



Toxics Cleanup Program

Policy 940: Voluntary Cleanup Program and Sediment Sites

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Contact: Policy Section, Headquarters

Purpose: This policy provides a policy and process to determine if a site that includes freshwater or marine sediment is suitable for the Voluntary Cleanup Program (VCP) or if the cleanup site should be elevated to the formal site process.

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Introduction

This policy includes a stepwise decision process and criteria to determine if a site that includes freshwater or marine sediment is suitable for the Voluntary Cleanup Program (VCP) or if the site should be elevated to the formal site process. The conceptual site model should be evaluated against the following set of criteria:

- If sediment media is present.
- If sediment sampling has been done and contamination is confirmed.
- The complexity of the site.
- If a sediment specialist is available to help with the site.

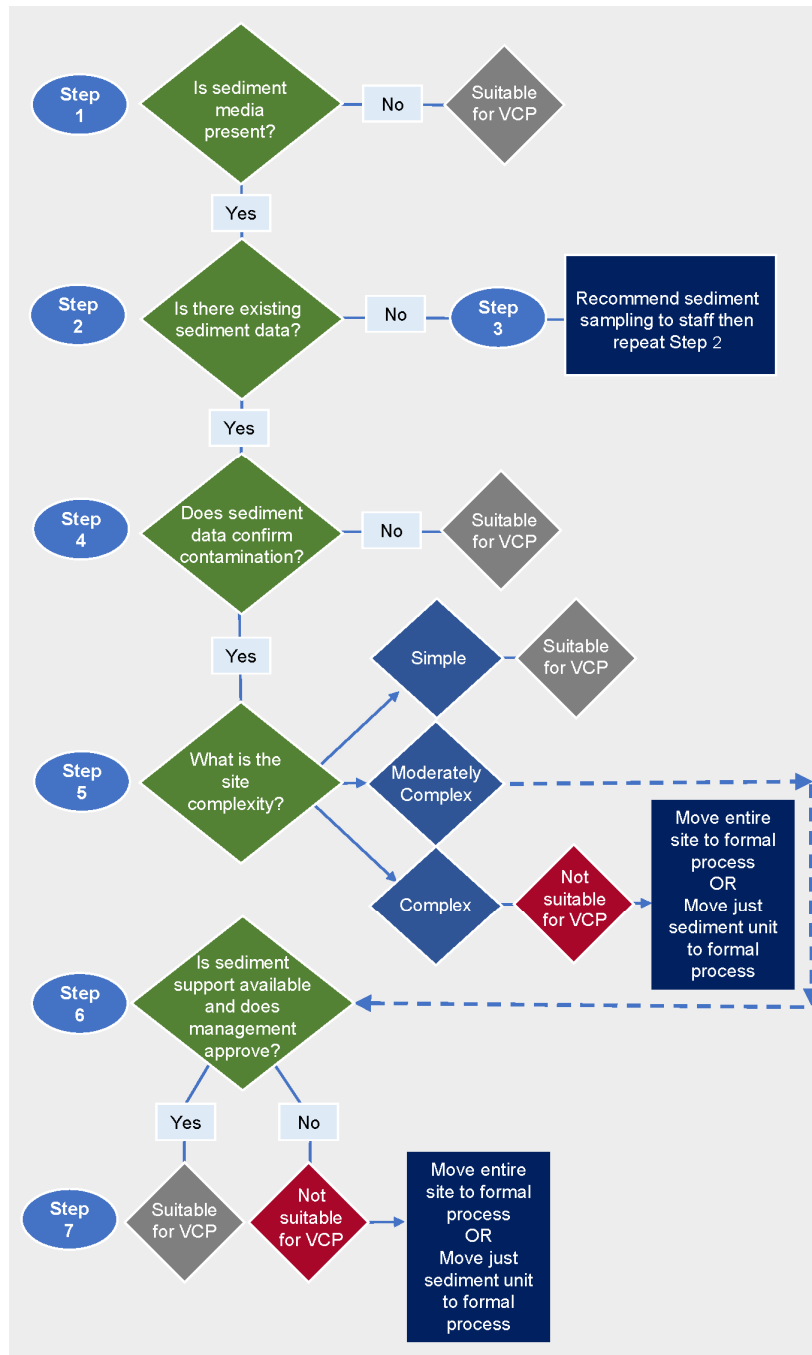
For purposes of this policy, the complexity of a sediment site can be defined as:

- **Simple.** Simple sediment sites do not require permitting or involvement with other state, federal, and local regulatory agencies and may be suitable for VCP.
- **Moderately complex.** Moderately complex sediment sites require limited permitting and limited involvement with other state, federal, and local regulatory agencies. These sites may be suitable for VCP upon management approval and if an appropriate sediment specialist is available to provide technical assistance.
- **Complex.** Complex sediment sites require multiple permits, coordination with other state, federal, and local regulatory agencies, and must comply with applicable laws beyond the Sediment Management Standards (Chapter 173-204 WAC; Ecology 2013)) and the Model Toxics Control Act (Chapter 173-340 WAC; Ecology 2023).

These laws can pertain to endangered species, habitat, shoreline access, usual and accustomed (U&A) tribal fishing grounds and other tribal treaty rights, state-owned aquatic lands, and federal navigation channel authorizations. The applicability of these regulations can vary widely based on the location of the water body, salinity, navigability, tribal treaty rights, and other factors. Because of the permitting, coordination, and applicable laws, complex sediment sites are not suitable for VCP and should be managed as a formal cleanup site.

How to determine if a sediment site is suitable for VCP

Each Regional VCP Coordinator will review their VCP applications and use the following stepwise process in the below flowchart to determine if a site includes sediment media and is suitable for VCP. The rest of this policy includes further details for each of the steps in the flowchart.



Step 1. Determine if a site includes sediment media

To determine if sediment media is part of the site, the following criteria should be used. Sediment is considered present if surface water is:

1. On or adjacent to the upland portion of the site, and
2. Is present annually for more than six consecutive weeks of the year as defined in the Sediment Management Standards rule, WAC 173-204-505(22) [Ecology, 2013]. This includes permanent or ephemeral wetlands, streams, rivers, lakes, and estuarine and marine water bodies (e.g., Puget Sound and coastal bays, inlets, and beaches).

If sediment media is present, move to Step 2. If sediment media is not present, the site is suitable for VCP.

Step 2. Identify existing data

Check Ecology's Environmental Information Management (EIM) database, reports in central files, or other relevant data sources to verify if sediment sampling has been done. If not, move to Step 3.

If sediment data exists, move to Step 4. If sediment data does not exist, move to Step 3.

Step 3. Recommend sediment sampling

If sediment data does not exist, but there is sediment media present (Step 1), recommend to the site manager that sampling should be conducted to verify if contamination exists. Sampling does not have to be equivalent to a remedial investigation, but sufficient sampling should be done to determine if contamination exists.

After data has been received, repeat Step 2.

Step 4. Confirm contamination exists above standards

Under the Sediment Management Standards rule, WAC 173-204-505(7), a contaminant is defined as

“...any hazardous substance that does not occur naturally or occurs at greater than natural background levels.”

Use the Sediment Management Standards chemical criteria in the Sediment Cleanup User's Manual (Chapter 8 Table 8-1, Chapter 10 Table 10-1; Ecology 2021), the Sediment Management Standards biological criteria in the Sediment Cleanup User's Manual (Chapter 8 Tables 8-2, 8-4; Ecology 2021) to verify if concentrations are above criteria.

If contamination exists, move to Step 5. If sediment is not contaminated, the site is suitable for VCP.

Step 5. Determine if the sediment site is simple, moderately complex, or complex

Determine the complexity of the sediment site to see if it is suitable for VCP or should be designated a formal site using the following information:

Simple sediment sites

These can be suitable for VCP. Simple sediment sites can be in permanent and ephemeral wetlands, rivers, lakes, ponds, and creeks. They should not:

1. Be in a water body under federal authority or have potential to impact a water body under federal authority (e.g., a stream that drains to a river under federal authority). See the References section to access the U.S. Army Corps of Engineers list of navigable water bodies.
2. Be within tribal usual and accustomed (U&A) fishing grounds.
3. Support critical habitat for species under the Federal Endangered Species Act. See References to access state and federal resources.

Moderately complex sediment sites

These can be suitable for VCP upon management approval and if an appropriate sediment specialist is available to provide support. Move to Step 6 in this case. Examples of moderately complex sites that are now in VCP are CSID 13209, VCP SW1599 and CSID 3951, VCP SW1793. Moderately complex sediment sites can be in smaller rivers, lakes, ponds, and streams, and:

1. Are not in a water body under federal authority or do not have potential to impact a water body under federal authority.
2. Can be within tribal Usual and Accustomed fishing grounds.
3. Can support critical habitat for species under the Federal Endangered Species Act.
4. Do not require federal permits for cleanup actions, with some potential exceptions. For example, NPDES discharge permits or Clean Water Act Section 401 Certifications.
5. Compliance with other local and state permit requirements can be done by coordinating with local and state authorities and obtaining written authorizations, even if a formal permit is not required.

Complex sediment sites

These are not suitable for VCP. Move to Step 7 in this case. Complex sediment sites have multiple site-related issues that will require significant technical support from a sediment specialist (See Step 6). They are typically in major rivers (e.g., Lower Columbia River), Puget Sound, and lower reaches of rivers that drain into major rivers or Puget Sound, and:

1. Are in a water body under federal authority or have potential to impact a water body under federal authority.
2. The sediment area is relatively large and spans shallow and deep-water depths.
3. Cleanup actions require significant coordination and multiple federal permits.
4. May require other state and local permits.
5. Pose risks to human health and the environment.
6. Includes bioaccumulative chemicals of concern (e.g., PCBs, dioxins/furans).
7. Can be located within tribal Usual and Accustomed fishing grounds.
8. Can include critical habitat for species under the Federal Endangered Species Act.

If a site cannot be clearly defined as complex at this point, the following additional evaluations may be necessary to determine if the site is complex:

1. **Identify if a water body is under federal authority.** The U.S. Army Corps of Engineers manages a list of federally designated navigable waters in Washington State and regulates activities that could obstruct or alter navigable waters. See References to access this list. State and local laws and substantive permit requirements also apply to these water bodies, as outlined below. Water bodies that are not listed under federal authority are under state, local, and tribal jurisdictional authority. However, cleanup actions for sediment sites within these water bodies must still comply with the applicable federal laws mentioned above.
2. **Identify if federal permits are required to conduct cleanup.** Federal permits (e.g., Nationwide 38 and Clean Water Act Section 401 Water Quality Certifications) are required for in-water activities (including cleanup) within federally listed water bodies. The need for these permits substantially increases the multi-agency and tribal coordination requirements, described below. At this step, sites are often listed as complex because of federal permitting requirements. Water bodies under federal authority can be under the jurisdiction of multiple federal and state agencies with unique regulatory authorities. They can include:
 - Ecology's Shorelands and Environmental Assistance Program
 - Tribal governments
 - U.S. Army Corps of Engineers
 - U.S. Coast Guard

- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. National Oceanic and Atmospheric Administration Fisheries
- Washington Department of Archaeology and Historic Preservation
- Washington Department of Fish and Wildlife
- Washington Department of Natural Resources, Aquatic Resources Division

For more information on jurisdictions, required permits and approvals, and working with tribal governments, see the References section to access the most updated Joint Aquatic Resources Permit Application Form, the Sediment Cleanup User's Manual Chapter 15 (Ecology 2021), Ecology's Working with Tribal Governments web page, and the Shorelands and Environmental Assistance Program.

3. **Identify if state or local permits and approvals are likely.** Local permits (e.g., Shoreline permits under the Shoreline Master Program) and state permits (e.g., WDFW Hydraulic Project Approval) are not required for a cleanup action under the authority of the Sediment Management Standards or Model Toxics Control Act. However, all substantive local and state requirements must be met, so coordination with the state and local regulatory authorities is necessary. They will provide written documentation of the conditions to be met and it is generally a simpler process than for federal permits.
4. **Identify potential multi-agency, multi-governmental coordination requirements.** Sediment sampling and in-water construction may require coordination with multiple agencies and governments (listed above), detailed below.
 - **Identify if sediment sampling may require permits or approvals.** A sediment site will need sampling to determine the nature and extent of contamination—whether it is suitable for VCP or not—which may categorize the sediment site as complex. Generally, permits are not required to collect surface sediment samples (e.g., the top 10 cm). However, written documentation from state, local, and potentially federal authorities to confirm an exemption may be needed. For example, some areas that support migrating salmon or forage fish may require coordination with WDFW to ensure sampling occurs during fish windows when disturbance to salmon is least likely to impact their annual migration. Subsurface (core) sediment sampling may require permits and tissue sampling may require a scientific collection permit from WDFW and access agreements with DNR for state-owned aquatic lands.
 - **Identify if in-water construction may require permits or approvals.** Basically, sediment remedies include removing material from, or placing material into, the aquatic environment. In-water construction in a federally regulated water body often involves multi-jurisdictional permitting and

substantial coordination with federal, state, and local agencies, and consultation with tribes. This adds significant complexity and increased coordination and lead time. If the water body is not under federal authority, coordination can be simpler and quicker as it involves only state and local permits and coordination, and consultation with tribal governments. Permitting occurs after an RI/FS or equivalent is completed, and the cleanup action plan or equivalent is being developed.

Step 6. Determine if sediment technical support is available

For moderately complex sites to be suitable for VCP, adequate sediment technical support within the regions or headquarters is required. The Regional VCP Coordinator should bring this issue to their Unit Supervisor and Section Manager for a decision. If the region does not have adequate sediment support, they can consult with the HQ Information and Policy Section Manager, the Sediment Policy Program Lead, or the HQ Aquatic Lands Cleanup Unit Supervisor to determine if their sediment staff are available to support the site.

If sediment expertise support is available and management approves, the site is suitable for VCP. If support is not available, the site is not suitable for VCP. Move to Step 7 in both cases.

Step 7. Decide if the site is suitable for VCP

For new VCP site applications, the Regional VCP Coordinator will use the evaluation results from Steps 1 – 6 to determine if the sediment site is suitable for VCP or the formal cleanup process and will make a recommendation to their Unit Supervisor and Section Manager for a final decision. Sediment specialists can help the Regional VCP Coordinator identify if the site is simple, moderately complex, or complex, the availability of sediment technical support, and other relevant site information necessary to make a recommendation to management.

For sediment sites currently in VCP, if a site review and/or investigation confirms sediment contamination, the site should be reviewed according to this policy and the steps above. If the site is determined to be simple, it can continue to be managed under the VCP. If the site is moderately complex and sediment technical support is available, it may continue to be managed under the VCP based on the Unit Supervisor and Section Manager's decision.

If the sediment site is identified as moderately complex and sediment technical support is not available or the sediment site is identified as complex, there are two options:

- Option 1:** Complete the upland cleanup and conduct additional sediment sampling under VCP. Under this option, the following should be done:
- a. Complete the upland cleanup per Model Toxics Control Act requirements.
 - b. Conduct sediment sampling to identify the sediment unit as a cleanup site per the Sediment Management Standards requirements.

- c. The ISIS database will be updated to reflect accurate information about the sediment portion of the site, which will be called a “sediment unit” in ISIS.
- d. All sediment data will be uploaded to Ecology’s Environmental Information Management system.
- e. After identifying the sediment portion as a cleanup site, the sediment unit will be terminated from VCP and ISIS updated to show the sediment unit as formal.

Option 2: Immediately move the site to the formal process. Both the upland and sediment portions will be removed from VCP and added to ISIS as a formal site.

References and Resources

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Ecology’s [Working With Tribal Governments](#) web page (use search box on Home page).

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- [Section 401 Water Quality Certification](#) (401 Certification).
- [Hydraulic Project Approval](#) (HPA).
- [Section 404 Discharge of Dredge or Fill Material](#) (Nationwide 38 permit).