



PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)
(Implements RCW 34.05.310)**

Do **NOT** use for expedited rule making

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DATE: December 20, 2018

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WSR 19-02-013

Agency: Department of Ecology AO #18-09

Subject of possible rule making:

Rule chapters(s), parts or section(s) and short description:

Chapter 173-340 WAC, Model Toxics Control Act (MTCA) – Cleanup (the Cleanup Rule). The Cleanup Rule regulates the management and remediation of sites contaminated by hazardous substances.

Parts 1 through 6 and Part 8 of the rule describe administrative and procedural aspects of site cleanups; Parts 7 and 9 establish technical cleanup standards.

What are we doing to/in the rule?

The Department of Ecology (Ecology) plans to amend the administrative and procedural requirements for site cleanups under Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulation (the Cleanup Rule). In this rulemaking Ecology will not change the technical standards for site cleanups in Parts 7 and 9 of the rule, but does plan to:

- a. Update the title of this chapter.
- b. Modify the initial investigation, site hazard assessment and ranking, and public notice process in Parts 1 and 3 of the rule.
- c. Update other administrative and procedural requirements of the cleanup program in Parts 1–6 and Part 8 of the rule.
- d. Make changes in Parts 1–6 and Part 8 to streamline rule requirements, as well as minor corrections to improve rule clarity and consistency with other laws and rules.
- e. Make changes in Parts 7 and 9 to clarify language and make corrections without changing the effect of the rule.
- f. Incorporate changes to the cleanup program specified in Chapter 70.105D RCW, Hazardous Waste Cleanup – Model Toxics Control Act, and Chapter 64.70 RCW, Uniform Environmental Covenants Act.

Statutes authorizing the agency to adopt rules on this subject: Hazardous Waste Cleanup – Model Toxics Control Act (Chapter 70.105D RCW)

Reasons why rules on this subject may be needed and what they might accomplish:

Ecology is conducting this rulemaking to:

1. Improve the initial investigation, site hazard assessment, ranking, and public notice processes to update the site hazard ranking system; to streamline the initial assessment and listing of new sites; and to allow re-ranking of listed sites based on significant new information or changes in site conditions.
2. Update the other administrative and procedural requirements of the cleanup program based on agency review of the codified rule and on comments received during the Cleanup Rule Update Exploratory

rulemaking process (see our website at <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking>).

3. Implement changes to the cleanup program specified in Chapter 70.105D RCW, Hazardous Waste Cleanup – Model Toxics Control Act, and Chapter 64.70 RCW, Uniform Environmental Covenants Act.
4. Make the rule easier to use and understand by the regulated community.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Tribal nations. Many tribal nations have lands or usual and accustomed fishing areas on or adjacent to cleanup sites, and will be consulted during the rulemaking process.

U.S. Environmental Protection Agency (EPA). This agency is responsible for overseeing cleanup actions conducted under the federal Superfund program and for source control activities under the federal Clean Water Act.

Agency for Toxic Substances and Disease Registry (ATSDR) and Washington State Department of Health (DOH). These agencies are responsible for evaluating human health hazards, and both will be consulted during this rulemaking process.

Washington State’s Pollution Liability Insurance Agency (PLIA).

Washington State Department of Ecology’s programs that have MTCA regulatory oversight:

- Toxics Cleanup Program
- Hazardous Waste and Toxics Reduction Program
- Solid Waste Management Program
- Nuclear Waste Program

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Clint Stanovsky	(If necessary) Name:
Address: Department of Ecology Toxics Cleanup Program P.O. Box 47600, 300 Desmond Dr SE Lacey, WA 98504-7600	Address:
Phone: (360) 407-7193	Phone:
Fax: N/A	Fax:
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.	TTY:
Email: MTCARule@ecy.wa.gov	Email:
Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340	Web site:
Other: Join our email list to receive updates on this rulemaking: http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=MTCA-SMS-RULE-UPDATE&A=1	Other: N/A

Additional comments:

Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: 12/20/2018

Name: Jim Pendowski

Title: Toxics Cleanup Program Manager

Signature:

