

City of Tacoma

Please see Tacoma's comments in the attached file.

City of Tacoma Comments
Proposed Amendments to Chapter 173-340 WAC

General comments

1. Environmental Justice. Ecology has noted in the purpose statement preceding the draft rules that one purpose of the proposal is to “strengthen environmental justice principles when prioritizing and cleaning up sites”. Tacoma supports Ecology’s efforts to incorporate the HEAL Act (Ch. 70A.02 RCW) and notes the following proposed amendments at WAC 173-340 subsections, 100, 130 (5), 200, 340 (1), 340 (3), 350 (6)(g), 350 (6)(h), 351 (6)(b)(i)(B), 351 (6)(f)(vii), 357 (1), 360(3)(a), 360 (3)(d)(i), 360 (4)(c)(i), 360 (3)(d)(i), 360 (3)(d)(iii), 360 (3)(d)(iv), (600) (9)(a)(i), (600) (9)(b). While Tacoma supports these proposed changes, Tacoma has the following concerns:

1.a. Each of the foregoing proposed amendments make reference to “vulnerable populations and overburdened communities.” While the terms “vulnerable populations” and “overburdened communities” are defined in the proposed rules by reference to the HEAL Act, the proposed rules do not establish the process to be used by Ecology to evaluate and determine the presence or existence of a vulnerable population or overburdened community. Nor do the proposed rules establish how a person or entity subject to the proposed regulations will determine the presence or existence of a vulnerable population or overburdened community. Tacoma, for example, has created an equity index map based upon 32 data points in five determinant categories. This map identifies where residents have less access to opportunities. While Tacoma believes that the equity index identifies vulnerable populations and overburdened communities, the proposed rules provide no guidance regarding how Ecology will determine if use of the Tacoma equity index meets Ecology’s requirements under these proposed amendments and whether Ecology will allow for consideration of tools such as the Tacoma equity index to meet the requirements of the proposed new rules.

1.b. Obligations under the above referenced proposed rules include requirements that are triggered when a release or threatened release “may” include a vulnerable population. For example, the proposed amendment to WAC 173-340-320 (1)(e) provides that the site hazard assessment will be used to identify whether the population threatened “may” include a vulnerable population or an overburdened community. Use of the term “may” here and throughout the proposed rule amendments creates uncertainty regarding compliance obligations because the term “may” is synonymous with “possibility” or what is “possible”. Wherever this term is used throughout the proposed rules to create a compliance obligation, it would mean that those obligations are triggered whenever it is “possible” for an impact or event to occur. Because most things are possible, the use of this term as a qualifier for a compliance obligation simply means that if something is possible, the obligation is triggered. In the context of WAC 173-340-320 (1)(e), the proposed rule would require Ecology to determine if it is possible that a threatened population includes a vulnerable population or an overburdened community. Triggering obligations based upon the mere possibility of a release, threat or impact is not a standard at all. For example, Ecology’s proposed resource allocation rule WAC 173-340-340 (3) is triggered when a contaminated site “may” impact vulnerable populations and overburdened communities. Effectively, this proposed rule would trigger prioritization of resources not when a vulnerable population or overburdened community “is” impacted by a contaminated site, but when there is the mere possibility that a vulnerable population or overburdened community will be impacted. Such a rule does not appropriately target resources

because it has such broad application. In other words, the only time when resources would not be prioritized would be when Ecology has determined that it is not possible for a vulnerable population or overburdened community to be impacted. This effectively eviscerates the well-intended and statutorily mandated efforts by Ecology to implement meaningful requirements to address environmental equity.

1.c. While the proposed rule amendments impose requirements that consider vulnerable populations and overburdened communities, the rules lack any substantive criteria with respect to how and if impacts to vulnerable populations and overburdened communities are evaluated differently than impacts to other populations. For example, proposed amendment to WAC 173-340-360 establishes the requirements for cleanup actions and for determining whether a cleanup action alternative meets those requirements. Subsection (3)(a)(i) provides that a cleanup action must, among other things, “[p]rotect human health and the environment, including vulnerable populations and overburdened communities.” It is unclear how or if this requirement is different than the current requirement that requires the cleanup action to “[p]rotect human health and the environment.” The current language already includes protection of vulnerable populations and overburdened communities. The footnote (No. 367) suggests that this addition, and others like it, “emphasize that cleanup actions must protect vulnerable populations and overburdened communities”. However, because there are no additional criteria or requirements to address what additional obligations this emphasis imposes, there appears to be no substantive difference in the regulations based upon this change and others like it. Further, if there are substantive changes intended, those changes are not reflected in these proposed amendments.

2. On Ecology’s webpage (<https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites>) under the heading “Find cleanup sites”, there appear to be two formats which may or may not be intended to represent the same information. There is a map tool (titled “What’s in my neighborhood” and a list (titled “Cleanup and Tank Search”). The information provided in these two formats is not the same (the list and map tool do not contain the same set of sites) .

2a. Please clarify where the authorization for the list and the map come from. WAC 173-340 does not appear to mention the map format. Please clarify and add language to the WAC as needed. The webpages do not reference the WAC and/or RCW which is confusing to users.

2b. City of Tacoma staff have been told by Ecology staff that there is only one way to remove a site from the “what’s in my neighborhood” map and that is to complete a voluntary cleanup, however, WAC 173-340 contains several pathways to remove a site from the Contaminated sites list. Please clarify and add language to the WAC as needed.

3. Throughout WAC 173-340; including sections: 173-340-120(2) and (4), 173-340-120(13)(a), and other locations, it states that information will be “provided on ecology’s website” Ecology has a large and multipage website with a huge amount of information. When users attempt to locate a specific item referenced in the WAC, it is difficult to find. Please provide more assistance in the WAC and ecology’s website to help users find specific information referenced in the WAC and/or RCW. The specific information on the website should reference back to the appropriate WAC and/or RCW. Tacoma recommends that each webpage indicates the WAC and/or RCW sections that are presented on or related to that webpage.

For example, in 173-340-120(2) it is stated “For sites where remedial action is necessary, ecology also notifies the public in the *Contaminated Site Register* and provides information about the site on ecology’s website under WAC 173-340-600.” (highlighting added) The following webpage was found on ecology’s website: <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites> Does the highlighted text above refer to this webpage? Does the highlighted text refer to the “What’s in My Neighborhood”, the “Cleanup and Tank Search” or the “Site Register”, or does it refer to something entirely different? It is understood that ecology is trying to present its website in “plain language”, however, references to appropriate governing legislature will help users who are attempting to navigate the regulatory environment.

WAC Specific Section Comments

4. WAC 173-340-120(2) Initial investigation. Please clarify in the WAC what happens if Ecology does not undertake the initial investigation.
5. WAC 173-340-120 (4)(a) Contaminated sites list. Clarify the exact name and location of this list on ecology’s website. Is this list the “Hazardous sites list” available at <https://apps.ecology.wa.gov/publications/SummaryPages/0909042B.html> or “What’s in My Neighborhood”, the “Cleanup and Tank Search” available at webpage <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites> or the Contaminated Site Register referenced in WAC 173-340-120 (13)(a)(iii) or is it another list? The list itself should reference the appropriate authorizing WAC and/or RCW.
6. WAC 173-340-120 (4)(b) No further action sites list. Clarify the exact name and location of this list on ecology’s website. The list itself should reference the appropriate authorizing WAC and/or RCW.
7. WAC 173-340-120 (13)(a)(ii) – include how a person would request to be notified under this section and other sections in the WAC that contain similar language.
8. WAC 173-340-120 (13)(a)(iii) Contaminated Site Register referenced in Please provide a definition of the “Contaminated Site Register” and relate it to the contaminated sites list. A search of ecology’s website found the following item “Site register” on this webpage <https://apps.ecology.wa.gov/publications/UIPages/PublicationList.aspx?IndexTypeName=Topic&NameValue=Site+Register&DocumentTypeName=Newsletter> Is the Site Register intended to be the Contaminated Site Register? Please clarify. If this is intended to be the Contaminated Site Register, please include WAC 173-340 in the title of the document for clarity.
9. WAC 173-340-300(2)(a) Exemptions. The section states “An owner or operator does not need to report the following releases under this section”. Item (x) lists an exemption for a release to a permitted wastewater facility. A release by definition means entry of any hazardous substance into the environment. RCW 70A.305.020(32). It is unclear why this exemption is included for a wastewater facility because such facilities do not meet the definition of “environment”. “Environment” means any plant, animal, natural resource, surface water (including underlying sediments), groundwater, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington. WAC 173-340-200. A wastewater facility is none of these things. Please provide an explanation clarifying why these facilities are listed in this section as an exception. Additionally, it is unclear why an exemption is listed for wastewater facilities but not for stormwater systems and

facilities. Please provide an explanation regarding why stormwater systems and facilities are not also exempt.

10. Definitions Section Comments

10.a “Contaminated sites list” called “contaminated sites list” in WAC 173-340 and “hazardous sites list” under RCW Ch 70A.305. If Ecology intends to have one list that is called two different things, please ensure that on the actual list, both names and the WAC and RCW references are included for clarity.

10.b “Site” Per the definitions in the WAC, “site” means the same as “facility”. In the definition of facility, the word site is used. This creates confusion, please revise language to clarify intent.