Cleanup Rule (WAC 173–340) exploratory rulemaking: 2018 comments

On April 3, 2018, the Washington State Department of Ecology (Ecology) hosted a statewide listening session to solicit ideas about updating the Cleanup Rule, Chapter 173–340 WAC, and to hear what topics are most important for us to address.

This document contains comments received from the public during the Exploratory Rulemaking process, from February 14 through May 11, 2018. These include comments provided through the online eComment system, by mail, by email, and on comment cards at the April 3rd listening session. We will be addressing many of these comments in the current rulemaking, which began on December 20, 2018.

To learn more, visit the Cleanup Rulemaking webpage at https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340. For more information, please contact:

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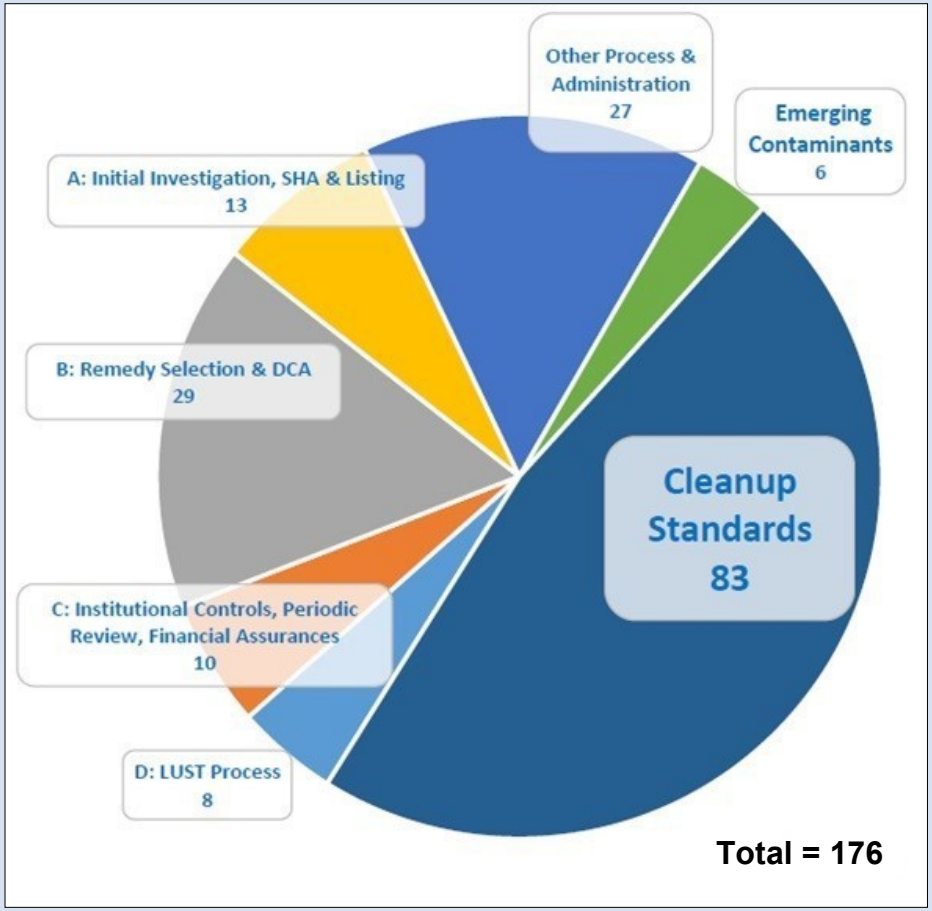
Ecology is updating the Cleanup Rule. The Model Toxics Control Act (MTCA) Regulations, known as the Cleanup Rule (Chapter 173-340 WAC), set standards and procedures for cleaning up contaminated sites under Washington state's environmental cleanup law, MTCA (Chapter 70.105D RCW). Both the rule and law help us remove contamination that can pose risks to your health and the environment. We expect this update to include several rulemakings over the next five to ten years. For more details and to learn how to participate:

- **Visit the current Cleanup Rulemaking page, Chapter 173–340:** https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340
- **Visit the 2018 Cleanup Rule exploratory rulemaking page:** https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking
- **Subscribe to Cleanup Rule email updates**: http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=MTCA-SMS-RULE-UPDATE&A=1
- **Download Washington's cleanup law and regulation:** https://fortress.wa.gov/ecy/publications/summarypages/9406.html
- **Watch the April 3, 2018, statewide scoping webinar:** https://watech.webex.com/watech/ldr.php?RCID=273c0fe57a52651bf9781dfddab85714

Accommodation requests: To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call 360-407-7668 or visit https://ecology.wa.gov/accessibility. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Exploratory Rulemaking – Public Scoping
Cleanup Rule (Chapter 173-340 WAC)

Figure 1. Rule changes (by category) suggested by the public during the Cleanup Rule Exploratory Rulemaking, February 14–May 11, 2018.



Abbreviations

DCA: Disproportionate Cost Analysis
LUST: Leaking Underground Storage Tanks
SHA: Site Hazard Assessment

Exploratory Rulemaking Comment Period
eComments through April 15, 2018

Comment Code	Topic	Assigned	Commenter	Comment	Comment Submitted
I- 1 -1	Unclassified		David Coles	The obvious change that is needed in MTCA is to trash the current cleanup standards and adopt a risk-based approach similar to the one used in Oregon. The current approach is unrealistic and unduly burdensome on PRPs.	2/14/18 2:37 PM PT
I- 2 -1	Unclassified		Mike Ehlebracht	Addressing the groundwater to surface water pathway is currently problematic particularly in terms of point of compliance, cleanup and remediation levels, and compliance monitoring. Current application of existing rule and guidance is inconsistent and often overly conservative particularly at sites involving groundwater discharge to marine surface water. I think stakeholder meetings to discuss this topic would be very helpful to clarify and/or revise existing rule and guidance. Thanks.	3/06/18 11:31 AM PT
I- 3 -1	Unclassified		Monte Hokanson	Consider eliminating the current rule which exempts households and some businesses from prosecution under MTCA for the improper disposal of hazardous waste. Create a new rule that mandates all cities provide curbside pickup of hazardous waste at least quarterly.	3/25/18 5:52 PM PT
I- 4 -1	Unclassified		andrea Flaherty	I am doing a test to see how quickly this comes into the system	3/28/18 11:27 AM PT

I- 5 -1	Unclassified		Jennifer Moore	Category H Submittal. There is no existing guidance for characterization, storage, management, and disposal of investigation derived waste that is generated during MTCA investigations, cleanups, and due diligence projects. I realize that this isn't directly a MTCA issue, but it is a nexus between MTCA and the Dangerous Waste Regulation, which is ineffective at helping generators of this type of waste manage their liabilities. It would be very helpful if these two factions in Ecology worked together to provide effective guidance to generators. I would be happy to be involved in the process if there is a way for people in the industry to contribute. Thanks for your time.	4/05/18 1:12 PM PT
I- 6 -1	Unclassified		Arnie Sugar	Change the funding mechanism so money paid by VCP applicants goes to Ecology for resources and staff, instead of to the general fund. Ecology resources could then be adjusted based on demand from the regulated community. Better yet, implement a consultant review process for VCP similar to the successful water rights cost reimbursement program. This would be faster and less costly, and still adhere to the regulation (as proven in the water rights program).	4/05/18 2:44 PM PT
I- 7 -1	Unclassified		LV Listening Session (4/3/2018)	A/D - Suggest establishing timelines for sites to complete a release determination assessment, complete a sensitive receptor survey, complete a site characterization etc. Other states do this and it appears help speed up the cleanup process, particularly on LUST cleanups.	4/11/18 3:51 PM PT
I- 8 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	A - If most sites aren't ranked using Site Hazard Assessments, why are they (SHAs)still being used?	4/11/18 4:02 PM PT
I- 9 -1	Unclassified		LV Cleanup Scoping (4/3//2018)	B - DCA process should include consideration for sustainability (e.g. containment may be preferable to dig and haul when: a) onsite risks of leaving contaminants in place are low b) moving huge amounts of soil by truck results in high carbon footprint.)	4/11/18 4:05 PM PT

I- 10 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - "Reasonable restoration timeframe" should be included within DCA analysis as it is redundant and poorly defined on how to determine the "practicability of achieving a shorter restoration timeframe."	4/11/18 4:07 PM PT
I- 11 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - Evaluating ways to streamline both regulatory process and the cleanup process for remedy selection and implementation - to address REAL risks instead of all potential risks that may ever exist - to allow for redevelopment to support 10 cal economies (i.e. affordable housing, creating jobs, public use of 'clean' open space, etc.)	4/11/18 4:11 PM PT
I- 12 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - Reasonable Restoration timeframe, particularly with large diffuse plumes - low level, but exceeding CULs. VERY expansive to address.	4/11/18 4:13 PM PT
I- 13 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - The current rule has Ecology preparing the CAP, but consultants typically write these. Consider rewriting the rule to address the actual process.	4/11/18 4:15 PM PT
I- 14 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - When evaluating remedies in FS and DCA - need further clarification regarding source removal options. In practice, Ecology often requires evaluation and costing of excavation options even when it is obviously not technically practicable. Should be allowed to compare to treatment remedies that also remove mass	4/11/18 4:18 PM PT
I- 15 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - Provide Clarity on DCA Benefit scoring. This could be done by example table in guidance instead of rule amendment.	4/11/18 4:19 PM PT
I- 16 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - Use of silica gel needs to be allowed. Distrust by Ecology of gw - sw interface - tidal pumping can cause concentrations (TPH or Solvent) to decrease due to increased oxidation - NOT dilution - need to allow monitoring as gw discharges to sw, OK to monitor at the gw/sw interface by shoreline wells, seeps, and/or pore water sampling.	4/11/18 4:24 PM PT
I- 17 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	C - For contamination in ROWs/under streets, streamline the process to get municipalities/DOT to allow impacts to remain without going through the env. covenant process.	4/11/18 4:25 PM PT

I- 18 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	D - LUST cleanups should be more risk-based and consider receptors.	4/11/18 4:27 PM PT
I- 19 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	D - LUST-petroleum only cleanups - maybe develop a low threat closure process to streamline site characterization, cleanup actions, etc. So that property owners can transact on their properties.	4/11/18 4:28 PM PT
I- 20 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	E - Provide cleanup levels for PFOs and PFOA	4/11/18 4:29 PM PT
I- 21 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	E - Are polar metabolites really a risk? If so, why aren't they listed in CLARC?	4/11/18 4:31 PM PT
I- 22 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Is TPH as a regulated contaminant still appropriate? TPH is a problematic group of chemicals and many states have screening levels for TPH but not "cleanup levels". Just regulate BTEX, naphthalene, etc.	4/11/18 4:32 PM PT
I- 23 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Potable gw defined > 10,000 mg/l TDS (seawater salt/brackish?)seems very high. Other requirements need clarification much interpretation is dependent on "department recognition" which policy/decisions seem to fall under and water is potable ->eg. perched in high density areas where well installation is prohibited	4/11/18 4:35 PM PT
I- 24 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Method B is still not widely accepted even though is maybe used at all sites. When consideration of Method B CULs is submitted appropriately there is still a default to Method A. Can we make this clearer?	4/11/18 4:37 PM PT
I- 25 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Incorporate LNAPL Transmissivity as an end point to product recovery. This is adopted in other states. Can draw on ASTM LNAPL Transmissivity docs and IRTC literature for technical basis for site-specific evaluation.	4/11/18 4:45 PM PT
I- 26 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - MTCA should clarify that multiple CULs and POCs for an affected media can be established, based on changes in receptors, pathways, and other site-specific considerations.	4/11/18 4:48 PM PT

I- 27 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Using WAC 173-201A as a groundwater CUL is inappropriate for site-wide use as 201A is clearly an "end of pipe" standard (i.e. does not regulate concentrations within the process). 201A standards should ONLY apply to point of discharge to groundwater.	4/11/18 4:50 PM PT
I- 28 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Will arsenic in groundwater cleanup standards be adjusted to consider background levels found in Washington St.	4/11/18 4:51 PM PT
I- 29 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Treated shallow contaminated groundwater the same as shallow contaminated soil (to 15 feet deep) as a direct contact risk rather than an ingestion risk. Shallow groundwater is not a potable drinking water source.	4/11/18 4:53 PM PT
I- 30 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - CWA makes very clear distinctions between groundwater and surface water. Using surface water standards as groundwater CULs site-wide is inappropriate and over-reaches Ecology's authority based on the distinctions made by the CWA	4/11/18 4:56 PM PT
I- 31 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Adoption of "operable units" should be included to allow for different cleanup standards at clearly different areas of a site based on use, receptors, pathways, etc.	4/11/18 4:57 PM PT
I- 32 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - WAC 173-340-747 provides some criteria for evaluating TCLP and SPLP mutals data when considering soil cleanup levels that are protective of groundwater. Would it be possible to also provide criteria for other common contaminants such as petroleum compounds?	4/11/18 5:00 PM PT
I- 33 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Points of Compliance/Conditional Pt of Compliance for sites adjacent to or near surface water, need to clarify compliance points and monitoring requirement for the gw to sw and gw to sediment pathways.	4/11/18 5:02 PM PT

I- 34 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - 1) Addressing concerns about more and more stringent cleanup levels and the frequent problem of: a) science not being able to quantify to those extremely low levels; and b) providing cleanup criteria that are nearly impossible to meet. 2) Regarding vapor intrusion screening criteria and addressing/incorporating, or at least providing for consideration of , WISHA/OSHA worker exposure criteria as guiding ARARs.	4/11/18 5:14 PM PT
I- 35 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Will Vapor Intrusion Policy/Guidance be coded into MTCA Cleanup Standards?	4/11/18 5:15 PM PT
I- 36 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	C/F - WAC 173-340-720(2)(i) 1) Develop table values for non-potable groundwater 2) Develop a process for determining non-potability. 3) Streamlined process for setting environmental covenant for non-potable GW	4/11/18 5:17 PM PT
I- 37 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Option to develop Risk-based cleanup levels based on actual receptors and site specific use. (Method B is only used to get the lowest possible cleanup level based on non realistic scenarios).	4/11/18 5:19 PM PT
I- 38 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - I was confused by the development of Stds in WAC 173-303. I haven't checked the most recent version, but need to understand, link to MTCA, such as if >Method A, goes to Subtitle D landfill? Also, listed waste (again 173-303) decisions will thwart cleanups at dry cleaners when it is not usually clearly known that the waste (PCE or TCE) is 'discarded' or 'spent'. Some site managers are assuming any solvent is always a listed hazardous waste at ANY detected level, even BELOW MTCA cleanup levels or J.flagged values.	4/11/18 5:23 PM PT
I- 39 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Will guidance provided in existing Ecology tech manual be incorporated during the upcoming rule making processes?	4/11/18 5:26 PM PT
I- 40 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Enforcement should be part of the rule, with more engagement by regulatory agency once a release/contamination is reported.	4/11/18 5:27 PM PT

I- 41 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Cleanups conducted under order/decree Public Outreach/Participation (this is the best place I can think of). Needs to be a requirement that ALL PLPs be notified, prior to implementation of remedial action. No going back after the fact because they did not do their due diligence.	4/11/18 5:29 PM PT
I- 42 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Consistency between Ecology site manages is lacking, not only state-wide but within individual regions somehow fix this.	4/11/18 5:30 PM PT
I- 43 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Separation of Feasibility Study complex sites vs simpler sites - maybe incorporate model remedy language (e.g. not needed for simple sites)? Or define process better?	4/11/18 5:32 PM PT
I- 44 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	G - Need to resolve the EPH silica gel cleanup controversy with Ecology so the risk-based TPH provisions in MTCA can be properly applied to groundwater cleanups.	4/11/18 5:34 PM PT
I- 45 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	H - Need guidance for characterization, management, and disposal of investigation-derived waste, this is a nexus with the dangerous waste regulation.	4/11/18 5:36 PM PT
I- 46 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	H - Have groundwater protection under the rule correlate to the WAC 178-160 surface seal requirements, so potable groundwater is better defined as groundwater below 18 feet.	4/11/18 5:37 PM PT
I- 47 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	H - Ecology's Formal Dispute Resolution process is ineffective and clearly biased toward Ecolgoy's position. Needs to include on independent administrator to provide an impartial final decision based on facts and law.	4/11/18 5:39 PM PT
I- 48 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	H - If PLIA is now allowed/authorized to provide opinions under MTCA, are they participating in this rulemaking process other than providing comment?	4/11/18 5:40 PM PT
I- 49 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	A -> F Specify Rule vs. Guidance. MCTA previously focused on incorporating guidance into rule vs. guidance - where is focus now?	4/11/18 5:42 PM PT

I- 50 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	A - I.I of site listing site investigations. Clarify indicated hazardous substances. Shown specify screening process.	4/11/18 5:44 PM PT
I- 51 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	B - DCA: How is sustainability incorporated into process? Runs cursory to permanent in some cases.	4/11/18 5:46 PM PT
I- 52 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	C - Periodic Review: Revise specify steps. Formalize Process. Re-openers?	4/11/18 5:47 PM PT
I- 53 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - New Information Requirements: Specify process for incorporating new information into MTCA process. Used to have to go through Science Advisory Board.	4/11/18 5:49 PM PT
I- 54 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Consider removing specific statistical methodology from rule. Too specific and limited.	4/11/18 5:51 PM PT
I- 55 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	F - Background: Rule making/flexibility. National background. Area background (regional).	4/11/18 5:53 PM PT
I- 56 -1	Unclassified		LV Cleanup Scoping (4/3/2018)	H - As this process moves forward, please convene technical working group(s) to work with Ecology on actual text revisions. Thank you!	4/11/18 5:54 PM PT
I- 57 -1	Unclassified		John Price	173-340-747(e) is popularly referred to as the 3-part test for verifying soil cleanup. Ecology recently (Dec 2017) allowed the use of incremental sampling methodology (ISM) for sediments in its SCUM II manual, Ecology Publication No. 12-09-057. I request that Ecology modify 173-340-747 to allow the use of ISM for MTCA soil cleanups. I request that Ecology allow ISM for soil cleanups on industrial properties via the 173-340-745 reference to -747. While you are modifying only 173-340, I would also like ISM to be allowed for the closure of dangerous waste management units under 173-303-610; note that 173-303-610(2)(b)i refers to 173-340-700 through -760. Therefore, I request that the Concise Explanatory Statement for the changes to 173-340 should explicitly acknowledge the applicability of the changes to 173-303-610(2)(b)i	4/12/18 12:44 PM PT
I- 58 -1	Unclassified		Elizabeth Rochette		4/12/18 1:47 PM PT

I- 59 -1	Unclassified		Ivanna New-mtca	Why is Ecology looking to create a new SHA WARM tool? The purpose of the WARM is to prioritize Ecology's resources towards sites with the greatest potential to impact human health and the environment in an effort to affect change. Until MTCA is prepared to forego its current method of "cleanup when you are ready" in favor of a true priority-driven cleanup with potential true enforcement action for sites where documented impacts are happening, there is no purpose to having a ranking system. The resources we are looking to allocate should not be strictly people and time, but effort and remediation. Why rank something when we are not going to enforce a cleanup? MTCA has the potential written into it - and others have made a point to bringing this forward for true enforcement capabilities; but at present the mindset is to not push the envelope, to allow people to cleanup a site when they are ready at a pace they are comfortable with, and if they don't want to then they don't have to. Ecology is not a corporation, it is a state agency; Ecology is not here to make people comfortable or to accommodate only those who are willing. Ecology's purpose, its client, is the State of Washington and Ecology is fighting for Washington's health. Change the mindset, change the rule, and then refine the process. Until we change the mindset we will continue to be stuck in the ever-growing backlog of more and more terrifyingly contaminated sites causing a greater and greater impact to human health and the environment in Washington State. Is this the legacy we will all leave behind or are we ready for a new tomorrow?	4/12/18 3:07 PM PT
I- 60 -1	Unclassified		John McCorkle	Ecology should explore developing model remedies for dry cleaner cleanups; this may be more suited for a guidance document than rulemaking.	4/13/18 12:32 PM PT

I- 61 -1	Unclassified		John McCorkle	The full environmental impact of a remedial cleanup action should be a part of the cleanup alternative evaluation under 173-340-360 (3)(e). Many remedial approaches have substantial carbon footprints that are not currently part of the evaluation, and in some cases that footprint may inflict more environmental harm than the benefit attained from implementation of the remedial action. This footprint is an additional "cost".	4/13/18 12:43 PM PT
I- 62 -1	Unclassified		John McCorkle	Ecology should reconsider their position (expressed in guidance) regarding the use of silica gel cleanup methodology on groundwater samples given the current scientific understanding regarding the toxicity of polar non-hydrocarbons that are addressed by the cleanup methodology. This position could then be expressed in WAC 173-340-720 (9), similar to the direction regarding the use of filtered samples	4/13/18 12:51 PM PT
I- 63 -1	Unclassified		John McCorkle	The directive in WAC 173-340-720 (9) that only unfiltered samples (particularly for metals) are acceptable for compliance monitoring is not consistent with current industry standard sampling practices (even low-flow sampling in soil types with fine grained sediments can produce false positives for metals in unfiltered samples). While MTCA provides for use of filtered samples via (9)(b), in practice the requirements to demonstrate (ii) to the satisfaction of agency site managers are often too stringent to be effective.	4/13/18 4:46 PM PT
I- 64 -1	Unclassified		John McCorkle	As noted in the Interim PFAS Chemical Action Plan, cleanup standards should be developed for PFAS contamination.	4/13/18 4:54 PM PT

I- 65 -1	Unclassified		John McCorkle	WAC 173-340-350(B)(C)and(D): The current terminology and directive to characterize the extent of hazardous substances is overly simplistic and has been used to require entities to continue to do assessment work when no contamination exceeding applicable cleanup levels has been detected. If one can adequately characterize the nature and extent of contamination exceeding the applicable cleanup levels, one should not be required to further assess until non-detect levels are reached.	4/13/18 5:22 PM PT
A- 1 -1	Unclassified		King County DNRP		4/15/18 9:50 PM PT

O- 1 -1	Unclassified		Landau Associates	Landau Associates has the following comments with respect to suggested revisions and updates to the MTCA rule during the upcoming rulemaking process: 1) Application of Surface Water Cleanup Levels to Groundwater: Surface water quality standards (e.g., Chapter 173-201A WAC) are often used as an ARAR in developing groundwater cleanup levels for groundwater that discharges to surface water, including most Puget Sound shoreline sites. This is reasonable when linked to a conditional point of compliance at the location of groundwater discharge to surface water. However, we have run into instances where Ecology PMs have required that groundwater cleanup levels be set at the surface water standard and be achieved throughout the site or at a conditional point of compliance upgradient of the shoreline rather than at a conditional point of compliance at the shoreline. There is not a reasonable technical rationale for requiring compliance with surface water criteria upgradient of the point of groundwater discharge to surface water, especially for criteria based on human ingestion of aquatic organisms, since no exposure can occur. This issue could be addressed through a revision to WAC 173-340-720(8), subsections c and d. It appears that this issue is at least partially the result of the MTCA regulation not explicitly providing an opportunity to apply different cleanup levels to different areas of the site for the same media. One approach to addressing this issue could be formally adopting an operable unit approach similar to CERCLA, discussed below. Or the changes suggested in item 3 below could be adopted. Additionally, the regulation should specifically provide an opportunity to establish a groundwater concentration	4/07/18 12:18 AM PT
O- 2 -1	Unclassified		Citizens for a Healthy Bay		4/13/18 10:59 AM PT

O- 3 -1	Unclassified		Washington Environmental Council and partners	Please see attached letter for comments from Citizens for a Healthy Bay, Front & Centered, RE Sources for Sustainable Communities, Toxic-Free Future, Washington Environmental Council, and Zero Waste Washington.	4/13/18 3:15 PM PT
O- 4 -1	Unclassified		Aspect Consulting		4/15/18 3:33 PM PT

Aspect Consulting

Comments for Cleanup Rule Exploratory Rulemaking [April 15, 2018]

Topic A – Initial Investigations/Site Hazard Assessments/Listing

1. Regarding Site Hazard Assessments (SHA), provide clarification regarding what the ranking score means and how it is used. Evaluate potential for revising a SHA score given time, changes in site use and/or implementation of remedial actions.
2. Clarify Initial Investigation process for site cleanup and closure.

Topic B – Remedy Selection/Disproportionate Cost Analysis

1. Clarify the options for selecting and implementing remedies. Include consideration and further description of Initial Investigation and Model Remedy routes to site cleanup and closure.
2. Provide clarity in the disproportionate cost analysis process (maybe guidance instead of rule changes?). The current rule language allows for considerable subjectivity and there are stark regional differences in how the DCA process is applied to sites and used in decision-making.
3. Pertaining to remedy selection, provide clarification and description regarding the incorporation of climate change (greenhouse gas emissions), green technologies, and sustainability into remedy evaluation and selection.
4. Consider adopting EPA's CERCLA model remedy for landfills, with long-term adaptive management during periodic reviews, instead of contingency planning at the time of remedy selection.

Task C – Institutional Controls/Periodic Reviews/Financial Assurances

1. Consider allowing reassessment of financial assurances contingent with long-term compliance monitoring results instead of at the time of cleanup (reassessment at first/each 5-year periodic review).
2. Develop more practical institutional controls/process for sites/situations where contamination extends off-property but does not pose an exposure risk. For example, we need a path or mechanism for closing sites where off-property contamination may exist, but is not considered practicable to address, without requiring an individual environmental covenant for each and every potentially impacted property parcel or public right of way. These situations would need to be demonstrated to pose a low risk for exposure, and the final remedy would need to include long term monitoring/controls and periodic review.

Task D – Leaking Underground Storage Tanks

1. Provide clarification regarding the roles, responsibility and authority of Ecology and PLIA to manage and opine on LUST/petroleum sites.

Task E – Emerging Contaminants

1. Evaluate and incorporate emerging science surrounding TPH mixtures. Conduct rigorous further investigation into the science of polar compounds and establish toxicity to develop TPH cleanup numbers that are based on actual risk. We recommend convening a coalition of qualified professionals from Ecology, industry, and academia to undertake this work, as done by the TPH Criteria Working Group 20 years ago.

Task F – Cleanup Standards

1. MTCA Update for consistency with VI guidance, for example, update the 10,000 mg/kg soil criteria in MTCA as the trigger for vapor intrusion evaluation with respect to diesel range organics and incorporate key elements of the VI guidance into the rule.
2. Area background, allow area background concentrations for soil to be used to set soil cleanup levels, as is allowed for groundwater, surface water, and air cleanup levels.
    a. Outside of MTCA rule making, we also recommend that Ecology undertake comprehensive sampling of soils in major urban centers to establish area background soil concentrations, like the work Ecology did for dioxins/furans and PAHs in Seattle but expanded to include heavy metals. A great deal of time and money is wasted arguing about and/or addressing low-level soil contamination on cleanup sites that is attributable to area background conditions.
3. Indoor air cleanup levels, allow for use, consideration and application of WISHA/OSHA exposure limits at operating commercial and industrial facilities, where it can be demonstrated to be applicable and protective.
4. Clarify rule about setting conditional points of compliance along the shoreline and at landfill sites, the rule allows for setting a conditional point of compliance, so it shouldn't be so hard to set one and get Ecology to agree to it.
5. Allow more flexibility for setting conditional points of compliance provided there is exposure or risk-based justification. For example, allowing off-property or area-wide conditional points of compliance for hazardous substances released from individual sources that may or may not be considered practicable to address, but do not present an exposure risk for human health or the environment in any case given current use. These situations would need to be paired with more innovative institutional controls as part of a final remedy and require periodic review.
6. Streamline the non-potability evaluation process and designation for urban areas within municipal water service areas.
7. From a public policy perspective, think very carefully before making changes that make cleanup levels more stringent than they are now. Do not assume that more stringent cleanup levels will lead to “better” cleanups. On the contrary, trying to achieve cleanup levels that are increasingly unattainable makes “cleanup success” increasingly unattainable, which will lead to greater resistance for undertaking cleanup. The 2016 human-health surface water standards are a prime example of unattainable standards.

Task G – Other

1. Pertaining to remediation waste disposal and RCRA requirements, RCRA was not intended for cleanup sites but it is well known to create a strong disincentive to permanent cleanups involving soil removal/landfilling. While it is outside of the MTCA rule, we request that the Toxics Cleanup program work together with the Dangerous Waste program to revise, clarify and simplify the contained-in policy so that it does not interfere with completing cleanups. It has nothing to do with environmental protection and is an unnecessary policy because the dangerous waste characteristics (that are based on environmental risk) still apply to waste generated in a cleanup.
2. Regarding requirements for Remedial Investigation and Feasibility Study (WAC 173-340-350). Evaluate and clarify the applicability of RIFS requirements to large-scale redevelopment projects

where construction will remove most/all the contaminated media, it is a waste of time and money to have to fully characterize nature and extent and evaluate alternatives when cleanup remedy is a lot-line to lot-line excavation. Consider developing and allow for the implementation of model remedies for properties being redeveloped.

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April 13, 2018

Clint Stanovsky
Rulemaking Lead
Washington State Dept. of Ecology
PO Box 47600
Olympia, WA 98504-7600
clinton.stanovsky@ecy.wa.gov

Re: Comments on Exploratory Rulemaking, WAC 173-340 Model Toxics Control Act Cleanup Regulation

Executive Director
Melissa Malott

Dear Mr. Stanovsky,

Thank you for providing the opportunity to review and comment on the exploratory process to update Chapter 173-340 WAC, the Model Toxics Control Act Cleanup Regulation ("the Cleanup Rule.")

Board of Directors
Jeff Barney
Brice Boland
Sherrie Duncan
Bryan Flint
Jerry Hallman
Charles Joy
Kelly McCord
Marco Pinchot
Angie Thomson
Sheri Tonn

Citizens for a Healthy Bay (CHB) is a 28-year-old organization whose mission is to represent and engage people in the cleanup, restoration, and protection of Commencement Bay, its surrounding waters and natural habitat. We are a 501(c)3 nonprofit providing practical, solutions-based environmental leadership in the Puget Sound area. We work side-by-side with local residents, businesses, and government to prevent water pollution and make our community more sustainable. Citizens for a Healthy Bay has been engaging with the Model Toxics Control Act (MTCA) since our founding in 1990.

Staff and expert members of CHB's Policy and Technical Advisory Committee have reviewed the exploratory rulemaking process, documents, and related materials. We also attended the rulemaking webinar hosted by the Washington State Department of Ecology (Ecology.) Our comments are outlined below.

Length of Process

Our first concern is regarding the length of this update process, which is currently slated for completion in 2027. Reform of MTCA is long overdue, with the last update occurring in 2001. Citizens for a Healthy Bay is particularly concerned about the timeliness in addressing cleanup standards. As Ecology's proposal stands, "This will allow a second rulemaking focused on the cleanup standards to begin in 2021 (or earlier) with adoption anticipated before the end of 2022." [1] Due to the significant changes needed in the Cleanup Rules, this phase should occur earlier in the process. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Include defined timeline for activities taking place during the proposed update;
- Expedite the update process; and
- Address cleanup standards earlier in the update process.

Creation of New, and Enhancement of Existing Advisory Committees

We would like to see the creation of both administrative and technical advisory committees to oversee the direction of this update process. Committees should equitably represent stakeholders from communities most impacted by contaminated sites, environmental groups, and tribal nations. Steps should be taken to ensure that these committees are not dominated by industry representatives who are being paid to participate. Ecology should also create a Citizens Advisory Committee.

Additionally, the people and communities most impacted by toxic pollution, including local tribes, communities of color, and low-income communities, are less likely to engage in advisory committee processes dominated by well-paid industry representatives. We recommend formalizing assurances of participation from these vulnerable groups. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Formalize the process for creating Administrative, Technical and Citizen advisory committees and add language to the exploratory rulemaking process.
- Enhance Regional Citizens' Advisory Committees by presenting any work from technical committees to the Regional Citizens Advisory Committees (RCW 173-340-610.)

Transparency

Ecology must incorporate broader notification for interim actions and early phases of cleanups. For example, Ecology worked on the Superlon Plastic cleanup in the Tacoma Tideflats for over two years before CHB was notified. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Formalize the process and include language for a broad, inclusive notification process for interim actions and early phases of cleanups. Consider press releases at all phases of cleanup (RCW 173-340-600.)

Incorporate Environmental Justice

Environmental justice mapping should be incorporated throughout the prevention and cleanup process and program. For example, as resources are prioritized to take advantage of private or public developers, we need to ensure that this does not systematically leave tribes, communities

of color, and low-income communities further behind. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Incorporate rule changes that institutionalize environmental justice, from site evaluation to cleanup to where prevention resources are prioritized; and
- Define "Environmental Justice", "Disproportionate Impacts", and "Sensitive Populations" in WAC 173-340-200.

Incentivize Consent Decrees for Liable Parties

We have observed that Ecology has removed incentives for liable parties to engage in Consent Decrees (CDs) and is, instead, relying purely upon Agreed Orders for cleaning up contaminated sites. We find this approach to be short-sighted. Consent Decrees have been very effective in the cleanups in the Tacoma Tideflats, offering contribution protections and streamlining the cleanup process. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Include formal language clarifying the benefits of CDs to liable parties.

Cleanup Prioritization and Disproportionate Cost-Benefit Analyses

The current system leads to prioritizing economic development drivers at the expense of communities impacted by toxic pollution. Developers can "jump the line" by paying for cleanup of sites prioritized as a lower hazard, while liable parties can opt for lower cleanup standards and use the high cost-benefit analysis as their defense, as seen in the ongoing Occidental Chemical Cleanup in Tacoma. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Reevaluate regional cleanup priorities to fully consider all long-term community and environmental impacts;
- Define methodology used for the feasibility study's cost-benefit analysis in WAC 173-340-355; and
- Define "practicable" in WAC 173-340-360

Funding Public Participation Grants

We recommend protecting MTCA funding of Public Participation Grants from raiding. Citizens for a Healthy Bay lost $83,000 during the 2015-2017 biennium due to the legislature zeroing out the fund. We also recommend reforming the grant facilitation process, as it is currently very time-intensive for reporting requirements, and overly burdensome on small grantee organizations. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Create protected funding account so revenues from Hazardous Substance Tax cannot be raided during State budget shortfalls;
- Contract with new grant tracking software developer to modernize and streamline grant reporting activities;
- Simplify reporting requirements to more accurately capture impacts of grant monies; and
- Formalize process to disperse grant award monies at time of contract period, rather than rely on reimbursement from grantees.

Please contact me if there are questions regarding my comments. Thank you for the opportunity to provide feedback on the exploratory rulemaking process to update MTCA.

Sincerely,

Melissa Malott
Executive Director, Citizens for a Healthy Bay
mmalott@healthybay.org, (253) 383-2429

Landau Associates [April 7, 2017]

Landau Associates has the following comments with respect to suggested revisions and updates to the MTCA rule during the upcoming rulemaking process:

1) Application of Surface Water Cleanup Levels to Groundwater: Surface water quality standards (e.g., Chapter 173-201A WAC) are often used as an ARAR in developing groundwater cleanup levels for groundwater that discharges to surface water, including most Puget Sound shoreline sites. This is reasonable when linked to a conditional point of compliance at the location of groundwater discharge to surface water. However, we have run into instances where Ecology PMs have required that groundwater cleanup levels be set at the surface water standard and be achieved throughout the site or at a conditional point of compliance upgradient of the shoreline rather than at a conditional point of compliance at the shoreline. There is not a reasonable technical rationale for requiring compliance with surface water criteria upgradient of the point of groundwater discharge to surface water, especially for criteria based on human ingestion of aquatic organisms, since no exposure can occur. This issue could be addressed through a revision to WAC 173-340-720(8), subsections c and d. It appears that this issue is at least partially the result of the MTCA regulation not explicitly providing an opportunity to apply different cleanup levels to different areas of the site for the same media. One approach to addressing this issue could be formally adopting an operable unit approach similar to CERCLA, discussed below. Or the changes suggested in item 3 below could be adopted. Additionally, the regulation should specifically provide an opportunity to establish a groundwater concentration protective of surface water based on attenuation (i.e. a groundwater cleanup level protective of surface water that is higher than the surface water criteria) similar to 173-340-720(8)(e) but regardless of the use of a conditional point of compliance. Attenuation is often significant in highly biologically active zones near the groundwater to surface water interface and at tidally influenced sites subject to significant hydrodynamic dispersion, and it is not always possible to install monitoring points immediately adjacent to a surface water body. The regulation should allow for demonstration or modeling of attenuation between the nearest groundwater monitoring point and the surface water interface and establishment of groundwater criteria based on the resulting attenuation factor.

2) Clarification of the use of multiple cleanup levels for the same media type: The regulation should clarify that multiple cleanup levels and points of compliance for an affected media can be established, if warranted, based on changes in receptors, pathways and other considerations within a site.

3) Adoption of Operable Units: MTCA does not provide for the establishment of operable units to define cleanup levels, remedial actions, and multiple points of compliance within a site. Ecology PMs often accept the functional equivalent of operable units for shoreline sites, drawing the line between upland media and aquatic media. This probably is considered acceptable under the current rule because the affected media change from soil and groundwater (upland) to sediment (aquatic). Formally adopting an operable unit approach would allow greater flexibility for larger, more complex sites where the receptors and/or exposure pathways can vary for a given media, and the establishment of differing cleanup levels and point of compliance, and implementation of differing cleanup actions, are appropriate. Ecology should consider amending the regulation to allow for the use of an operable unit approach when warranted.
a. Example: A site has a potable groundwater source that discharges to a fresh water river. The development of groundwater cleanup levels would need to consider potable water criteria and

surface water quality criteria (protection of aquatic organisms, human consumption of water and fish). Under the current regulation, Ecology may require that the most conservative groundwater cleanup level be applied throughout the site. For a number of COCs the cleanup level protective of surface water would be the more conservative criteria, and as such, would become the groundwater cleanup level for the entire site even though the exposure that the criteria is based on only occurs where groundwater discharges to surface water. What would be more appropriate would be to establish a cleanup level based on drinking water criteria throughout the upland portion of the site and establish a groundwater cleanup level at the shoreline based on surface water quality criteria. This variation in cleanup levels could be easily addressed by establishing an operable unit for protection of surface water at the shoreline and establishing a groundwater operable unit based on drinking water criteria throughout the remainder of the site.

4) Risk-Based Cleanup Levels: the rule would benefit from having a mechanism for allowing the development of exposure risk-based cleanup levels for circumstances that are not adequately addressed by MTCA Method A, B or C cleanup levels. The regulation should be modified to allow the development of exposure risk-based cleanup levels for all media. Below are a couple of examples of situations that would benefit from greater flexibility in developing exposure risk-based cleanup levels:
a. Example - Vapor Intrusion. Many vapor intrusion sites involve commercial buildings. The current regulations allow for some modifications to the Method B air cleanup levels, but the allowable modifications are limited and do not directly address commercial exposure. The rule would benefit from a better established process for evaluating vapor intrusion risk for various building types and uses. Because vapor intrusion is building-specific, it would make sense to have a process for calculating either building-specific or use-specific cleanup levels applicable to commercial buildings.
b. Example - Surface Water Bodies Without Aquatic or Potable Water Exposure. A mechanism for developing surface water cleanup levels for surface water bodies, such as stormwater ponds and ditches, that are clearly not intended for potable water use and do not contain fish, should be provided. The current modified Method B cleanup level development approach [WAC 173-340-730(3)(c)] does not adequately address this condition, and Ecology typically requires the application of standard Method B cleanup levels or in many cases state surface water standards developed under WAC 173-201A.

5) Restoration Timeframe: The current structure of evaluating the restoration timeframe for cleanup alternatives separate from the disproportionate cost analysis results in redundancies in the feasibility study since most of the restoration timeframe criteria are addressed in one manner or another within the DCA, or are essentially the outcome of the DCA (i.e., practicability of a shorter restoration timeframe). The FS process should be streamlined by adopting a restoration timeframe as one of the DCA criteria rather than having it as an additional evaluation step in the FS process.

6) Dispute resolution: Ecology should implement an independent dispute resolution process to formally resolve disagreements between PLPs and the agency regarding implementation of the MTCA regulation. While the dispute resolution process does not necessarily belong in the regulation itself, Ecology should formally adopt an administrative policy or program procedure for independent dispute resolution. The process should allow PLPs to formally appeal decisions made by the Department with respect to requirements at all stages of the MTCA process. Independent dispute resolution should be administered by a third party not affiliated with the Department of Ecology and should provide for fair and impartial written decisions based on the facts and law.

Scoping for MTCA rulemaking: Recommended issues to be considered by Ecology from King County Science, Wastewater and Public Health [April 15, 2018]

1) Racial Equity and Social Justice components should be considered in the prioritization and ranking of sites (risk and equity-based ranking). Because many voluntary cleanups are initiated by developers, these cleanups tend to occur first, MTCA needs to ensure that vulnerable populations in impacted areas which are not necessarily economically desirable for redevelopment are protected against harmful health effects of contaminants.
2) There are many inconsistencies between MTCA and the Sediment Management Standards especially since the Sediment Cleanup User's Manual (SCUM II) was revised. Since SCUM II is more recent and evolved, revising MTCA to be consistent with the latest methodologies for sediment sites makes sense.
3) As part of the rule revisions addressing aquatic sites, additional documentation and guidance on how natural and regional background may be developed would be useful. This is particularly relevant for urban areas which may never achieve cancer risk goals due to diffuse sources (like air deposition or upstream stormwater inputs) which are outside the control of liable parties.
4) Update MTCA so that requirements for analytical testing and reporting match current EPA criteria plus provide allowances for future updates. For example, EPA has adopted the Lower Limit of Quantitation (LLOQ) as a replacement for the Method Detection Limit for analytical methods in the RCRA program. Therefore, the sections in MTCA that discuss the use of a method detection limit need to be revised, as appropriate.
5) MTCA includes human health equations which may not reflect best available science, including potentially outdated values such as gastrointestinal absorption factors. Revising MTCA rules to address the best available risk assessment science today while providing opportunities to incorporate additional information developed in the future would be welcome.
6) There are many soils throughout the urban areas of the state (including King County) which exceed MTCA level A criteria despite not being part of a designated MTCA site. King County regulates these soils as solid waste which is conservative for many projects. Unfortunately, many salmon and river floodplain restoration projects require significant re-grading and terrain alteration, e.g. reconnecting a section of riverbank to the floodplain for salmon habitat. It would be most helpful if Ecology developed additional guidance on the management of lightly (e.g. metals, pesticides, PAHs) contaminated soils which allowed for commercial or other appropriate reuse – comparable to the latest guidance on petroleum contaminated soils. The transportation and landfill space issues posed by management of tens of thousands of cubic yards of these modestly contaminated soils as solid waste are formidable.

Washington Environmental Council and partners

Please see attached letter for comments from Citizens for a Healthy Bay, Front & Centered, RE Sources for Sustainable Communities, Toxic-Free Future, Washington Environmental Council, and Zero Waste Washington. [April 13, 2018]

Note: scroll down to see the submitted letter.

April 13, 2018

Clint Stanovsky, Cleanup Rulemaking Lead
Washington State Department of Ecology

Subject: Cleanup Rule Exploratory Rulemaking

Dear Mr. Stanovsky:

Thank you for the opportunity to identify topics and issues that we would like to see addressed in future rulemakings around the Cleanup Rule. Our organizations are deeply committed to supporting the Model Toxics Control Act, passed by voters in 1988. This successful program has cleaned up over 6,000 toxic waste sites across Washington State, prevented pollution through source control, and engaged the public in decisions. Our goal is to strengthen protections for public health and the environment, and we will defend against attempts to weaken the rule. We would like to see the following topics strengthened in the rulemaking processes:

Incorporating Environmental Justice Throughout the Program and Processes

Toxic waste sites are disproportionately located in communities of color and low-income communities (http://frontandcentered.org/mtca-report/). Environmental justice mapping should be incorporated throughout the prevention and cleanup process and program. For examples, as resources are prioritized to take advantage of private or public developers, we need to ensure that this does not systematically leave tribes, communities of color, and low-income communities further behind. We would like to see rule changes that institutionalize environmental justice, from site evaluation to cleanup to where prevention resources are prioritized.

We would also like to see Environmental Justice, Disproportionate Impacts, and Sensitive Populations defined in 173-340-200.

Valuing All Communities in Resource and Cleanup Prioritization

The current system leads to prioritizing economic development drivers at the expense of communities impacted by toxic pollution. Developers can "jump the line" by paying for cleanup of sites prioritized as a lower hazard. While this has the benefit of incorporating private funding into cleanups, an unintended consequence may be that this leaves tribes, communities of color, and low-income communities further

behind if those developers tend to favor more affluent white communities. For example, as part of the hazard ranking that leads to the final Washington Ranking Method (WARM) score, Ecology should incorporate an "equity score" that reflects the potential exposure risk from toxic sites for communities of color and low-income communities.

Rulemaking needs to explore establishing institutional backstops to ensure that as private funding accelerates some cleanups that the disparity in community impacts not only disappears but drives regional cleanup priorities.

We would also like to see moderate and major cleanups work more closely with Department of Health on human health evaluations.

Require programs that receive MTCA funding to conduct an equity analysis

Programs that receive pollution prevention funding from MTCA must be required to report on how their programs serve communities that are overburdened by toxic pollution and face barriers of social and economic disadvantages. The results should be published publicly on the Ecology website and shared digitally with past and present grant recipients.

Source Control and Pollution Prevention

Since voters passed Initiative 97 in 1988, the Model Toxics Cleanup Act has included three strong elements to address toxic pollution: prevention, public engagement, and cleanup. Source control efforts to stop further contamination and phasing out the use and release of high-priority chemicals to prevent contamination in the first place are two important approaches that will save cleanup money and protect health and the environment in the long run. We would like to see rulemaking address the importance of source control and prevention, including defining it in 173-340-200. We see the need to increase funding for source control and prevention, although we realize that that is an issue for the legislative budgeting processes. We would also like the agency to prioritize chemicals of emerging concern to phase out, including but not limited to toxic flame retardants, highly fluorinated or polyfluoroalkyl substances (PFAS) chemicals, and phthalates. Finally, we would like to see alignment with the Puget Sound Vital Sign Toxics in Fish and the implementation strategy currently under development.

Transparency and Public Engagement

Public participation has been critical to MTCA since it was passed by voters. We would like to see increased transparency and public engagement throughout the prevention and cleanup processes. In particular, shunting topics into technical committees selected by Ecology decreases transparency. The people and communities most impacted by toxic pollution, including tribes, communities of color, and low-income communities, are less likely to engage in these groups without a dedicated and authentic effort to increase diversity, equity, and inclusion. We would like to see processes for ensuring representativeness of any groups convened to discuss technical issues critical to cleanup decisions.

RCW 173-340-610 describes Regional Citizens' Advisory Committees. We would like to see these enhanced to engage the communities most impacted in a way that ensures representation. Any work developed in technical committees needs to be presented to Citizens' Advisory Committees for comment and input.

RCW 173-340-600 describes public notice. We would like to see broadened public notice on interim actions and earlier phases of actions, whether in this section or other sections.

State and Federal Administrative Coordination

The annual Sediment Management Annual Review Meeting (SMARM) is an example of the federal/state nexus on cleanup issues, and Ecology currently uses this meeting to roll out changes. We would like to see the rules clarify steps needed to coordinate among state and federal topics such as sediment cleanup and water quality standards, including engaging the public in meetings such as SMARM.

Disproportionate Cost Analysis

The disproportionate cost analysis has weakened cleanup targets at sites from Bellingham Bay to Commencement Bay and beyond. We would like to see a reevaluation and improved guidance of the disproportionate cost analysis to ensure we are appropriately investing in the long-term health of Washington's lands and waters and not at the expense of future generations.

Consent Decrees

We would like to see the role of consent decrees reevaluated.

Update Technical Topics

Currently consultants can introduce new evaluations of regional background levels during site-level processes to justify more lenient targets than the natural background. We would like to see improved processes to ensure that regional background levels are developed fairly and transparently.

In addition, the geographic extent of initial characterization may miss contamination that has migrated offsite. We would like to see provisions for addressing the need to evaluate offsite migration of contamination.

Sediment Cleanup Standards

While not part of this comment period, we would like to reiterate that strengthening cleanup standards will protect public health and the environment. We would like to see specific attention to emerging contaminants of concern, including perfluorinated compounds and phthalates.

Commitment to completing the rulemaking process for MTCA

Respectfully, we ask the Department to not drop the rulemaking process for MTCA. We do not want to see a delay in reviewing and updating the rule like in 2010, following Executive Order 10-06, which suspended most rulemaking by state regulatory agencies through the end of 2011. Additionally, we hope the Department will expeditiously complete the rulemaking as we are long overdue. Cleanup sites around the state will be started before the new rule is implemented.

Hazardous Substance Tax

The Hazardous Substance Tax (HST) rate for generating revenue to pay for MTCA programs is volatile and unpredictable. Although this is a matter for the legislature, we would like to underscore our concern and highlight the need for stabilization and reform.

Languages other than English

Thank you for including references for people who communicate in languages other than English on the rulemaking web page. We recognize and support this work.

We look forward to engaging with the Department of Ecology in the coming years to increase the benefits of MTCA through Cleanup Rule processes. Washingtonians value pollution prevention, cleanup, and public engagement.

Sincerely,

Melissa Mallott, *Executive Director*
Citizens for a Healthy Bay

David Mendoza, *Director – Legislative & Government Affairs*
Front & Centered

Eleanor Hines, *North Sound Baykeeper & Lead Scientist*
Karlee Deatherage, *Policy Analyst*
Andrea Reiter, *Pollution Prevention Specialist*
RE Sources for Sustainable Communities

Laurie Valeriano, *Executive Director*
Toxic-Free Future (formerly WA Toxics Coalition)

Mindy Roberts, *Puget Sound Director*
Washington Environmental Council

Heather Trim, *Executive Director*
Zero Waste Washington

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Public Health
Seattle & King County

[Received by email on May 11, 2018]

MEMORANDUM

DATE: May 11, 2018

TO: Clint Stanovsky, Washington State Department of Ecology

CC: Leah Helms, Interim Solid Waste Program Supervisor, Environmental Health Services Division, Public Health – Seattle & King County; Shirlee Tan, Toxicologist, Environmental Health Services Division, PHSKC

FROM: Darrell Rodgers, Interim Division Director, EHS Division, Public Health – Seattle & King County

RE: Public Health – Seattle & King County (PHSKC) Environmental Health Services Division comments on proposed revisions to Cleanup rule WAC 173-340 MTCA.

Dear Mr. Stanovsky:

The following comments have been provided by the Environmental Health Services Division at PHSKC for your consideration:

Racial equity and social justice should be incorporated in the priority assessment (risk and equity based ranking) of contaminated sites in areas with greater health inequities including lower life expectancy, poorer air quality, and higher toxics/contaminants exposures. These a result of long-standing racial and social inequities in land-use, economic, environmental, and education policies and decisions. Suggestions for implementing a prioritization process include working with Washington DOH to use the Washington Tracking Network (WTN) as a way to use health data to identify and assess the type of environmental justice impacts experienced in communities state-wide. Equity impact tools, e.g. King County's Equity Impact Review (EIR) tool, can facilitate a process to identify, evaluate, and communicate the potential positive and negative impacts of a policy or program on equity.

1. PHSKC believes sites in areas with existing health disparities and impacts need to be given preference for remediation and cleanup of contaminants. Because these areas are less often voluntarily remediated, they need to be allocated staff and cleanup resources to achieve cleanup criteria in a timely manner. SKCPH believes resources should be prioritized based on risk for orphaned and other sites in marginalized communities to start cleanup action plans to protect human health and the environment.

2. PHSKC recommends a new section address contamination from emerging chemicals with recently established toxicity criteria. Examples include perfluorinated contaminants and pyrethroid pesticides which are not EPA priority pollutants or otherwise cited in current MTCA rules. SKCPH recommends that adequate resources be allocated for site and contamination characterization, risk assessment, migration and exposure pathways, prevention of adverse human health impacts, and protection of the environment from emerging pollutants such as these.
3. PHSKC recommends that new site prioritization methods incorporating the disproportionate impacts on racially or economically disadvantaged communities be transparently linked with a revised, transparent funding formula to ensure they receive their fair share of the available cleanup resources.
4. For easier location of cleanup methods based on specific site and contaminant criteria in the MTCA document, we suggest that all methods be incorporated under one section "Clean-Up Methods and Criteria" such as Method A, Method B, Method C, etc.