



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*  
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