulative impacts and incorporate these findings into the MTCA process.* We would be happy to have follow up conversations about resources if Ecology staff is interested.

### **310 INITIAL INVESTIGATION**

- 4 While we are pleased to see some improvements, such as the inclusion of vulnerable populations and overburdened communities, we reiterate our previous comments. *In addition to owners and operators, employees, renters, and other people who may be impacted by the contaminated site need to be informed under Section 310(6) and provided with information detailing the nature of the contaminants at the site and any potential health and environmental risks and exposures associated with the site.*
- 5 Section 310 no longer requires Ecology to perform site visits. *We recommend the implementation of a policy that identifies the procedures Ecology staff will utilize in order to determine if a site visit is necessary.* The steps outlined in the policy should be repeatable and consistent across sites. Additionally, we are concerned that codifying the removal of initial site visits could be deemed as a decrease in workload by the Washington State Legislature, and could justify a budget cut, further impacting an already tight budget.
- 6 *Finally, we recommend ensuring that Tribal governments are afforded the opportunity to opt in to receiving any communications related to initial investigations and assessments within their Usual and Accustomed Areas.* This could be included in section 620 on Tribal engagement as well as referenced in this section to ensure proper Tribal engagement.

### **320 SITE HAZARD ASSESSMENT AND RANKING**

- 7 We appreciate Ecology releasing the SHARP tool for public comment in parallel with this rulemaking update so that we can see a side-by-side comparison and to have a more transparent process. We have separately submitted a comment letter for the SHARP tool.
- 8 We additionally appreciate the inclusion in this rulemaking of section 320(2)(d) on public

participation, ensuring that when establishing the site hazardous assessment and ranking process or making any change to the process that could affect hazard ranking, Ecology will provide a public notice and opportunity to comment. This too is important to maintain a transparent process that the public will have an opportunity to review.

9 We also appreciate that this section allows for new information to be considered and for  
10 consideration of vulnerable and overburdened populations. It appears that the performance  
11 standards and quality assurance added, while somewhat vague, do allow for easier and more  
regular updates to technical standards. In implementation, the notification requirements have  
been updated to include “potential exposure of human and environmental receptors,” severity of  
exposure to human health and environment, and whether community is overburdened, which  
we hope will also create more transparency.

12 This section, however, still lacks clarity on how vulnerable populations and overburdened  
communities are to be considered in site assessment and ranking. *We still do not see in the  
13 assessment and ranking any considerations for cumulative impacts or how long a site has been  
on the hazardous site list without any cleanup. We would still like to see performance standards  
14 for evaluating cumulative impacts of multiple environmental exposures. Consideration for  
potential of future releases of hazardous substances associated with historical and current land  
use, as well as consideration for chronic exposures should be taken into account. The rule is  
also still unclear how Ecology will ensure communities know about their notification options.*

### **340 PROGRAM PLANNING AND ASSESSMENT**

15 We are in support of some of the edits made in section 340 regarding program planning and  
assessments. We believe that broadening the language in subsection 1 and 2 to include  
prioritization for overburdened populations that *may* be impacted by contaminated sites is  
consistent with environmental justice principles. We also support a similar edit made in  
subsection 3 that broadens the language of the rule to include progress assessment for  
cleaning up sites that may impact vulnerable communities. These changes will allow for  
potential harm to overburdened and vulnerable communities to be considered when making  
decisions about program planning.

16 However, we still have several concerns with the section. *There should be an explicitly stated  
prioritization of BIPOC communities, as race is one of the strongest indicators of environmental  
17 injustice. We are also concerned that some of our previous comments on this section have not  
been addressed. We do not see anything in this section that would allow for ways to ensure the  
disparity in the number and severity of contaminated sites in frontline communities not only  
disappears, but also drives cleanup priorities.*

18 We are also concerned that there are no included metrics to measure how certain communities  
are disproportionately impacted by toxic pollution, how current and future MTCA sites will be  
analyzed, and how Ecology will report to the legislature regarding its progress towards  
eliminating disproportionate impacts on vulnerable, overburdened, and BIPOC communities.  
*These metrics need to be fully realized in the Toxic Cleanup Program’s (TCP) Strategic Plan, to  
include assurance mechanisms that reduce the disparity of toxic sites in low-income and*



19 *communities of color on a near-term timeline. A timeline is crucial to ensure accountability for the TCP, and to allow community advocates to track TCP's progress. Because public review and comment is not required for Strategic Plan updates, any communications about these updates should be explicitly clear that public review and comment are welcome, and those comments will be reviewed and considered by TCP staff.*

### **350 REMEDIAL INVESTIGATION**

We appreciated some clarifications and additions to this section, including:

- 20 • Clarification that the requirement to conduct a remedial investigation (RI) applies to all contaminated sites, regardless of which administrative option in Section 510 is used to conduct remedial action at the site (Ecology-conducted, Ecology-supervised, or independent). Performing an RI is a substantive requirement, applicable to all sites.
- 21 • The added requirement that independent investigations of a site must be reported to Ecology within 90 days of completion.
- 22 • The additional requirement that Ecology must notify the public of independent investigation reports submitted to Ecology.
- 23 • The added requirement to include an inadvertent discovery plan (IDP) to meet the requirements in new Section 815 regarding cultural resources. An IDP will also be required as part of interim action plans and cleanup action implementation plans, which is important in protecting cultural resources.
- 24 • The requirement added that reports must include documentation of the proper management and disposal of any waste materials generated.
- 25 • The added requirement that investigation must include, as applicable, an assessment of the geologic and hydrogeologic features of the site that are likely to affect the ability to implement cleanup action alternatives.
- 26 • For investigations of air and soil vapor, the addition of more specific requirements in reflection of better understandings of vapor pathways.
- 27 • The added specific characteristics relevant to climate change, such as sea level rise and potential for wildfires which are important to ensure permanence of cleanup actions and better reflects our current understanding.
- 28 • This section emphasized that investigations of land and resource uses must include the uses of vulnerable populations and overburdened communities, which is a step in the right direction.
- It also emphasized that investigations of affected human populations must include vulnerable populations and overburdened communities, though what this means is still left unclear.

29 We disagree with a few things in this section. *We do not agree with the elimination of the requirements for conducting a cumulative impact analysis of existing burdens on a vulnerable population or overburdened community for the purposes of selecting a remedy for a contaminated site.* It is not clear to us that cumulative impacts of existing burdens are analyzed at any step in the cleanup process. *We reiterate from our previous comment letters that cumulative impacts need to be considered early and often to ensure that the communities impacted most by environmental harms receive the benefits of this rule.* We know that “multiple

factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.” (EPA 2020). If Ecology is to truly advance environmental justice principles and reduce harmful disparities, a cumulative impacts analysis will need to be performed, especially for sites located in or adjacent to highly impacted communities.

30 *Further, this version of this section does not utilize our previous recommendation to include immigrant and refugee populations in the definition of highly impacted communities, which is important in making progress towards closing the gap on disproportionately impacted populations.*

### **351 FEASIBILITY STUDY**

We agree that the following additional requirements in this section improve this rule:

- 31 ● the inclusion of the location and estimated amount of hazardous substances removed or treated by the alternative and the restoration time frame for the alternative;
- the inclusion of the location, estimated amount, and projected concentration distribution of each hazardous substance remaining above proposed cleanup levels after implementing the alternative;
- 32 ● the inclusion of documentation of how impacts on vulnerable populations and overburdened communities were considered in the evaluation required in Step 4; and
- 33 ● the inclusion of documentation of the proper management and disposal of any waste materials generated by study.

### **360 CLEANUP ACTION REQUIREMENTS**

34 We again appreciate that this section emphasized that cleanup actions must protect vulnerable populations and overburdened communities, and that one must consider the potential risks posed by the site to the health and environment of vulnerable populations and overburdened communities when evaluating the reasonableness of a time frame as well as when assessing the long-term effectiveness of a cleanup action. We also appreciate taking our recommendation to include language that considers the impacts on vulnerable populations and overburdened communities when assessing the short-term risks of a cleanup action during construction and  
35 *implementation; however, we believe more guidance is necessary to ensure cleanup occurs. Ecology needs a clear method for measuring the degree to which the benefits and burdens of the preferred cleanup action alternative are equitably distributed must be outlined in guidance. As currently written, it is unclear how Ecology plans to determine if these expectations are met.*

36 We support the separation of the climate resilience requirement from the existing protectiveness requirement in the former subsection (2)(a)(i). Specifying that a cleanup action must be resilient to climate change impacts that have a high likelihood of occurring and severely compromising the action’s long-term effectiveness is critical in ensuring the permanence of cleanup actions. We foresee a higher likelihood of extreme events occurring that could compromise cleanup  
37 actions and appreciate this addition. Under subsection (5), climate resilience has also been separated out as an explicit factor when evaluating the relative long-term effectiveness of a cleanup action alternative in the disproportionate cost analysis, which we also support.

- 38 We also agree with the added requirement in Section 360(3)(d), that for Ecology-conducted or Ecology-supervised remedial actions, one must consider both public concerns and tribal rights and interests both when determining and when weighting each of the five benefit criteria (protectiveness, permanence, long-term effectiveness, management of short-term risks, and implementation potential).
- 39 We have some concerns with the removal of “volume” replaced by “exposure” as a factor that must be considered when assessing the permanence of a cleanup action alternative. While this appears to prioritize exposure over volume, which could be protective of human health and the environment in the short term, we are concerned that this could lead to higher risks after sites are considered cleaned up if the volume of a contaminant is not considered. While capping contaminants is often used and can be an appropriate cleanup remedy, left behind contaminants may pose risk to human health and the environment in the long run should an exposure pathway be introduced at a later point in time. *What is Ecology’s justification for this change?*
- 40 We have concerns over the eliminated guidance in former subsection (2)(e)(ii) about using quantitative, scientific analysis to evaluate whether institutional controls demonstrably reduce risks. The original text that was removed stated: “Institutional controls should demonstrably reduce risks to ensure a protective remedy. This demonstration should be based on a quantitative scientific analysis where appropriate.” We are concerned that removing this language means there is no requirement for ensuring risks are reduced. We also are concerned that there is no explicit requirement to show how an analysis was done to create protective remedies. *What was Ecology’s intention with this change?*
- 41 We are concerned about the elimination of the separate equitability requirement for cleanup actions, including consideration of any cumulative environmental or health impacts on vulnerable populations and overburdened communities from sources additional to the contaminated site. The subtext indicates that this removal will be subsidized by provisions of the HEAL Act, but it is unclear to us how that will happen. *We request clarification and justification of this change.*
- 42 We are still very concerned about the process of performing the Disproportionate Cost Analysis (DCA). Given the amount of time and effort spent on discussing benefits while participating in the STAG, we are very disappointed to see that the proposed rule only lists specific costs to be included in the DCA, but not benefits. This will grossly underestimate the ecosystem and public health benefits of a thorough, more protective cleanup. And, because Ecology has no method to monetize ecosystem services and public health, but can easily tally the costs to the PLP for cleanup - finite costs like labor, construction equipment, and mileage, for example - costs will always be overrepresented in a DCA. As it currently stands, the DCA process is biased for permanence, meaning when the most permanent cleanup alternative is found, the DCA stops. This method then neglects to even consider more protective cleanup alternatives if a more permanent solution is found earlier in the process. *What is Ecology’s justification for prioritizing permanence over protectiveness?*
- 43

44 We understand that the exercise of monetizing ecosystem services and improvements in public health is time consuming and costly. These barriers should not however, be used as a reason to not perform the most accurate DCA possible. *Can Ecology complete this task using something similar to a model remedy? – use known factors and costs to plug in values to come up with a more complete picture of the benefits provided by a properly functioning, healthy ecosystem that the public can safely access?*

### **370 CLEANUP ACTION EXPECTATIONS**

45 We support the edit specifying that cleanup actions in compliance with the rule is not a substitute for conducting a feasibility study. *However, we are concerned that there are no details on what circumstances would make non-conformance acceptable. To increase transparency and accountability, there should be clear standards that specify when non-conformance will be*  
46 *allowed. We are also concerned that there is no specific language around equity related considerations as a cleanup action expectation. Expectations for the equitable distribution of costs and benefits from MTCA work, and for the expectation that cleanup remedies will be resilient to climate change should be added back into the proposed rule, as seen in previous drafts.*

### **380 CLEANUP ACTION PLAN**

47 We support the inclusion of the statement that independent remedial actions must also include the same information required in a cleanup action plan. Yet we have concerns about the  
48 removal of the subsection requiring notice when cleanup action cannot be achieved. *This should be included so that impacted communities can stay informed on the status of cleanups. We also*  
49 *believe that a summary of considerations related to cumulative impacts and overburdened community needs should be included.*

### **390 MODEL REMEDIES**

We appreciate Ecology's desire to accelerate the selection of cleanup actions. However, streamlining the process should not reduce the quality of cleanup actions. *We find the following sections in need of clarification to reduce ambiguity in the model remedy selection process:*

50 (1) *Purpose.* This section lacks an explanation of what constitutes “routine types of cleanup projects at sites with common features and lower risk to human health and the environment.” While this wording aligns with the definition of a model remedy in RCW 70A.305.020(20), the language does not provide enough information about the characteristics of projects that qualify for a model remedy. *We recommend adding language to clearly define these elements.*

51 (2) *Development of model remedies.* This section lacks a description of what constitutes common categories of sites or types of hazardous substances. *We recommend adding language to clearly define these elements.*

52 (4) *Selection.* We agree that in certain situations under certain circumstances, it makes sense to forgo a feasibility study. *However, the rule should be made clear to emphasize that this should only be done when a remedial investigation justifies the absence of a feasibility study, i.e. the*

*remedial investigation proves that the situation meets the conditions or standards to select a model remedy.*

## **600 PUBLIC NOTIFICATION AND PARTICIPATION**

- 53 All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. *To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. Additionally, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.*

## **620 TRIBAL ENGAGEMENT**

- 54 In section (2) *Applicability*, we appreciate Ecology incorporating feedback from the STAG into this section. As stated in our October 2022 comment letter, this section previously too narrowly defined “Indian tribes’ rights or interests in their tribal lands.” This wording relied on the definition of “tribal lands” in RCW 70A.02.010(13) and “Indian country” in 18 U.S.C. Sec 1151. Conscripted by these definitions, this language introduces a limited geographic extent not encompassing broader geographic areas that are within Tribal lands and waters defined by Executive Order or within Usual and Accustomed Areas. Since Tribal rights and interests extend well beyond reservation boundaries, we appreciate the change of wording to reflect this in section 620 as well as sections 360 and 380. However, we defer to Tribal representatives for final wording.
- 55 We are however disappointed that the applicability of section 620 is limited to Ecology-conducted and Ecology-supervised remedial actions and does not include independent actions. This is an example of weaker policy in the independent cleanup program. *Tribal engagement must be a component of all cleanup actions that may affect Tribes’ rights or interest, including independent actions.*
- 56 In section (3) *Tribal engagement*, we appreciate Ecology’s commitment to developing a site Tribal engagement plan identifying Indian Tribes that may be adversely affected by the site and opportunities for government-to-government collaboration and consultation, and protocols for engagement. *However, we request clarity regarding how Tribes will be engaged and how input received from Tribes will be incorporated into decision making.*
- 57 Footnote 650 describes Ecology’s intent to develop a template that will be modified on a site-specific basis as needed based on Tribal interest. We defer to Tribal leaders on whether a template is the appropriate approach to engagement. *We would however like to see this section modified to outline how specifically Ecology plans to approach engaging with Tribes and what resources will be used to identify Tribes affected by a site.* Meaningful engagement requires careful planning by Ecology early in the process and the language in the rule should demonstrate Ecology’s proposed approach.

58 We are encouraged to see that Ecology will engage affected Indian Tribes before the initiation of a remedial investigation or an interim action at a site, but would like this language to more clearly reflect pathways that will emerge from engagement. *We would like the rule to clearly state how Ecology plans to consult Tribes and how input received by Ecology will be incorporated into final decision making about remedial investigations or interim actions.* We urge Ecology to consult with Tribal representatives to finalize this language.

59 In section (4) *Relationship with public*, we are encouraged to see language adapted from the HEAL Act, RCW 70A.02.100(3), requiring that engagement with federally recognized Indian Tribes must be independent from any public participation process.

60 We are disappointed that the Department's proposed Strategic Plan described in section 340(1) does not include Tribal engagement. As stated in our October 2022 letter:

"In addition to the engagement elements listed in the pre-proposal rule, we also urge Ecology to include tribal engagement in the Department's proposed Strategic Plan described in 173-340-340(1). One option would be to include a new Part (5) that describes tribal engagement, and cross reference that in 173-340-620. Engaging with tribal representatives during strategic plan development and assessment would be an effective opportunity to plan more broadly than the individual sites that are referenced in Part (4) of this section, where cumulative impacts to natural resources could be identified and addressed strategically."

### **815 CULTURAL RESOURCE PROTECTION**

61 In section (1) Purpose, we appreciate that the added statement of purpose aligns with Executive Order 21-02 which states that, "State agencies shall take all reasonable action to avoid, minimize or mitigate adverse effects to archeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites or other cultural resources." This Executive Order recognizes the need to protect the state's numerous archaeological and historical sites and Native American sacred places and landscapes.

62 In section (3) Consultations and inadvertent discovery plans, *the applicability of consultations and inadvertent discovery plans should be expanded to include independent remedial actions.* This is an example of a weaker policy in the independent cleanup program that may have a direct, negative impact on Tribes.

63 Additionally, the language in section (B)(i), "Based on the consultations, Ecology may require the development and implementation of a cultural resources work plan," needs clarification. *The rule should state what types of consultation outcomes would trigger the development and implementation of a cultural resources work plan. The steps to determine the need for such a plan should be consistent and repeatable across sites.*



## **830 SAMPLING AND ANALYSIS PROCEDURES**

64 We appreciate the proposal to shift the list of Ecology-approved analytical methods outside of the rule as it will allow for adaptation to evolving scientific methodology and technological changes.

*As stated in our October 2022 comment letter, all data used for regulatory decision making must be subject to stringent quality assurance and quality controls using standard and acceptable methodologies. Because changes to the list are proposed to occur outside of formal rulemaking, we expect the addition or removal of methods from the list to strictly align with these standards.*

We thank Ecology for this opportunity to comment. Many years and much hard work has been put into updating these sections of the Model Toxics Control Act rule. We deeply appreciate the focus on environmental justice and engagement with Tribes. While we agree with some of the directions that have been taken, we still have serious concerns about the implementation of the changes, especially regarding reducing disparities across the many communities we serve. We look forward to continuing efforts with MTCA STAG in the future for an improved rule and inclusion of environmental justice.

Sincerely,

Jamie Hearn  
Duwamish River Community Coalition

Mindy Roberts  
Washington Conservation Action

Eleanor Hines  
RE Sources

Sue Joerger  
Twin Harbors Waterkeeper

Erin Dilworth  
Communities for a Healthy Bay

Lee First  
Twin Harbors Waterkeeper

Katie Byrnes  
Washington Conservation Action

## David Friscia

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 ● **Cumulative health impacts:** Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 ● **Disproportionate Cost Analysis:** The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 ● **Public notice:** All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.



With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

## Olympic Environmental Coalition

MTCA is a good and needed program, but it seems weaker than the original intent - comparable or stronger than the USEPA Superfund program. WA State cannot be "green" until these poisons can be gotten rid of.

Perhaps more staff is needed to work on these sites. There are thousands on the list and more being added. The state needs:

- cleanup schedules being met. Significant cleanups met in a timely manner.
- the PLPs should put significant funds up front to initiate and cover cleanup costs. MTCA can draw on these funds if the PLP is recalcitrant.
- more lawsuits against PLPs
- stop over representing cleanup costs. Rather, accurately reflect the costs to human health, wildlife and natural resources. There is no justification for leaving toxic and hazardous waste in communities. Polluters must remove these and MTCA should reflect this, as well as hardball positions it will take if PLPs don't advance cleanups.
- Determine and share with the public the cumulative impacts to human health, the wildlife and ecosystems.
- pay attention to cleanups in EJ and lower economic communities.
- include Equity in the SHARP tool
- always increase ways to reach and inform the public.
- give large weight to public comments. Don't just check a box that comments were asked for and received but that there is no regulation that says the public comments matter, which has been stated by Ecology staff. Don't waste the public's time and energy if their input is dismissed. Heavily weigh public input!

Thank you.

## Phil Harty

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
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## Michelle Mood

I live near a Superfund site in South Tacoma, with commercial auto recycling businesses nearby, and very concerned about this clean up rule. My neighbors and I need the protection of law to be able to reduce our high environmental health inequities. The Department of Ecology is key to reducing environmental injustice. Please strengthen this rule. am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

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communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

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## Comment Memorandum

Date: April 16, 2023

To: Clint Stanovsky, Washington State Department of Ecology, Toxics Cleanup Program, Cleanup Rulemaking Lead (comments submitted online)

From: Ben Starr, Anne Fitzpatrick, Luke Smith, Geosyntec Consultants Inc.

Subject: Comments on MTCA Cleanup Regulations Chapter 173-340 WAC - Proposed Rule Amendments

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Geosyntec Consultants Inc (Geosyntec) is providing the following general and specific comments to the Model Toxics Control Act (MTCA) Cleanup Regulations Chapter 173-340 WAC Proposed Rule Amendments (proposed rule) posted by the Washington State Department of Ecology (Ecology) on February 15, 2023. The proposed rule restructures several sections of WAC 173-340 in an effort to improve the site hazard ranking process, revitalize MTCA cleanup program planning and assessment, update and clarify remedial investigation and remedy selection requirements, improve response to underground storage tank (UST) releases, strengthen environmental justice, advance public and tribal participation, and make rules easier to follow.

We appreciate the opportunity to review the draft document and look forward to working with Ecology, stakeholders, and community members in a constructive dialogue for implementing changes to the MTCA Cleanup process.

### OVERVIEW

Based on our review of the proposed rule, the changes in the proposed rule fall into the following general categories:

- Revisions that reflect Ecology’s need to consider environmental justice, in accordance with the Healthy Environment for All (HEAL) Act (Chapter 70A.02 RCW) and to:
  - Ensure equal protection from environmental and health hazards and equal access to decisions made about environmental protection.
  - Prioritize sites for cleanup or funding. Ecology would be required to prioritize vulnerable populations and overburdened communities impacted by contaminated sites and to track Ecology’s progress in reducing such impacts.
  - Conducting cleanup work. Ecology and regulated parties would be required to consider and document site and cleanup impacts on vulnerable populations and overburdened communities when making cleanup decisions.
  - More explicit requirements and process for Tribal consultation and engagement for Ecology-supervised cleanups.

- Changes to the site hazard assessment, ranking, and prioritization process.
- Updates and clarification of requirements for investigating sites and selecting cleanup actions.
- Updated responses to releases from regulated USTs.
- Clarification of requirements for independent site cleanups.
- Incorporation of a revised disproportionate cost analysis (DCA) into the feasibility study process to facilitate identification of a cleanup action alternative that uses permanent solutions to the maximum extent practicable.
- General revisions to improve clarity and understanding.

## GENERAL COMMENT

- 1 Throughout the proposed rule, Ecology incorporates discussion and consideration of ‘*vulnerable populations and overburdened communities*.’ We appreciate that these changes are intended to promote more equitable consideration/engagement of these communities and prioritization of cleanup sites. The proposed rule indicates that during the initial investigation stage of a project, Ecology will identify vulnerable or overburdened communities using the environmental health disparities map or other readily available information. It is recommended that Ecology provide additional information regarding the process that will be used to identify vulnerable or overburdened communities (e.g., if available existing mapping tools<sup>1</sup> will be used) and how this designation may impact the overall MTCA cleanup process and schedule.

## SPECIFIC COMMENTS BY SECTION

### 2 WAC 173-340-350 Remedial Investigation

The requirements under Section (6) Investigations use the term ‘*must*,’ which is too strong depending on the nature of the site and its conceptual site model. It is recommended that this term be replaced with ‘*should*’ to allow flexibility to tailor the scope of the investigation based on site characteristics.

### 3 WAC-173-340-360 Cleanup Action Requirements

Subsection 5 presents a revised procedure for utilizing the DCA in determining whether a cleanup action uses permanent solutions to the maximum extent practicable. The proposed rule describes an iterative process in which the baseline alternative (defined to be the most permanent per WAC 173-340-200) is compared to other cleanup action alternatives. If the incremental costs associated with the baseline alternative are determined to be disproportionate relative to the incremental degree of benefits, the alternative may be eliminated, and the next most permanent baseline alternative becomes the baseline for a subsequent round of analysis. It is understood that the iterative approach is intended to prevent misuse of the DCA and ensure that a cleanup action that uses permanent solutions to the maximum extent practicable is identified at the conclusion of the process. However, this stepwise process will be tedious to implement and evaluate and

<sup>1</sup> Examples of existing mapping tools to identify vulnerable populations are: the United States Environmental Protection Agency Environmental Justice Screening and Mapping Tool, available here: <https://www.epa.gov/ejscreen>, and the Washington Environmental Health Disparities Map, available here: <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>



create unnecessary steps. Also, by iteratively screening out alternatives this revised DCA process has the potential to amplify very minor differences between two or more alternatives that have very similar net benefits and/or costs. It is recommended that flexibility be maintained on a site-specific basis to minimize inefficiencies and the potential to artificially amplify differences between similar alternatives. One DCA screening may be sufficient for most projects.

- 4 Subsection (5)(c)(i)(C) states that Ecology may consider public concerns and tribal rights and interests when determining and weighting each of the five benefit criteria (protectiveness, permanence, long-term effectiveness, management of short-term risks, and implementability). The text indicates that this requirement is intended to replace the separate “public concerns” criterion of the DCA in former subsection (3)(f)(vii). It is recommended that this modification not be implemented, and that the prior category of public concerns be retained. It is understood that a particular criterion may be of greater or less interest and concern to an individual population or group; however, it is more transparent to develop a weighting/score that objectively assesses the magnitude of benefits with respect to a given criterion. It is also a place that could narratively describe public outreach efforts to collect and consider stakeholder priorities. Expressed public concerns may then be taken into consideration and used to adjust or modify the cleanup action selection, if needed.

**WAC-173-340-370 Expectations**

- 5 The change from “overall” to “long-term” prioritizes long-term over short-term impacts (e.g., greenhouse gas emissions, resource use). It is recommended that the prior term “overall threat” be maintained and consider all impacts.

**WAC-173-340-620 Tribal Engagement**

- 6 The proposed rule includes an added requirement for Ecology to develop a tribal engagement plan for each site that identifies affected Indian tribes and opportunities for engagement. The text further indicates that Ecology intends to develop a template that can be modified on a site-specific basis as needed based on tribal interest. Please confirm that identification of affected Indian tribes and development of a site-specific tribal engagement plan are activities that will be performed independently by Ecology, with input if appropriate from Potentially Liable Parties (PLP) and/or engagement specialists.

**Table 1. Summary of Comments**

Chapter	Section	Page Number <sup>2</sup>	Geosyntec Comment
<i>Remedial Investigation</i>			
2 WAC 173-340-350	(6)	83	The requirements under <i>Section 6 - Investigations</i> incorporate the term ‘must,’ which is too strong, depending on the nature of the site and its conceptual site model. <u>It is recommended that this term be replaced with ‘should’ to allow flexibility to tailor the scope of the investigation based on site characteristics.</u>
<i>Cleanup Action Requirements</i>			

<sup>2</sup> Page numbers refer to the formatted version of the proposed rule with tracked and footnoted changes.

3	WAC-173-340-360	(5)	113 <i>Section 5 – Cleanup Action Requirements</i> presents a revised iterative and stepwise process for utilizing the disproportionate cost analysis (DCA) in determining whether a cleanup action uses permanent solutions to the maximum extent practicable. The baseline alternative may be eliminated if costs are disproportionate to the incremental benefit and the next most permanent baseline alternative becomes the baseline for a subsequent round of analysis. This stepwise process will be tedious to implement and evaluate, and by iteratively screening out alternatives it has the potential to amplify very minor differences associated between two or more alternatives that have very similar net benefits and/or costs. <u>It is recommended that flexibility be maintained to adapt this process on a site-specific basis to minimize inefficiencies and the potential to artificially amplify differences between similar alternatives.</u>
4	WAC-173-340-360	(5)(c)(i)(C)	114 <i>Subsection (5)(c)(i)(C)</i> states that Ecology may consider public concerns and tribal rights and interests when determining and weighting each of the five benefit criteria (protectiveness, permanence, long-term effectiveness, management of short-term risks and implementability). <u>It is recommended that the “public concerns” DCA criterion in former subsection (3)(f)(vii) be retained (no change). This criterion can be used to provide a transparent narrative discussion of stakeholder outreach efforts and documentation of priorities.</u>
<i>Cleanup Expectations</i>			
5	WAC-173-340-370	(8)	121 The change from “overall” to “long-term” prioritizes long-term over short-term impacts. <u>It is recommended that the prior term “overall threat” be maintained.</u>
<i>Tribal Engagement</i>			
6	WAC 173-340-620	3(a)	212 The proposed rule includes an added requirement for Ecology to develop a tribal engagement plan for each site that identifies affected Indian tribes and opportunities for engagement. The text further indicates that Ecology intends to develop a template that can be modified on a site-specific basis as needed based on tribal interest. <u>Please confirm that the identification of affected Indian tribes and development of a site-specific tribal engagement plan are activities that will be performed independently by Ecology, with input from others if appropriate.</u>

\* \* \* \* \*

Prepared by Geosyntec 4/16/2023  
 Saved in \\Seattle-01\data\Tech Resources References\Ecology Publications\MTCA

## Commenter #38 - Landau Associates

April 16, 2023

Sarah Wollwage  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Submitted to: <https://tcp.ecology.commentinput.com/?id=uJVx2>

**Re: Comments on Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations - Proposed Rule Amendments**

Thank you for the opportunity to comment on the Washington State Department of Ecology's (Ecology's) proposed rule amendments to Chapter 173-340 WAC - Model Toxics Control Act (MTCA). Specific comments on the proposed rule amendments, by MTCA section, are provided below.

### **MTCA Section: 173-340-200. Definitions.**

**Comment:** Definitions should include terminology commonly used under the MTCA cleanup process that are not currently included in the regulation. Suggested additional definitions include:

- 1 • **"Contaminant of concern"** means a hazardous substance that has been identified in soil, groundwater, surface water, or air during a remedial investigation at a concentration above an applicable preliminary cleanup level developed during the FS or a final cleanup level identified in a cleanup action plan.
- 2 • **"Contaminant of potential concern"** means a hazardous substance that has been identified in soil, groundwater, surface water, or air during an initial investigation or remedial investigation at a concentration above an applicable screening level.
- 3 • **"Proposed cleanup level"** means the applicable cleanup levels determined to be protective of human health and the environment during the remedial investigation or feasibility study by evaluating the site-specific receptors and exposure pathways for current and future site uses, but that have not been accepted by the Department as final within the cleanup action plan.
- 4 • **"Screening levels"** means the initial concentration levels for known or suspected hazardous substances at a facility or site that will be used evaluate the nature and extent potential contaminants of concern in soil, groundwater, surface water, or air during the initial investigation or remedial investigation; these are generally the most conservative values found in or derived from Sections 173-340-720 through 173-340- 750 and other applicable other applicable state and federal laws without consideration for site-specific exposure scenarios.

### 5 **MTCA Section: 173-340-350. Remedial Investigation.**

**Comment:** In Section 173-340-350(5)(b)(i)(B), "target concentration" is not defined. Replace with "screening level" (see suggested additional definition for "screening level" proposed above for Section 173-340-200) or define "target concentration" in this section and in section –200).

**MTCA Section: 173-340-355. Development of cleanup action alternatives that include remediation levels.**

- 6 **Comment:** Section 173-340-355(2) - Applicability, states “Remediation levels must be established as part of a cleanup action if the cleanup action relies on a combination of cleanup action components to remediate an environmental medium.” This statement is not necessarily true as different cleanup components may be used to clean up different contaminants in the same media, but each component is still cleaning the contaminant up to the cleanup level/cleanup standard. This section should be revised accordingly. (See also subsection –355[5][b].)
- 7 **Comment:** Section 173-340-355(4) - Development states “Remediation levels must be developed and evaluated as part of a cleanup action alternative during the feasibility study conducted under WAC 173-340-351.” While evaluation of remediation levels is generally most appropriate in the feasibility study, the regulation should not restrict remediation level development to the feasibility study only and should allow flexibility to develop remediation levels at other later stages if needed, such as in the cleanup action plan or in the engineering design report (e.g., additional information may come or be available at a later time from pilot studies or specific design elements that would necessitate the need for new or altered RLs).

**MTCA Section: 173-340-370(4) Determining whether a cleanup action provides for a reasonable restoration time frame.**

- 8 **Comment:** Section 173-340-370(4)(c)(ii) states that “A restoration time frame is not reasonable if an active remedial measure with a shorter restoration time frame is practicable.” This evaluation criterion leads to a circular logic loop with determination of practicability of a shorter restoration timeframe. I.e.,:
1. this criterion indicates that if a practicable alternative exists with a shorter restoration timeframe, that the restoration timeframe of the alternative being evaluated would not be reasonable; however
  2. the definition of “practicable” in Section 173-340-200 “means capable of being designed, constructed and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, an alternative shall not be considered practicable if the incremental costs of the alternative are disproportionate to the incremental degree of benefits provided by the alternative over other lower cost alternatives” (i.e., this definition summarizes the disproportionate cost analysis [DCA] process in Section -370); therefore, the DCA must be used to determine whether an alternative is practicable; but
  3. in order to determine whether an alternative may be evaluated under the DCA process, it must first meet the requirement of being able to be completed in a reasonable restoration timeframe.

Due to this circular logic loop, this statement should be removed from the list of evaluation criteria for reasonable restoration timeframe for a given remedial alternative.

- 9 **Comment:** Section 173-340-370(4)(d) - Cleanup levels below technically possible concentrations states that “At sites where cleanup levels determined under Method C in WAC 173-340-706 are below concentrations that are technically possible to achieve...” Why is this condition restricted to only cleanup levels determined under Method C? Method B cleanup levels are often significantly lower than Method C cleanup levels and, therefore, more often or more likely to be technically unachievable. This section should be expanded to include Method B.

**MTCA Section: 173-340-370(5) Determining whether a cleanup action uses permanent solutions to the maximum extent practicable.**

- 10 **Comment:** Section 173-340-370(5)(XXX)(vi)(B)(II) - Future Costs states that “Future costs **may be** [emphasis added] discounted using present worth analysis.” It was understood from the current version of the MTCA regulations that a present worth analysis was a required element of the cost evaluation based on Section 173-340-360(3)(f)(iii) that states that the cost to implement the alternative includes “**the net present value** [emphasis added] of any long-term costs...” With the new proposed “may be discounted” language, is it Ecology’s intention that present worth analysis is optional? Please clarify if this is optional under all circumstances, or under what specific situations present worth analysis would or would not be required. For example, maybe present worth analysis would not be required for alternatives that are anticipated to achieve cleanup levels based on short term remedial actions (e.g., remedial excavation); and present worth analysis would be required for alternatives that include long-term (e.g., longer than 10-year) performance monitoring.
- 11 **Comment:** Section 173-340-370(5)(XXX)(vi)(B)(II) - Future Costs states that “When discounting future costs, do the following:
- Estimate future costs using an appropriate construction cost index; and
  - Discount future costs using the current U.S. Treasury nominal interest rate for bonds of comparable maturity to the period of analysis. If project costs exceed thirty years, use the current U.S. Treasury thirty-year nominal interest rate.”

Under the current inflationary economic environment in the United States, this proposed process would prove to be inappropriate for a long-term present worth evaluation. E.g., the Turner Construction Cost Index value for 2022 is 8% ([www.turnerconstruction.com/cost-index](http://www.turnerconstruction.com/cost-index)) and 2022 U.S. Treasury 30-year nominal interest rate is 4.2% (December 12, 2022 OMB App. C Circular No. A-94). Following these proposed procedures, a present worth analysis for an alternative with an estimated 30-year implementation (operations and maintenance) period would result in a negative discount rate (i.e., inflation would outpace interest rates by 3.8%) resulting in increasing year over year long-term estimated costs for the duration of cleanup. Using this current date is unlikely to yield a realistic present worth analysis of costs over the next 30 years. Based on the average construction cost index values and nominal interest rates over the past 25 years (as far back as Turner values are available online), the nominal interest rates have averaged values of 0.5% higher than the cost index. I.e., historically, more often than not, interest rates have outpaced inflation resulting in a positive discount rate that would be used in a present value analysis, thereby yielding reducing O&M costs year after year, which is what would generally be expected from this type of analysis under more typical economic conditions. Therefore, the proposed Future Cost approach should include other options or allow for more flexibility, such as providing businesses with the option of using a discount rate more realistic to their business practices, or using an average cost index values/interest rates over a longer period of time (e.g., last 20 years) to mask anomalous economic conditions such as those available for 2022.

\* \* \* \* \*

We appreciate the opportunity to review Ecology's proposed rule amendments to WAC 173-340. We hope that you will consider these comments for inclusion and revision of MTCA.

LANDAU ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read 'Piper Roelen', with a long horizontal flourish extending to the right.

Piper Roelen, PE  
Principal

## Carolyn Robinson

I am writing to you as a concerned member of the public. Like many of my fellow citizens, I care deeply about reducing toxic waste sites and their impacts on our communities. Please consider the below suggested changes to the documents now out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. Tribes should be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.



[Commenter #12 - see individual comment letter #s 40 through 213](#)

## **Washington Conservation Action**

Please find attached 174 public comments from supporters and members of Washington Conservation Action. We expect that each letter to Ecology in this document will be regarded as an individual, unique comment letter.

With regards,  
Katie Byrnes

-- Sent from **Nancy Shimeall** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am concerned and I care deeply about reducing toxic waste sites and their impacts on communities.

We all must live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. Tribes must also be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

It is alarming that most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. These sites exist in neighborhoods and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This must change.

The following changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
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about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Nancy Shimeall  
74 Hoh Pl  
La Conner, WA 98257

-- Sent from **Jonathan Betz-Zall** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

Please ensure that the toxic cleanup law includes strong protection for the communities that are most affected by the poisons. I'm particularly concerned about people of color and low-income communities, which bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Jonathan Betz-Zall  
302 NW 81st St  
Seattle, WA 98117

-- Sent from **Felicity Devlin** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Felicity Devlin  
2417 N Washington St  
Tacoma, WA 98406

-- Sent from **Paul Sampson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data are clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Paul Sampson  
8458 Tillicum Rd SW  
Seattle, WA 98136



Commenter #44 - Sara Bhakti

-- Sent from **Sara Bhakti** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

Protecting the environment is my top priority.

- 1 In choosing among the thousands of toxic waste sites across Washington State to be clean up, please give priority to those sites closest to the homes of people of color and Tribes. It is a health issue for them.

Washington State's environmental cleanup law doesn't prioritize cleanups in the places where we live. It should. An environmental group I follow makes these recommendations that I ask you to consider when choosing which sites to clean up first in the Model Toxics Control Act:

- Cumulative health impacts to the people living close to these toxic sites;
- 2 - Disproportionate Cost Analysis (the DCA) should consider the savings from health costs with more effective outreach and public notice to those impacted.
  - 3

Thank you,  
Sara Bhakti  
22975 SE Black Nugget Rd  
Issaquah, WA 98029

-- Sent from **Lehman Holder** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

As a concerned member of the public, I ask you for your attention on this. My objective is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most

effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Lehman Holder  
8916 NE 11th St  
Vancouver, WA 98664

-- Sent from **Marian Wineman** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. I retired from a job focused on cleaning up hazardous waste sites, so I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, nearly half of the 13,000 toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Marian Wineman  
3611 45th Ave W  
Seattle, WA 98199

-- Sent from **Dagmar Fabian** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxins, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Dagmar Fabian  
1480 Birchwood Ave Apt 101  
Bellingham, WA 98225

-- Sent from **Kathryn Ryan** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste. Please take care of our environmentally vulnerable populations.

Thank you,  
Kathryn Ryan  
18923 Olympic View Dr  
Edmonds, WA 98020

-- Sent from **Fleener Teresa** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

My undergraduate degree is in environmental science, so I am aware of the complexity of issues surrounding toxic waste disposal. I care about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law does not prioritize cleanups in the places where we live.

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about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Fleener Teresa  
151 E Robbins Rd  
Grapeview, WA 98546

-- Sent from **Jean Waight** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. I am blessed to live in a clean neighborhood with fresh air and good water. But I am mindful that my waste goes somewhere, and it is time we do justice to those communities who get the short end of the stick and have toxic places located near them. I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Jean Waight  
919 Coronado Ave  
Bellingham, WA 98229

-- Sent from **Carole Burger** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Carole Burger  
21428 86th Ave SW  
Vashon, WA 98070

-- Sent from **Carrie Heron** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxins, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Carrie Heron  
3955 S Eddy St  
Seattle, WA 98118

-- Sent from **Matthew Boguske** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green spaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxins, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington State still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

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- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information

about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Matthew Boguske  
8500 148th Ave NE  
Redmond, WA 98052

Commenter #54 - Rebecca Durr

-- Sent from **Rebecca Durr** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I care about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

- 1 As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

This needs to change.

These communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Rebecca Durr  
2703 Riverview Dr  
Aberdeen, WA 98520

-- Sent from **Judith Thierry** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. I grew up in Kalamazoo, Michigan and played in an area which is now a superfund site. My day job is as a pediatrician and grandmother. I care deeply about reducing toxic waste sites and their impacts on communities, children as they grow and thrive (and play!). You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy green-spaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxins, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. It's an incredible number but believable as I lived near several growing up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for

those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Judith Thierry  
8220 65th St Ct W  
Tacoma, WA 98467

-- Sent from **Barbara Citko** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am a concerned Washington citizen. I care deeply about reducing toxic waste sites and their how they adversely affect communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach

them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Barbara Citko  
530 4th Ave W  
Seattle, WA 98119



-- Sent from **Virginia Davis** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

As a concerned member of the public, I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 \* Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 \* Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 \* Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information

about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Virginia Davis  
17721 NE 156th St  
Woodinville, WA 98072

-- Sent from **priscilla martinez** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We need to take better care of what is left of our environment, for people, wildlife, marine life, and plant life.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for

public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
priscilla martinez  
35411 SE English St  
Snoqualmie, WA 98065

-- Sent from **Derek Benedict** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public who cares deeply about reducing toxic waste sites and their impacts on communities.

And you can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most

effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Derek Benedict  
709 212th PI SW  
Lynnwood, WA 98036

-- Sent from **Gloria McClintock** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes.

And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes.

Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics.

This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites.

When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.

- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option.

This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem

services and public health.

- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Gloria McClintock  
1411 Northview Ct  
Mount Vernon, WA 98274



-- Sent from **Kathleen Allen** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

Alongside perpetual concern about radioactive waste at Hanford still leaching into groundwaters ..., we all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most

effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Kathleen Allen  
5900 37th Ave S  
Seattle, WA 98118

-- Sent from **Jennifer Hickey** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
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- 3 - Public notice: All members of the public have a right to know about toxic waste sites and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Jennifer Hickey  
5720 Crow Haven Rd  
Langley, WA 98260

-- Sent from **Julia McLaughlin** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

This plant--our home--was once pure and pristine, for millions of years. In less than 200 years humans have screwed it up so bad some of it will never recover. Protect what's left. NOW!

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
- 2 - Disproportionate Cost Analysis: The Disproportionate Cost Analysis (DCA) currently fails to provide enough guidance to accurately represent the ecosystem services and public health benefits of a thorough, more protective cleanup when compared to the monetary cost of each cleanup option. This leads to a consistent underestimation of the ecosystem and public health benefits and an overrepresentation of the cleanup costs. Ecology must provide more guidance for consistent analysis that accurately represents the true benefits of ecosystem services and public health.
- 3 - Public notice: All members of the public have a right to know about toxic waste sites

and cleanups happening in their communities. The current methods Ecology uses for public notification do not make this information sufficiently accessible, especially for those without easy access to the internet or technology. To ensure that the most effective communication strategies are being used, Ecology must gather information about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Julia McLaughlin  
16740 Dodd Ln SW  
Rochester, WA 98579

-- Sent from **Ken Lederman** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public who cares deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial.

As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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about the affected communities to determine the best modes of communication to reach them. In addition, Ecology must provide more effective outreach to the general public about how to find information and receive notifications beyond the current obscure website registry.

With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Ken Lederman  
5137 NE 41st St  
Seattle, WA 98105



-- Sent from **Virginia Metcalf** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. I care deeply about the health of our planet and in reducing toxic waste sites and their impacts. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. Tribal members must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

- 1 - Cumulative health impacts: Toxic waste sites in Washington are often clustered in low-income communities of color. In addition to the health impacts that stem from living close to these sites, these communities also suffer from the consequences of living near other forms of pollution, including airports, freeways, and Superfund sites. When prioritizing cleanup sites and determining how they are cleaned, the cumulative impacts of living in areas where pollution is heavily concentrated must be considered.
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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Virginia Metcalf  
8814 30th St Ct NW  
Gig Harbor, WA 98335

-- Sent from **Emily Van Alyne** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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Thank you,  
Emily Van Alyne  
6749 Whitestone St  
West Richland, WA 99353

-- Sent from **Pawiter Parhar** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Pawiter Parhar  
22626 NE Inglewood Hill Rd  
Sammamish, WA 98074

-- Sent from **Thomas Frenock** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Thomas Frenock  
1627 209th PI NE  
Sammamish, WA 98074



-- Sent from **Stephen Green** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Stephen Green  
12719 Country Club Pl  
Burlington, WA 98233

-- Sent from **Lucy Flanagan** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

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Thank you,  
Lucy Flanagan  
12030 4th Ave NW  
Seattle, WA 98177

-- Sent from *rein attemann* to *Mr. Clint Stanovsky* on Apr 13, 2023 --

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Thank you,  
rein attemann  
316 NW 86th St  
Seattle, WA 98117

-- Sent from **Selim Uzuner** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Selim Uzuner  
1807 344th Ave NE  
Carnation, WA 98014



-- Sent from **Lisa Ceazan** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Lisa Ceazan  
303 41st Ave NE  
Olympia, WA 98506

-- Sent from **Michael Garten** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Michael Garten  
3420 Burke Ave N  
Seattle, WA 98103

-- Sent from **John Shirlock** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
John Shirlock  
1409 Rainbow Ln  
Camano, WA 98282

-- Sent from **Julia Paulsen** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Julia Paulsen  
8237 Ravenna Ave NE  
Seattle, WA 98115



-- Sent from **Frank Kroger** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Frank Kroger  
1504 E Alder St  
Seattle, WA 98122

-- Sent from **Suzanne Nevins** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Suzanne Nevins  
123 Grand Fir St  
Chimacum, WA 98325

-- Sent from **Daniel Henling** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Daniel Henling  
1412 NW 61st St  
Seattle, WA 98107

-- Sent from **John Paladin** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
John Paladin  
10605 SE 240th St  
Kent, WA 98031



-- Sent from **Margaret Woll** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Margaret Woll  
208 Highland Dr  
Bellingham, WA 98225

-- Sent from **J K** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
J K  
15120 Starr Rd SE  
Olalla, WA 98359

-- Sent from **Rebecca Kempton** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Rebecca Kempton  
121 E 28th St  
Vancouver, WA 98663

-- Sent from **Kristen Bakken** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Kristen Bakken  
1429 21st Ave  
Seattle, WA 98122



-- Sent from **Greg Espe** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Greg Espe  
6278 20th Ave NE  
Seattle, WA 98115

-- Sent from **Diane Sullivan to Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Diane Sullivan  
1231 SW Kalama Loop  
Oak Harbor, WA 98277

-- Sent from **Richard Osmun** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Richard Osmun  
2726 NW Valley St  
Camas, WA 98607

-- Sent from **John Thompson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
John Thompson  
4953 S Spinnaker Dr  
Freeland, WA 98249



-- Sent from **Frances Marquart** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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Thank you,  
Frances Marquart  
8610 Nixon Ave SW  
Lakewood, WA 98498

-- Sent from **Anita Scheunemann** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Anita Scheunemann  
6316 199th Loop SW  
Rochester, WA 98579

-- Sent from **Nancy Ellingham** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Nancy Ellingham  
9106 Fortuna Dr Apt 4201  
Mercer Island, WA 98040

-- Sent from **Ben Moore** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Ben Moore  
4823 243rd St SW  
Mountlake Terrace, WA 98043



-- Sent from **Linda Hall** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Linda Hall  
15504 91st Ave Ct E  
Puyallup, WA 98375

-- Sent from **Barbara Blackwood** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Barbara Blackwood  
11916 E 25th Ave  
Spokane Valley, WA 99206

-- Sent from **Grace Padelford** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Grace Padelford  
11807 100th Ave NE  
Kirkland, WA 98034

-- Sent from **Matthew White** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Matthew White  
3661 Briarwood Dr SE  
Port Orchard, WA 98366



-- Sent from **Janet Riordan** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Janet Riordan  
1925 Weaver Rd  
Snohomish, WA 98290

-- Sent from **JAMES WILLIAMS** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
JAMES WILLIAMS  
9614 50th PI W  
Mukilteo, WA 98275

-- Sent from **Lucia Faithfull** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Lucia Faithfull  
1232 SW 296th St  
Federal Way, WA 98023

-- Sent from **Tiffany Brace** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Tiffany Brace  
4302 13th Ave S  
Seattle, WA 98108



-- Sent from **James Mulcare** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
James Mulcare  
1110 Benjamin St  
Clarkston, WA 99403

-- Sent from **Betty McNeil** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Betty McNiel  
14224 SE 45th PI  
Bellevue, WA 98006

-- Sent from **Joseph Yencich** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Joseph Yencich  
9117 NE 151st St  
Bothell, WA 98011

-- Sent from **Noah Ehler** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Noah Ehler  
32115 NE 110th Ct  
Carnation, WA 98014



-- Sent from **Phuong Nguyen** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Phuong Nguyen  
940 Martin Luther King Jr Way S  
Seattle, WA 98144

-- Sent from **Carolyn Boatsman** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Carolyn Boatsman  
3210 74th Ave SE  
Mercer Island, WA 98040

-- Sent from **Sarah Bauman** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Sarah Bauman  
695 Chuckanut Dr N  
Bellingham, WA 98229

-- Sent from **Tim Wandell** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Tim Wandell  
6413 Shadow Ln  
Aberdeen, WA 98520



-- Sent from **Ronald Lovell** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Ronald Lovell  
4110 S 144th St  
Tukwila, WA 98168

-- Sent from **Cheryl Speer** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Cheryl Speer  
410 SW Park St  
Camas, WA 98607

-- Sent from *mary n* to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
mary n  
14005 SE 38th St  
Vancouver, WA 98683

-- Sent from **Ann May** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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Thank you,  
Ann May  
45 Hylebos Ave  
Milton, WA 98354



-- Sent from **Alfred Ferraris to Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Alfred Ferraris  
1340 Corona St  
Port Townsend, WA 98368

-- Sent from **Adina Parsley** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Adina Parsley  
20420 Marine Dr  
Stanwood, WA 98292

-- Sent from **Asphodel Denning** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Asphodel Denning  
108 5th Ave S  
Seattle, WA 98104

-- Sent from **Elizabeth Lengel** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Elizabeth Lengel  
12901 S Wildwood Ln  
Anacortes, WA 98221



-- Sent from **Jamie Kitson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Jamie Kitson  
8603 WA-92  
Granite Falls, WA 98252

-- Sent from **Scott Bishop** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Scott Bishop  
1710 Giles Ave NW  
Olympia, WA 98502

-- Sent from **Bee Evans** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Bee Evans  
968 SW Inglewood Ln  
Oak Harbor, WA 98277

-- Sent from **Barbara Fristoe** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Barbara Fristoe  
3418 16th Ave S  
Seattle, WA 98144



-- Sent from **Amy Mower** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Amy Mower  
7392 Mt Baker Hwy  
Maple Falls, WA 98266

-- Sent from **Norman Baker** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Norman Baker  
3789 Lost Mountain Rd  
Sequim, WA 98382

-- Sent from **Elmer Preston** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Elmer Preston  
4015 133rd St SE  
Mill Creek, WA 98012

-- Sent from **Richard Johnson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Richard Johnson  
6 Overlake Ct  
Bellingham, WA 98229



-- Sent from **shary B** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
shary B  
1950 Alaskan Wy  
Seattle, WA 98101

-- Sent from **Gena DiLabio** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Gena DiLabio  
3124 Dakota Dr  
Mount Vernon, WA 98274

-- Sent from **Phebe Schwartz** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Phebe Schwartz  
523 N Garden St  
Bellingham, WA 98225

-- Sent from **Emily Thompson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Emily Thompson  
303 NW 164th St  
Ridgefield, WA 98642



-- Sent from **Lorelette Knowles** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Lorelette Knowles  
1010 Hoyt Ave  
Everett, WA 98201

-- Sent from **Michelle Pavcovich** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Michelle Pavcovich  
11351 20th Ave NE  
Seattle, WA 98125

-- Sent from **Elena Rumiantseva** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Elena Rumiantseva  
3807 West Lake Sammamish Pkwy NE  
Redmond, WA 98052

-- Sent from **Sally Neary** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Sally Neary  
22608 115th PI SE  
Kent, WA 98031



-- Sent from **John Cruz** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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John Cruz  
8912 SE Hillcrest Dr  
Vancouver, WA 98664

-- Sent from **Celia Cruz** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Celia Cruz  
8912 SE Hillcrest Dr  
Vancouver, WA 98664

-- Sent from **David Arntson to Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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Thank you,  
David Arntson  
1615 208th St SE  
Bothell, WA 98012

-- Sent from **JENNIFER VINING** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
JENNIFER VINING  
5119 Palatine Ave N  
Seattle, WA 98103



-- Sent from **Linda Golley** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

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Thank you,  
Linda Golley  
626 2nd Ave S  
Kent, WA 98032

-- Sent from **Kristi Weir** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Kristi Weir  
4639 133rd Ave SE  
Bellevue, WA 98006

-- Sent from **ken benoit** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
ken benoit  
5614 114th St SW  
Mukilteo, WA 98275

-- Sent from **Victoria Urias** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Victoria Urias  
14001 35th Ave NE  
Seattle, WA 98125



-- Sent from **Carole Henry** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Carole Henry  
6345 Seabeck Holly Rd NW  
Seabeck, WA 98380

-- Sent from **Jennifer Valentine** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Jennifer Valentine  
313 1st Ave S  
Seattle, WA 98104

-- Sent from **William McGunagle** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
William McGunagle  
1727 E Olympic Ave  
Spokane, WA 99207

-- Sent from **Susan Loomis** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Susan Loomis  
15150 140th Way SE  
Renton, WA 98058



-- Sent from **James Cronin** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
James Cronin  
2525 W Maxwell Ave  
Spokane, WA 99201

-- Sent from **Debbie Spear** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Debbie Spear  
20928 133rd St SE  
Monroe, WA 98272

-- Sent from **Lorraine Hartmann** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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Thank you,  
Lorraine Hartmann  
10627 Durland Ave NE  
Seattle, WA 98125

-- Sent from **Gerald Iyall** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Gerald Iyall  
3412 Orbit PI SE  
Olympia, WA 98501



-- Sent from **Jeannie Keyes** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Jeannie Keyes  
485 Renton Center Way SW  
Renton, WA 98057

-- Sent from **Lucy Larkin** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Lucy Larkin  
1200 Western Ave  
Seattle, WA 98101

-- Sent from **Andrea Speed** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Andrea Speed  
1618 154th St E  
Tacoma, WA 98445

-- Sent from **Lucy Ostrander** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Lucy Ostrander  
11431 Miller Rd NE  
Bainbridge Island, WA 98110



-- Sent from **Don Williams** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Don Williams  
4910 Cushman Rd NE  
Olympia, WA 98506

-- Sent from **Michael Hill** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Michael Hill  
701 Mineral Hill Rd  
Mineral, WA 98355

-- Sent from **Sandra Ciske** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Sandra Ciske  
1717 Sunset Ave SW  
Seattle, WA 98116

-- Sent from **Tom Craighead** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Tom Craighead  
28203 137th Ave SW  
Vashon, WA 98070



-- Sent from **Frederick Duhring** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Frederick Duhring  
2845 13th Ave W  
Seattle, WA 98119

-- Sent from **Kevin Davis** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Kevin Davis  
22023 SE Wax Rd  
Maple Valley, WA 98038

-- Sent from **Bob Schuessler** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Bob Schuessler  
4249 S Kenny St  
Seattle, WA 98118

-- Sent from **Josefina Lopez** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Josefina Lopez  
11130 SE 208th St  
Kent, WA 98031



-- Sent from **Peter Baird** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Peter Baird  
9105 Fortuna Dr  
Mercer Island, WA 98040

-- Sent from **Thomas Cox** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Thomas Cox  
11682 Holmes Point Dr NE  
Kirkland, WA 98034

-- Sent from **Steven Trevallee** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Steven Trevallee  
734 Broadway E  
Seattle, WA 98102

-- Sent from **Peter Reagel** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Peter Reagel  
15719 4th Ave S  
Burien, WA 98148



-- Sent from **Keegan Wulf** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Keegan Wulf  
311 9th Ave SE  
Olympia, WA 98501

-- Sent from **Maureen Kill** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Maureen Kill  
14041 15th Ave NE  
Seattle, WA 98125

-- Sent from **STEPHANIE BELL** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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STEPHANIE BELL  
21507 42nd Ave S  
Seatac, WA 98198

-- Sent from **Alice Flegel** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Alice Flegel  
8301 James Rd SW  
Rochester, WA 98579



-- Sent from **Alyce Fritch** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Alyce Fritch  
2160 NE 100th St  
Seattle, WA 98125

-- Sent from **Jody Caicco** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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Thank you,  
Jody Caicco  
23402 NE 108th St  
Vancouver, WA 98682

-- Sent from **Cheryl Biale** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Cheryl Biale  
7711 Greenridge St SW  
Olympia, WA 98512

-- Sent from **George Summers** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
George Summers  
1311 S Massachusetts St  
Seattle, WA 98144



-- Sent from **Sharon Anderson** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Sharon Anderson  
1920 NW Mulholland Blvd  
Poulsbo, WA 98370

-- Sent from **Joanne Watchie** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Joanne Watchie  
2440 Alki Ave SW  
Seattle, WA 98116

-- Sent from **Dan Rogers** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Dan Rogers  
3331 H St  
Washougal, WA 98671

-- Sent from **Kylie Loynd** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Kylie Loynd  
2525 Minor Ave E  
Seattle, WA 98102



-- Sent from **Jean Pauley** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Jean Pauley  
414 Malden Ave E  
Seattle, WA 98112

-- Sent from **Deborah Efron** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Deborah Efron  
10129 Main St  
Bellevue, WA 98004

-- Sent from **Gianina Graham** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Gianina Graham  
660 Horizon Rdg Rd  
Cle Elum, WA 98922

-- Sent from **Joyce Grajczyk** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Joyce Grajczyk  
12026 SE 216th St  
Kent, WA 98031



-- Sent from **Sari Schneider** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Sari Schneider  
7600 SE 29th St  
Mercer Island, WA 98040

-- Sent from **Tanara Saarinen** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Tanara Saarinen  
4418 Rosedale St NW  
Gig Harbor, WA 98335

-- Sent from **Norm Conrad** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Norm Conrad  
1120 S 25th St  
Mount Vernon, WA 98274

-- Sent from **Bruce Shilling** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
Bruce Shilling  
7120 Linden Ave N  
Seattle, WA 98103



-- Sent from **james hipp** to **Mr. Clint Stanovsky** on Apr 13, 2023 --

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Thank you,  
james hipp  
609 Rosette Ct  
Bellingham, WA 98226

-- Sent from **Philip Bebbington** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Philip Bebbington  
12534 N Park Ave N  
Seattle, WA 98133

-- Sent from **Don Worley** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Don Worley  
1949 WA-25  
Kettle Falls, WA 99141

-- Sent from **Lori Erbs** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Lori Erbs  
5310 Marda Ln  
Acme, WA 98220



-- Sent from **Tika Bordelon** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Tika Bordelon  
1400 Hubbell Pl  
Seattle, WA 98101

-- Sent from **Nancy White** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Nancy White  
13311 E Forrest Ave  
Spokane Valley, WA 99216

-- Sent from **Margie Heller** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Margie Heller  
731 S Garfield St  
Spokane, WA 99202

-- Sent from **Jeanie Bein** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Jeanie Bein  
4911 Coronado Ln  
Bellingham, WA 98229



-- Sent from **Sandra Russell** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

We all deserve to live in a community where we can breathe clean air, drink clean water, and safely enjoy greenspaces, rivers, and lakes. And Tribes must be able to harvest healthy salmon, free from toxics, as they have since time immemorial. As you know, most of the 14,000-plus toxic waste sites across Washington state still need to be cleaned up. Toxic waste sites exist in neighborhoods in our communities and disproportionately affect people of color and Tribes. Despite this, the state's environmental cleanup law doesn't prioritize cleanups in the places where we live.

The data is clear: People of color and low-income communities bear a disproportionate share of health risks from exposure to toxics. This includes increased risk for cancer and neurodevelopmental disorders in children. The environmental cleanup law doesn't currently factor this into deciding when, and how, toxic waste sites are cleaned up. This needs to change.

These changes must be incorporated into the Model Toxics Control Act through the current rulemaking processes:

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Thank you,  
Sandra Russell  
925 SE Kamiaken St  
Pullman, WA 99163

-- Sent from **William Sneiderwine** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
William Sneiderwine  
14901 SE Sunpark Dr  
Vancouver, WA 98683

-- Sent from **Thomas Hughes** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Thomas Hughes  
915 N M St  
Tacoma, WA 98403

-- Sent from **Penelope Johansen** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Penelope Johansen  
715 W Broadway Ave  
Montesano, WA 98563



-- Sent from **Dennis Ledden** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Dennis Ledden  
183 Webb Rd  
Sequim, WA 98382

-- Sent from **Katherine Nelson** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Katherine Nelson  
9445 S 232nd St  
Kent, WA 98031

-- Sent from **Suzanne Blair** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Suzanne Blair  
306 9th Ave N  
Kelso, WA 98626

-- Sent from **Colleen Curtis to Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Colleen Curtis  
1520 Chuckanut Crest Dr  
Bellingham, WA 98229



-- Sent from **Angie Dixon** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Angie Dixon  
6949 Humphrey Rd  
Clinton, WA 98236

-- Sent from **Therese L** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Therese L  
417 NE John Storm Ave  
La Center, WA 98629

-- Sent from **Lois Eulberg** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Lois Eulberg  
4730 US-97  
Peshastin, WA 98847

-- Sent from **Marquam Krantz** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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With your help, we can ensure that cleanups happen equitably. Communities deserve a strong cleanup rule that keeps them healthy and safe. There is no time to waste.

Thank you,  
Marquam Krantz  
5698 NE Wild Cherry Ln  
Bainbridge Island, WA 98110



-- Sent from **diane marks** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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Thank you,  
diane marks  
728 Caroline St  
Port Angeles, WA 98362

-- Sent from **r wood** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
r wood  
4326 University Way NE  
Seattle, WA 98105

-- Sent from **Barbara DuBois** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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Thank you,  
Barbara DuBois  
5020 N 18th St  
Tacoma, WA 98406

-- Sent from **kathy golic** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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I am writing to you as a concerned member of the public. My day job is not to track these complicated processes, but I care deeply about reducing toxic waste sites and their impacts on communities. You can help by making the following changes to the documents out for public comment.

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Thank you,  
kathy golic  
13705 460th Ct SE  
North Bend, WA 98045



-- Sent from **Claire Sagen** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

Dear Mr. Stanovsky,

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Thank you,  
Claire Sagen  
3015 127th PI SE  
Bellevue, WA 98005

-- Sent from **Linda Heckman** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Linda Heckman  
18725 41st Pl W  
Lynnwood, WA 98037

-- Sent from **Mary Denny** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Mary Denny  
4217 216th St SW  
Mountlake Terrace, WA 98043

-- Sent from **Mark Canright** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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Thank you,  
Mark Canright  
11589 Martin Rd  
Rockport, WA 98283



-- Sent from **Rebecca Canright** to **Mr. Clint Stanovsky** on Apr 14, 2023 --

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**Appendix C:  
Index of Public Comments on  
Draft SHARP Tool and User Manual**

## C.1 Purpose of Index

The SHARP Commenter Index on the following page identifies the people who commented on Ecology's Draft Site Hazard Assessment and Ranking Process (SHARP) [Tool](#)<sup>198</sup> and [User Manual](#)<sup>199</sup>, and where you can find Ecology's response to their comments.

The Draft SHARP Tool and User Manual (March 2023) remain available through the agency's SHARP [website](#)<sup>200</sup> and [blog](#).<sup>201</sup>

## C.2 Commenters

In total, 4 individuals and organizations submitted comments on the Draft SHARP Tool and User Manual.

Ecology assigned each commenter a unique identification number (from STC1 to STC4) in the order comments were submitted. The commenters are identified in the SHARP Commenter Index (Appendix C) by:

- Number;
- Name and affiliation; and
- The date comments were submitted.

The Commenter number is also inserted on the first page of the Commenter's written comments (see Appendix D).

## C.3 Comments

Ecology identified a total of 42 separate comments. Ecology assigned each of those comments a number. The Comment number is identified in:

- The SHARP Commenter Index (Appendix C); and
- The margins of the Commenter's written comments (Appendix D).

## C.4 Issues

For each those 42 comments, the SHARP Commenter Index (Appendix C) identifies the Issue number in the Concise Explanatory Statement where Ecology responded to the comment.

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<sup>198</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool.xlsm>

<sup>199</sup> <https://fortress.wa.gov/ecy/ezshare/tcp/SHARP/SHARP-Tool-Manual.pdf>

<sup>200</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Ranking-contaminated-sites>

<sup>201</sup> <https://ecology.wa.gov/blog/march-2023/improving-how-we-rank-contaminated-sites>

### C.5 SHARP Commenter Index

Commenter				Response to Comment	
#	Name	Affiliation	Date	Comment #	Issue #s
STC1	Monte Hokanson		03/07/23	STC1-1	96
				STC1-2	96
STC2	Richard Jack Shirlee Tan	King County	04/14/23	STC2-1	86
				STC2-2	10, 16, 86, 87
				STC2-3	8, 10, 16, 17, 86
				STC2-4	96, 102
				STC2-5	89
				STC2-6	18
				STC2-7	8, 10, 11, 16, 17
				STC2-8	96, 96
				STC2-9	94
				STC2-10	94
				STC2-11	92
				STC2-12	8, 10, 16, 17, 86
				STC2-13	8, 10, 16, 17
				STC2-14	10, 16, 17, 94
STC3	James Verburg	Western States Petroleum Association	04/15/23	STC3-1	88
				STC3-2	88
				STC3-3	99
				STC3-4	99
				STC3-5	90
				STC3-6	90
STC4	Erin Dilworth	Communities for a Healthy Bay	04/16/23	STC4-1	17
	Jamie Hearn	Duwamish River Community Coalition		STC4-2	85
	Eleanor Hines	RE Sources		STC4-3	9, 15
	Katie Byrnes Mindy Roberts	Washington Conservation Action		STC4-4	13
				STC4-5	8, 89
				STC4-6	96, 102
				STC4-7	9, 15, 89
				STC4-8	89
				STC4-9	10, 16
				STC4-10	10, 16, 182
				STC4-11	89
				STC4-12	17, 23
				STC4-13	8, 16, 17
				STC4-14	23
				STC4-15	17, 24
				STC4-16	86, 98, 113, 114
				STC4-17	101
				STC4-18	94
				STC4-19	94
				STC4-20	208

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**Appendix D:  
Public Comments on  
Draft SHARP Tool and User Manual  
annotated with Comment Numbers**

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## Monte Hokanson

- 1 Consider using color overlay mapping to consolidate the SHARP exposure scores into one visual grade for soil, groundwater, surface water, sediment, and indoor air.
- 2 The actual contaminated site boundaries would determine the shape of the visual grade. Each graded metric would be represented by a bullseye of color shaped by the site boundaries. The A to D ranking process determines the center color and ring proportions. Click on a color ring for more detailed information about a metric.

The EPA air quality site below uses color overlay mapping and is a good example of more detailed information.

<https://gispub.epa.gov/airnow>



## King County

### **Water and Land Resources Division**

Department of Natural Resources and Parks  
King Street Center  
201 South Jackson Street, Suite 5600  
Seattle, WA 98104-3855  
**206-477-4800** Fax 206-296-0192  
TTY Relay: 711

### **Public Health Seattle & King County Environmental Health Services Division**

401 Fifth Avenue, Suite 1100  
Seattle, WA 98104-1818  
**206-263-9566** Fax 206-296-0189  
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[www.kingcounty.gov/health](http://www.kingcounty.gov/health)

April 14, 2023

Mr. Clint Stanovsky, Rule Making Lead  
Cleanup Rule Update, AO# 18-09  
Washington Department of Ecology  
300 Desmond Dr. SE, Lacey  
P.O. Box 47600 | Olympia, WA 98504-7600

RE: Draft SHARP tools and related rule changes to WAC 173-340

Dear Mr. Stanovsky:

Thank you for the opportunity to comment on the Washington State Department of Ecology's (Ecology) Site Hazard Assessment and Ranking Process (SHARP) Tool and Manual. King County hopes Ecology applies SHARP to prioritize and accelerate actions at sites effecting our most marginalized communities. We are pleased to see Ecology taking steps towards prioritizing cleanups in areas that will protect the communities most impacted, with the fewest resources, and greatest cumulative stressors. After reviewing the SHARP tool, manual, and related rules, we have the following questions and comments:

- 1 **Assessing SHARP's adequacy is difficult without understanding how the ranks will be used:**  
The SHARP Tool Manual introduction states that "The SHARP Tool is currently in Microsoft Excel format. After we review comments received during the 2023 public comment period and finalized the content, we will convert it into an application. We'll then develop policy about how we will use the ranking results as separate steps." We struggled to assess and comment on the tool, because Ecology has not yet shared how it will be applied. We request that Ecology define the objectives for SHARP upfront, so that the stakeholder and Tribal communities can understand how the tool will achieve Ecology's proposed objectives.

2 Additionally, Ecology’s definition of “site rank” is unclear. If Ecology’s primary objective is to track the progress, hazards, and severity of hazards within a site, then a clearer definition of “rank” and how the “ranking tool” supports this objective would be helpful. If implementing the objects of the Environmental Justice Task Force as codified in the Health Environment for All (HEAL) Act is Ecology’s primary purpose, that is a much different objective. We strongly encourage Ecology to adopt this as a primary objective of SHARP, since site ranking is a MTCA requirement and redressing inequities in overburdened communities by prioritizing action at cleanups is a HEAL Act obligation for Ecology.

3 The SHARP tool will need to be refined to address the HEAL Act objectives. Because Ecology is a legislatively identified agency under the HEAL Act, we recommend that Ecology determine ways to utilize the SHARP tool to prioritize sites that are experiencing the greatest number of environmental health and socioeconomic impacts. These sites will then need to be incentivized for MTCA or other funding, technical or communication assistance, or other resources to actively implement the goals of the HEAL Act within MTCA. Only through expansion, prioritization, and redirection of Ecology’s resources will the practices of the past, which in part created health disparities across Washington, will the legislative goals of the HEAL Act be achieved. SHARP can be a part of this process but will require more than discretionary disparity flags to do so.

4 **SHARP does not show how sites have progressed through time:**

One need for the SHARP tool is to publicly demonstrate how Ecology and site owners are addressing contaminated sites, reducing exposures, and improving sites through time. We recommend Ecology develop and demonstrate through regular, repeated SHARP analysis, which sites are improving and how much. This kind of demonstration would ideally be accessible and searchable by anyone interested in how the MTCA sites in their neighborhood or across the State are being cleaned up by Ecology and site owners. Progress tracking via SHARP would also ideally be translated in the primary languages affected neighborhoods speak and read.

**It is not clear how SHARP reduces disparities and addresses equity:**

- 5 • The tool does not account for sites within usual and accustomed fishing areas, or otherwise note the broad swaths of Washington where fishing, hunting, and gathering rights are threatened.
- 6 • For sites in highly impacted areas that are of significant concern from an environmental justice perspective, yet where little data are available to score based on exposure or severity questions, how will they be prioritized so that more information is obtained in a timely manner?
- 7 • Currently, all disparity and socioeconomic values are only added as site flags. Why are these factors or values not used as part of ranking sites and prioritizing sites for funding/action? How will these flags be managed and tracked through time to demonstrate that Ecology is making progress on reducing disparities in how cleanups are addressed and managed? This will be critical to Ecology’s implementation of HEAL’s objectives and addressing sites that are currently languishing or ignored. As far as we can tell, the flags are not used in a way which reduces health or socioeconomic disparities.
- 8 • Will Ecology enter the existing 14,000 sites currently in the system and run these through the SHARP tool? And will Ecology compare the SHARP scores with those currently in WARM?

9 **The manual language leaves too much discretion on how to interpret and use the tool:**

In many parts of the manual the language is vague. Terms like “apply consistent professional judgement”, or “The ranker uses professional judgment to select a confidence level”, or instructions on reviewing the ranking results such as “take a ‘gut check’ to see if the scores seem reasonable” leave far too much up to user judgement.

- 10 We recommend that Ecology remove language that leaves decisions up to professional judgement and instead provide clear and concise approaches that allow staff to rank sites using consistent methodology, thus reducing personal bias in the ranking process. King County also recommends that Ecology develop a Quality Assurance Project Plan with quality control checks by senior staff so SHARP can be consistently applied across the agency.
- 11 **How chemicals entered in SHARP are classified is unclear:**  
We assume that Ecology will utilize data from traditional toxicology testing, epidemiology and the literature. How will new information on emerging chemicals or new data be considered? Can the tool incorporate new information on chemical hazards that may not yet be incorporated into an EPA risk assessment or through Ecology’s MTCA methods threshold values? Ecology incorporated an “additional factors – AF Tab” for information such as emerging issues, climate change, new chemical exposure studies and relevant changes in legislative decision making. We recommend that Ecology incorporate MTCA, HEAL Act, and other legal requirements directly into site scores and ranks. For other issues outside of Ecology’s legal mandates, but still of public or agency interest, such as within sea level rise areas or emerging contaminants, Ecology can assign non-scoring flags.
- 12 **The SHARP Tool Scoring does not include scoring based on socioeconomic or environmental health disparities**  
The tool currently requires Ecology staff to provide site-based scores for five socioeconomic measures included in EPA’s EJ SCREEN and the site-based index rank from the Washington Tracking Network’s Health Disparity Mapping Tool. These are not described in the Manual’s scoring section, implying that these values are just included as optional considerations and not used to rank or score a site for action. We don’t believe optional actions meet the intent of Ecology’s legislative requirements under the HEAL Act.
- 13 King County recommends that Ecology’s SHARP directly incorporate the Washington State Health Disparity Mapping Tool, which includes socioeconomic factors in the environmental health disparity rankings. Then the SHARP ranks can function as the principle prioritization for determining how to fund, assign site managers, and act on sites. The use of EPA’s EJ SCREEN seems duplicative of the information already incorporated into the Washington Health Disparity Mapping tool. We recommend that Ecology automatically prioritize sites that have an 8, 9, or 10 disparity ranking on the Washington Environmental Health Disparity Ranking Map.
- 14 King County appreciates the work that went into developing the SHARP tool. Overall, it remains unclear how this tool will be applied. It also remains unclear to us if the current SHARP version will redress the inequities Ecology’s MTCA programs are intended to target under the HEAL Act. We recommend that Ecology test the system via pilot exercises in each region and review those results to optimize SHARP before finalizing.

Thank you once again for the opportunity to comment and participate in the MTCA rule revision process. Please do not hesitate to contact Richard Jack ([richard.jack@kingcounty.gov](mailto:richard.jack@kingcounty.gov)) or Shirlee Tan ([shirlee.tan@kingcounty.gov](mailto:shirlee.tan@kingcounty.gov)) for clarification or questions.

Respectfully,

(Via email)

Richard Jack, MS

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Water and Land Resources Division  
King County Department of Natural Resources  
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**Jim Verburg**

Senior Director, NW and SW Climate and Fuels

April 15, 2023

Sent via upload to: <https://tcp.ecology.commentinput.com/?id=94FiR>

Clint Stanovsky  
Department of Ecology  
Toxics Cleanup Program  
Cleanup Rulemaking Lead

Sarah Wollwage  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: *New Draft Tool for Assessing and Ranking Contaminated Sites - Comment on the SHARP Tool*

Dear Mr. Stanovsky and Ms. Wollwage,

The Western States Petroleum Association (WSPA) appreciates this opportunity to comment on the new draft tool for assessing and ranking contaminated sites as provided on the Department of Ecology's (Ecology) webpage "Ranking Contaminated Sites." WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the transport and market petroleum, petroleum products, natural gas, and other energy supplies. WSPA provides the following comments for Ecology's review.

**SHARP Tool and Guidance Document**

- 1 The new site hazard assessment and ranking process (SHARP Tool) appears to be similar to preparing a Conceptual Site Model (CSM) within the existing Model Toxics Control Act remedial investigation (MTCA RI) process and expands the existing Washington Ranking Method (WARM) site ranking process with additional detail and media by media assessment. WARM would assign one number ranking from 1 to 5, with 1 being a site posing the greatest risk to human health and the environment. With SHARP, each media gets a number ranking and an exposure potential pathway ranking of complete (A), possible pathway (B), potential future pathway (C), or no source (D). Therefore, a site can have soil with a ranking of C2 and soil vapor to indoor air can be a D4.
- 2 One limitation of using the WARM ranking process was that sites were ranked only once during the cleanup process. Under SHARP, re-ranking can occur at milestones that indicate a significant or important change in site conditions, such as after completing a remedial investigation, an interim action, or other cleanup action. WSPA recognizes that the WARM ranking process was outdated and broad, whereas the SHARP process acts almost as a preliminary CSM with rankings for each media. The opportunity for re-ranking during milestones is a welcome improvement in the ranking process that could be streamlined to reduce the administrative burden on Ecology staff.

**Qualified Rankers**

- 3 The text in the SHARP Tool manual indicates that "[r]ankers include Ecology staff, such as initial investigators, site hazard assessors, site managers, and subject matter experts." The text does not

explicitly limit rankers to only Ecology staff members. However, the SHARP Tool evaluates sites more comprehensively than the WARM Tool and as a result, may require input from multiple Ecology staff with different specialties. Considering Ecology's current workload and limited resources, use of a more complex tool may cause additional delays in the site identification and cleanup process. Environmental consultants and others with experience in the environmental and natural resources have the necessary knowledge to complete the ranking process to be submitted to Ecology for review and approval when reporting a cleanup site or as major cleanup milestones are reached.

- 4 Ecology should update the SHARP Tool manual to be consistent with WSPA's earlier comment on WAC 173-340-130(4)'s proposed rule language to allow rankers with experience in environmental and natural resources, such as environmental consultants and environmental program managers, to complete the ranking process to be submitted to Ecology for review and approval when major cleanup milestones are reached.

- 5 **Additional Factors Tab Inputs: Climate Change Impacts Ranking**

The SHARP Tool includes consideration of "high threat vulnerabilities" including sea level rise and flooding. The SHARP Tool references Ecology's revised *Guidance for Sustainable Remediation* which provides steps to identify the climate change impacts that can pose the highest risk for a PLP's site.

- 6 At the initial site investigation and ranking phase, potential climate change impacts are not expected to be well understood. The inclusion of climate change considerations, which occur decades in the future, is most appropriate when determining long-term remedy protectiveness. To avoid duplication of resources, climate change should not be factored into site decisions until the feasibility study stage of cleanup. As a result, Ecology should clarify that climate change information is provided for context only, and that in early site rankings, this determination is made in the absence of site-specific data or studies completed consistent with sustainable remediation guidance.

WSPA appreciates the opportunity to comment on new draft tool for assessing and ranking contaminated sites. If you have any questions about the information presented in this letter, please contact me at (360) 296-0692 or via email at [jverburg@wspa.org](mailto:jverburg@wspa.org). I would be happy to discuss our comments with you.

Sincerely,



James Verburg

Senior Director, NW and SW Climate and Fuels



## Mindy Roberts

Please see the attached letter from Communities for a Healthy Bay, Duwamish River Community Coalition, RE Sources, and Washington Conservation Action.





WASHINGTON  
CONSERVATION  
ACTION

April 16, 2023

Clint Stanovsky  
clst461@ecy.wa.gov  
Rulemaking Lead – Cleanup Rule Update AO# 18-09  
Policy and Technical Support Unit, Toxics Cleanup Program  
Department of Ecology

RE: Comments on SHARP tool and manual

Dear Clint,

Thank you for providing the opportunity to comment on the SHARP tool and manual. Washington Conservation Action, Duwamish River Community Coalition, RE Sources, and Communities for a Healthy Bay offer these comments as members of the Stakeholder and Tribal Advisory Group.

- 1 While we provide specific comments on the SHARP tool and its manual below, we want to emphasize that we remain deeply concerned that Ecology has not documented how it will reprioritize program plans to eliminate the disparity in MTCA site location. As you know, MTCA sites are located disproportionately in low-income communities and communities of color, leading to serious disparities in health and quality of life (Front and Centered, 2017). Additionally, we do not see any materials describing the dashboard that Ecology staff mentioned in Fall 2022, nor how Ecology will prioritize its resources.
- 2 Until Ecology clarifies its approach and commits resources to this effort, we cannot support the shift outside of rule.

**Define and actively manage sites on the basis of environmental justice and tribal resources**

- 3 MTCA sites are disproportionately located in communities of color. These communities continue to live with the consequences of environmental racism and legacy pollution. Because of this, it is imperative that racial demographics be a stand alone factor in the SHARP analysis. Blending in racial demographics as one of many factors considered when looking at vulnerable populations minimizes the disparities that communities of color face.
- 4 We are also concerned that the SHARP manual does not have a definition for environmental justice. It is imperative that a clear definition is added to the manual so that anyone who uses the SHARP tool is working from the same, approved definition.



- 5 The materials available for review do not clarify how the existing list of MTCA sites across the state will be reassessed using the SHARP tool and transitioned from WARM. The manual suggests that each individual site will be reassessed separately. We recommend that Ecology complete a GIS analysis to fill in the demographic data rather than manually typing in information from EPA’s EJ Screen tool that is currently described in the manual. We urge you to work directly with Tribes to reflect tribal resources at this step as well. The individual process described in the manual is subject to error and should be automated for readily available information. We urge you to work directly with EPA for access to datalayers used in the EJ Screen, and we can put you in contact with staff within EPA Region 10. A related comment is that the Centers for Disease Control also has relevant demographic and environmental online databases, and we would like to understand why you used the EPA product alone.
- 6 Once a statewide analysis is complete, SHARP assessments must also be available in a statewide database that can be queried so that Ecology, advocates, and impacted communities can track whether or not racial disparities decline as a result of active management. This is a critical component for tracking over time so that Ecology can adaptively manage programs that direct funding for MTCA cleanups and prevention. We would like to discuss this with you further before you finalize the SHARP tool.
- 7 We also have concerns over the visual report’s lack of racial demographic information, information related to other overburdened communities, or anything that communicates a site’s potential to impact Tribal resources. We request further clarification regarding why the “Working with Tribal Governments” section is in 5.4.4 and not included in the Socioeconomic tab.
- 8 Finally, the SHARP tool has no information on a site’s potential to impact tribal resources for treaty-reserved resources or those established through executive order. This is an oversight that must be resolved before finalizing, and we defer to Tribes on how they would like to see this noted. We also urge you to work directly with Tribes to ensure that the identification of lands and waters relevant to tribal resources is clear and consistent across the state.

### **Expressly include mechanism for identifying cumulative impacts**

- 9 We remain concerned by the lack of a mechanism for identifying cumulative impacts. The existing site-by-site analyses do not account for cumulative health impacts to communities that are overburdened by MTCA sites, or in areas where there is broader regional contamination, such as the Duwamish Valley, Bellingham Bay, and Commencement Bay.
- 10 We would like to reiterate our comments on Preliminary Draft 2 regarding cumulative impacts:



*We would like Ecology to consider the potential of future releases of hazardous substances, the potentially present hazardous substances associated with historical and current land use, as well as consider chronic exposure, not just acute exposure when evaluating possible receptors and contaminants as additional performance measures.*

*Ecology should consider how long a site has been on the list without any cleanup, in the prioritization process. We believe that sites that have been listed for an extended length of time should be prioritized over a site with equal contamination that was just added to the list. We would also like to raise our concerns regarding the prioritization of “easier sites.” If sites that are easier to clean up consistently get prioritized over more complicated cleanups, then complicated sites may never reach the top of the list.*

- 11 The proposed site-by-site approach also misses the cumulative impacts to tribal resources. We urge you to work directly with Tribes on how to ensure that tribal communities are able to shape how cumulative impacts are assessed and managed against.

#### **Document commitments to center environmental justice in program cleanup plans**

- 12 As described above, we are unclear how the SHARP tool will be put into practice. We understand that Ecology intends to develop strategic program plans periodically and produce a dashboard where the public can track specific metrics of success. Specifically, we urge Ecology to regularly conduct the type of analysis that Front and Centered completed in 2017 to check for disparities on the basis of race and income. We also urge you to expand this analysis to evaluate sites from a tribal resource perspectives. Until the disparities that Front and Centered (2017) identified are closed and tribal resources or protected, the MTCA program will continue to contribute to environmental injustices in the state. We urge Ecology to clarify its approach as soon as possible.
- 13 We recommend that before Ecology separately rescors the thousands of sites awaiting cleanup across the state, Ecology first conduct a statewide GIS-based analysis to benchmark current status and socioeconomic information. When Ecology begins rescoring individual sites, we suggest that Ecology start with the Environmental Health Disparities (EHD) map and prioritize sites with a ranking of 8-10, and prioritize WARM rankings of 1 and 2. Further, the EHD mapping tool already includes data for people of color populations across the state. This is part of why we would like to discuss the approach with you further before you finalize the SHARP tool.
- 14 We recommend that Ecology publish and distribute a biennial report on the statewide analysis to improve transparency and accountability around whether the state is making progress toward its environmental justice goals and eliminating any disparities around tribal resources.



- 15 Finally, we recommend that the report include how all MTCA grant funds are spent related to socioeconomic factors, including communities of color and tribal communities. We recommend that Ecology commit to a specific goal of eliminating all disparities within the next three biennia, or no later than June 30, 2027.

### **Improve public outreach**

- 16 We want to reiterate the comments, copied below, that we made for Preliminary Draft 1 regarding insufficient public outreach and the SHARP tool:

*To ensure the public interest is being served, we would seek to provide input on how the proposed site hazard assessment and ranking process will be used to prioritize cleanups. We recommend that Ecology simultaneously develop a formal policy for how SHARP will be used to prioritize cleanups with the opportunity for our additional input.*

- 17 As Ecology develops strategic plans and program plans for SHARP implementation and site cleanups, we recommend that Ecology deepen its commitment to public engagement. Too few people know about MTCA sites in the state, particularly where no local group exists or no Public Participation Grant funds have been dedicated. While not directly part of the SHARP tool or the manual on which Ecology is seeking public comment, we urge you to improve the public availability of MTCA site information available from the SHARP tool. This may include providing information in multiple languages, reaching out through social media, and other more modern ways to engage the public. We wanted to reiterate our separate comment letter on MTCA Rulemaking regarding public engagement.

### **Actively manage the consistency of SHARP applications**

- 18 In order to ensure that SHARP applications are applied consistently, we recommend that Ecology mandate annual training and program certifications for site managers as a form of consistency checks to identify outliers and retrain on expectations. Ecology should also create a Quality Assurance Project Plan (QAPP) detailing how SHARP will be used by individual staff members and programmatically.
- 19 We would like Ecology to specifically focus on staff training regarding socioeconomic factors, tribal resources, and also the ChemTox tab.

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- 20 Thank you again for engaging with us through the Stakeholder and Tribal Advisory Group and for ensuring the SHARP tool was available for public comment coincident with the public comment period on the Rulemaking. If you have any questions regarding these comments,



please contact Katie Byrnes at [kbyrnes@waconservationaction.org](mailto:kbyrnes@waconservationaction.org). We look forward to engaging with you to strengthen MTCA, protect communities, and ensure the public has access to important information in their own communities.

Sincerely,

Katie Byrnes  
Washington Conservation Action

Mindy Roberts  
Washington Conservation Action

Jamie Hearn  
Duwamish River Community Coalition

Erin Dilworth  
Communities for a Healthy Bay

Eleanor Hines  
RE Sources

### References

Front and Centered. 2017. Equity Analysis of Toxic Sites and Model Toxic Control Act. <https://frontandcentered.org/mtca-report/>

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