MTCA Proposed Rule Amendments -
4/16/23

GHD

Rule Citation	Electronic Page Number	Comment
WAC 173-340-120(3), "Site Hazard Ranking"	13	Support hazard assessment and ranking of sites for purposes described. What will trigger an update and how will Ecology track the completion of this? Will PLIA complete the re-evaluation if site is in PLIA TAP?
WAC 173-340-120(13)(a), "Site specific information and alerts"	16	Will this also apply to PLIA?
WAC 173-340-200, "Model Remedy"	33	What is the definition of "lower risk" as it pertains to model remedy applicability? If the site is not "lower risk" does this mean that the site doesn't qualify for model remedy use?
WAC 173-340-200, "Practicable"	36	Generally support this definition, and should be included in the context of "maximum extent practicable" in regard to free product removal.
WAC 173-340-200, "Total Petroleum Hydrocarbons"	41	We are concerned that the ranges that define NWTPH-Gx and -Dx are lab analyst defined and are not defined in the method, and thus are not consistently applied through time or across sites/projects. Recommend the carbon ranges be defined to distinguish the -GX vs -DX results.
WAC 173-340-300(1) Purpose:	46	Purpose is to report a release **or threatened release** ….to the environment **that may pose a threat to human health or the environment (HH&E).** What if a potentially liable person (PLP) determines does not pose a threat to HH&E? What are the criteria to determine may pose a threat to HH&E? Releases many enter into the environment, but not all releases into the environment necessarily pose a threat to HH&E. Not clear how this seemingly flexible language will be implemented, and as such places the PLP in potential compliance jeopardy. Not a defined term in part 200 ("may pose a threat"). Is this defined by the SHARP process and if so, add cross-ref to 340-320? MTCA is predicated on cleanup to cleanup levels, if exceed a cleanup level, then is a threat to HH&E constituted?
WAC 173-340-300(2) Applicability and timing:	46	Added/modified requirements for independent remedial actions to report "a release or threatened release of a hazardous substance" within 90 days of discovery (per WAC 173-340-300 (1)). The language in section (2) is "…within 90 days of discovering a release **or threatened release** of a hazardous substance to the environment that may pose a threat to human health and the environment, an owner or operator **must report the release** to ecology." What if the owner/operator determines that the threatened release did not in fact actually result in a release? If it did not actually suffer a release to the environment, then there is no posed threat to HH&E? What then are the obligations and what is actually to be reported? Why would there be a reporting obligation in this instance? The addition of "or threatened release" seems problematic and confusing as proposed.
WAC 173-340-300(2)(b) Examples:	47	The examples seem to abandon the "may pose a threat" context. Could be released to the ground, but not pose a threat to HH&E, but such is obviated by requirement to report if just found in the ground without considering threat potential (e.g., provision viii). This sets up the PLP to make a judgement not a threat, to be over-ruled after the fact by the agencies, potentially. Concerned more risk-based decision making is implied than will actually be implemented at the agencies, in practice.
WAC 173-340-300(4)(a) Releases from regulated UST systems	49	Owners or operators must report a confirmed release of a regulated substance to ecology within 24 hours. The provision goes on to state if already reported under chapter 137-360A WAC, then this release reporting section does not apply. However, if a release is not already reported, then how does this language mesh with the 90-day release reporting deadline clarified in 300(2), or with the 300(2)(b)(ix) LUST example. Seems in conflict, and potentially puts owners or operators in compliance jeopardy.
WAC 173-340-310 (2)(c)	52	The provision is written from the context Ecology will conduct an initial investigation "**unless** Ecology **does not have** a reasonable basis to believe that there has been a release **or threatened release** of a hazardous substance **that may pose a threat to human health or the environment**." What criteria will Ecology use to determine it does have a reasonable basis to conclude such, and how will they apply these criteria unless they do perform the intial assessment? This is important if this responsibility is delegated or directed to a potentially liable person (PLP).

Rule Citation	Electronic Page Number	Comment
WAC 173-340-310 (6)(b)	54	This language is awkward as the initial investigation should confirm if a threatened release actually occurred, and if not then by default no longer poses a threat. So why is the "or a threatened release" included, here in? If a release did not occur, then no further action would be warranted as a natural outcome, but document a release did not occur, as a separate provision. Recommend strike "or threatened release" from this provision (6) and subprovisions. Also, the definition of remedial action in 173-340-300(2) includes "investigative" actions, so should another term be used in this provision, such as "clean up action" to distinguish from the investigative action that had to occur to confirm if a release occurred or not. Same point for 173-340-310(6)(c).
WAC 173-340-330(a)(i) and (ii)	64	"or threatened release" in these subprovisions seems irrelevant by this stage in the process as a release should be confirmed or prevented at this point. Recommend strike "or threatened release" from all 340-330 provisions.
WAC 173-340-330(5)(b) & (c)	67	If all cleanups standards have been achieved, then isn't it permanent? Is the context that these conditions apply to areas outside an engineering barrier, for example? Not clear.
WAC 173-340-340(3)	74	Support Ecology conducting performance assessments as described. A consideration is that in making the MTCA program more onerous to comply with in terms of process requirements and cost, fewer potentially liable persons (PLPs) will or will be able to comply proactively. And the greater degree of reporting to Ecology, such as for independent remedial actions (e.g., 90 day reporting for initial investigation, interim actions, and cleanup actions) will further overwhelm the capacity of Ecology or PLIA staff to issue opinions, further add to agency backlog. Such will produce no benefit from the increased reporting to the agencies, if the agencies are unable to respond with opinion letters (and not more letters requesting additional information) in a timely manner. Thus, these proposed amendments may likely be creating further disincentives for proactive compliance by PLPs.
WAC 173-340-350 (3)(a)	81	Ecology states that a remedial investigation/feasibility study must be completed prior to establishing cleanup levels. Please rephrase as a feasibility study is not needed to establish cleanup levels as defined in WAC 173-340-200 "remedial investigation" and WAC 173-340-350(1) indicating that cleanup standards can be established as a result of the remedial investigation only.
WAC 173-340-350 (3)(a)	81	A feasiblity study for a run-of-the-mill petroleum LUST site is overkill. Petroleum hydrocarbon remediation is well understood by the industry as to what remedial strategies and technologies work well, almost to the point of a presumptive remedy status. To require an FS increases compliance costs to the PLP and potentially delays progress while awaiting agency review. We recommend petroleum hydrocarbon LUST sites be afforded increased streamline measures to increase the rate of regulatory closure in Washington. Petroleum hydrocarbon matters should not be lumped in the same one-size-fits all regulatory approach with chlorinated hydrocarbons, metals or radionuclide contamination sites, which have much more potential for complexity, greater extent and risk to potential human and ecological receptors and are less well understood at the state, national or global scale than is the case for petroleum hydrocarbons.
WAC 173-340-350 (4)(b)(i)	83	The new requirement of independent cleanup site investigation activities be reported within 90 days if no additional activities other than compliance monitoring occurs is onerous to all parties. Ecology resources are already overwhelmed, this adds additional steps to the cleanup process for the PLPs and will not aid in progressing sites to NFA. For sites with potential impacts to groundwater, compliance sampling is needed prior to providing recommendations for next steps. As an independent cleanup, how will these documents be managed and how will the new timing rule be enforced?
WAC 173-340-350(4)(b)(i) and 173-340-515(4)(a)(i) and (ii)		The definition of "completion" is too narrow. Off-site access pursuit, laboratory turn around and data review and data issue resolution, workplan development, drilling rig availability, budget availability can all conspire frequently to delay investigation stages by 90 days or more, and as such, should not trigger reporting of an initial assessment or interim action, prematurely. Recommend to strike the requirement or put in time metrics that certain requirements must be met by to put a pace to the process.
WAC 173-340-350 (5)(f)	85	Step 6 could be expanded to provide a listed exclusion for petroleum LUST sites.

Rule Citation	Electronic Page Number	Comment
WAC 173-340-350 (6)(c)(i)	88	Areal extent. In the face of logistical barriers, can areal extent be modeled in lieu of actual sampling locations? Presence of highways and busy roads and inability to obtain off-site access at times can frustrate the areal distribution determination. The industry understands fuel PHC plume behavior very well, they are short and so warrant less assessment than a significant metals, chlorinated hydrocarbon or radionuclide contamination situation, all of which have greater potential transport potential than petroleum hydrocarbons. Numerous big data petroleum hydrocarbon plume studies bear this out. This would greatly shorten the regulatory lifespan of LUST sites in Washington.
WAC 173-340-351 Feasiblity Study	92	See comments above regarding WAC 173-340-350 (3)(a). Petroleum LUST sites should be exempted from Feasibility Studies, in order the encourage proactive PLP compliance and to reduce LUST site regulatory lifespan.
WAC 173-340-351 (3)(a)	93	See comments above regarding WAC 173-340-350 (3)(a). A feasibility study should not be required to establish cleanup levels.
WAC 173-340-450 (5)(c)(i)	160	These provisions are reflective of the US EPA 40 CFR Part 280.64 regulations. As such, we recommend that the maximum extent practical provision be implemented by the ecology and PLIA consistent with the intent of the provision as clarified by the US EPA Office of Underground Storage Tanks (https://www.epa.gov/ust/ust-technical-compendium-release-investigation-confirmation-and-corrective-action), Question 6.
WAC 173-340-450 (6)	161	Interim action reports are due within 90 days of release confirmation. This is on top of quarterly reporting required for free product removal actions under WAC 173-340-450(5)(c)(v). Many of the UST system releases reported are of newly-discovered legacy contamination, and not a newly occurring spill or release, and as such there may be no need for an interim action, and thus no interim action report, as the extent of the release is long stabilized and likely declining. Interim action reporting in such instances will rarely be of substantive regulatory benefit and represents a distractive action and unnecessary cost to a potentially liable person (PLP) and unnecessary additional workload for the already backlogged agencies. We understand this is proposed as a streamlining measure, but such represents minimal streamlining. Recommend to strike the requirement.