

Comments for Cleanup Rule Exploratory Rulemaking

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.