

**Washington Department of Ecology**  
**Legacy Pesticides Small Group Virtual Meeting Summary**  
**Small Group #1 – Buyer notification, Mapping, and Soil Sampling**  
Thursday, June 25, 2020 | 11:00 a.m. – 1:00 p.m.

## **Welcome**

Facilitator, Joy Juelson with Triangle Associates, welcomed the group (see list of attendees) and requested brief introductions. The facilitator reviewed the previous meeting's highlights and summary and provided a brief overview of the working group timeline.

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## **Presentation: Research Update & Initial Solutions Discussion**

Lisa Parks, MFA, presented a background report update based on the first three Legacy Pesticides Working Group (LPWG) and small group meetings. The presentation covered the following topics and can be found on page 5:

- Purpose of the report
  - Set the stage and lay the foundation
  - Document what we currently know
  - Build consensus around what we know
- Community concerns were discussed and are summarized in the report.
  - Overall themes are costs, liability, notification/awareness, clear guidance, affordable housing impacts, education, mapping, reasonable remedies, consistency, and health risks
- Discussed the relevance of the Model Toxics Control Act (MCTA)
- Discussed Soil Sampling. Necessary to determine if lead and arsenic are present, and if so, to what degree
- Reviewed several case studies
- Next steps
  - Complete background report
  - Detailed analysis/feasibility study into potential solutions, remedies, and approaches
  - Public outreach and education including content development and target audiences (last step after LPWG approval)

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## **Group Discussion and Q & A**

Following the background report update presentation, Joy Juelson requested the small group engage in a round table discussion to provide comments, questions, and feedback regarding the presentation and identifying additional potential solution ideas. The following feedback was captured:

1. *Group Member:* appreciated the case studies and noted they were informative. They questioned if any case studies had examples of recent technology that could be applied to orchard lands in this context.
2. *Group Member:* appreciated the presentation and looks forward to the deep dive analysis coming up. They provided the following feedback and questions:

- a. Commented on the first meeting where the top two priorities identified by the group were to identify data or studies that reflect the extent of the problem as it relates to the health and safety of people living on orchard lands. Previous data on contamination with lead and arsenic is important.
  - b. Commented on the need to communicate the application of the pesticides that caused current day lead and arsenic contamination in old orchard lands were applied legally.
  - c. Noted concern regarding deed restrictions that could have significant impacts on residential properties.
  - d. Commented on the Wisconsin case study and how within that case study, the burden fell on the purchaser.
  - e. Requested an analysis regarding the soil banking solution. Concern regarding costs relating to soil banking depending on the size of the plat (developer vs. small landowner). They requested the size of plats should be considered and to encourage Ecology and other regulatory agencies to assist developers by offsetting costs for large plats.
  - f. Comment that an annual notice through the Assessor's Office may be one solution. Recommended this notice to be general information (vs targeted to orchard lands parcels).
3. *Group Member* provided the following feedback and questions:
- a. Question regarding when the full report will be available. \* *Follow-up: MFA responded that the report will be available in August after a review with Ecology.*
  - b. Questions concerning if these changes will impact existing home sites and properties or when an individual sells their home in an existing legacy pesticides area.
  - c. Requested the process needs to clarify expectations to those who are selling their home and noted the importance for sellers to inform buyers about the potential risks and need for cleanup.
  - d. Question regarding who liable and what burdens will be will the process create.
  - e. Comment on concern regarding secondary loans and the impact the cleanup process may have.
4. *Group Member:* They also provided the following feedback:
- a. Further discussed ways to notify impacted property owners. Noted concern about using the Assessor's mail out. Brainstormed that a soil bank could be created on site.
  - b. Suggestion to limit hauling costs to help keep the overall remediation costs low.
  - c. Noted a secondary loan concern. If this problem becomes more of a health and safety concern, then the cleanup would be necessary before moving forward. This situation may lead to the scenario where a buyer could not obtain a loan and a cash buyer would be needed and this could impact the final sales price.

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### Small Group Discussion Regarding Attorney Questions

Valerie updated the group that upon request of this group, Ecology will work with MFA to ask select legal questions. Joy Juelson requested the small group engage in a round table discussion to provide comments, questions, and feedback on the draft attorney questions. The following feedback was captured under each of the draft question from the small group participants:

- 1. *Can a notification, similar to the one used for lead paint, suffice for liability purposes?*
  - o Noted there is a standard federal form required on all homes built prior to 1978.

- Question if the form used by real estate companies as the purchaser information disclosure could be a way of notification?
- 2. *When is cleanup required under the law?*
  - Question if there is a state RCW established or is this regulation only under MTCA.
  - Question if the baseline numbers and data provided by Ecology is a part of Ecology's policy. Similarly, have those numbers been process legislatively or adjudicated in some manner?
- 3. *If I sample on my own, do I have to report the results to Ecology?*
  - Question what the legal ramifications are if a homeowner or orchardist does their own samples for their own information.
  - Question when sampling is done by a homeowner, is this creating a liability for Ecology.
- 4. *Can this stay a business transaction between buyer and seller? For example, seller agrees to price reduction for not addressing contaminated soil. Or, no sampling or cleanup is conducted if new property owner agrees.*
  - Comment this would be consistent with the Federal Lead Based Paint Notice where the seller discloses if they have any records or knowledge of Lead Based Paint Notice, then the buyer can waive their right to test or assume the responsibility to test on their own but seller has to give their permission for the buyer to do so.
  - Commented that the buyer and seller can negotiate the privilege it is not automatic. If buyer opts to do so and exits the transaction without disclosing to the seller their findings, then the seller has no obligation to disclose what they do not know.
- 5. *Who pays for the cleanup?*
- 6. *Who is liable (a legal term)? The landowner? Grower? Developer? Homebuilder? Homeowner?*
  - Asked how far back liability goes and are they jointly liable.
- 7. *If Ecology has maps showing contamination or potential contamination, what responsibility does anyone have to check those?*
  - Question if the maps hosted on Ecology's website would become a notice to all sellers and obligate them to indicate "yes" their property is contaminated on the Form 17 Property Disclosure form?
  - Question if we are creating liability for those who must disclose if their property is contaminated?
- 8. *How does this affect property transactions?*
  - Noted concern regarding disclosure, notice, financing options on the secondary market, and more.
- 9. *Are current orchardists liable?*
  - Commented that many property owners acquired their orchards under the old standard sometimes 40-50 years ago, but many of those owners never used lead or arsenic. If Ecology requires cleanup, then the developers can decide whether they develop the land based on the economic factors. For many orchard owners, the land is their retirement.
- 10. *If a current property owner discovers they live on an old orchard and want to sell their property, what do they have to do?*
  - Commented that Form 17 covers disclosure.
- 11. *New: If it is required on new development and not on existing residential properties, is there potential for a private citizen to bring a suit? What about an environmental group?*

Lisa Parks and Joy Juelson thanked the small group for their feedback. Lisa Parks noted MFA intends to release separate reports to Ecology for their review in July. After Ecology's review, the small groups will

also have a review period. MFA will then begin their next phase where they will conduct a deep dive of the solutions of interest and based on their initial research.

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### **Small Group Interactive Activity**

After the group update, Lisa Parks conducted the small group through an interactive activity to brainstorm permitting solutions and identify the top three solutions. The interactive activity produced a word cloud where the more times an answer was responded, the larger the answer would appear in the word cloud.

Please see page 21 for the results of the interactive activity.

Following the round table and interactive brainstorming activity, the facilitator reviewed the next steps and reminded the small group members the next meeting will likely occur in August but may have small group meetings specific to select topics between now and the next working group meeting. The meeting was adjourned at 1:00.

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### **Small Group Attendance (in alphabetical order by last name)**

- Stephen Bishop, Relator for Premier 1 Properties
- Jim Blair, Title/Escrow for North Meridian Title & Escrow
- Dean Emanuels, Banker for Washington Trust Bank
- Craig Gildroy, Planning Director for City of Chelan

### **Ecology Staff/Consultants/Facilitation Team:**

- Joy Juelson, Triangle Associates
- Katrina Radach, Triangle Associates
- Valerie Bound, Ecology
- Jill Scheffer, Ecology
- Kate Elliot, MFA
- Lisa Parks, MFA
- Phil Wiescher, MFA



MAUL FOSTER ALONG!



# Legacy Pesticide Working Group: Background Report Update

June 22-26, 2020



# Today's Discussion

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Purpose of the  
Background Report

Overview of the  
Background Report

MFA's Next Steps

Discussion & Feedback



# Purpose of the Background Report

- Set the stage, lay the foundation
- Document what we know
- Build consensus around what we know



# Community Concerns

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Costs



Liability



Notification/  
Awareness



Clear  
Guidance



Affordable  
Housing Impacts



Education



Mapping



Reasonable  
Remedies



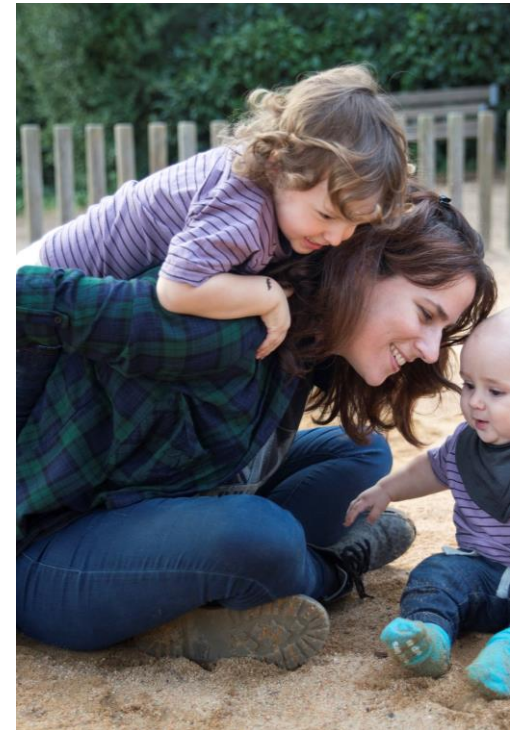
Consistency



# What is the Risk?

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- Lead and arsenic:
  - Persistent and toxic chemicals.
  - Used in pesticides applied to orchards in the 1900s and 1950s
- Frequent, regular exposure to these chemicals in soil increases the likelihood of the following health risks:
  - Neurological damage and reduced physical growth, especially in children (lead).
  - Various cancers, heart disease, and diabetes (arsenic).
- These are manageable risks.



# What are the Regulations?

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## Model Toxics Control Act (MTCA)

- Protects human health and the environment
- Investigation, cleanup, and prevention
- Implemented by the WA Department of Ecology

## State Environmental Policy Act (SEPA)

- Considers/mitigates impacts on the built and natural environments
- Applies to larger development projects
- Requests/addresses input from agencies and the public
- Implemented by all WA government agencies

## Local Land Use Regulations

- Regulates development (building permits, land divisions, site development, change in use proposals, etc.)
- Developed/adopted/implemented by cities and counties

# Soil Sampling...

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- Soil Sampling is necessary to determine if lead and arsenic are present, and, if so, to what degree.
- Two primary soil sampling methods:
  - Discrete: individual soil sample from a specific location
  - Composite: sample of soil collected from many locations
- Factors to determine appropriate sampling method:
  - Historic use: identify loading/mixing areas, potential areas of higher probability
  - Existing use: how much soil disturbance has occurred since historic use
  - Future use: where will buildings and pavement occur (less potential) and where will surface soil be exposed, i.e. yards, landscaped areas, etc (higher potential)

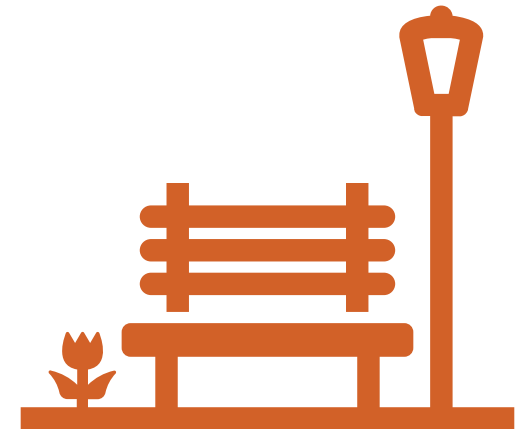
# CASE STUDIES: WA STATE

## Tacoma Smelter Plume

- Heavy metal contamination from Asarco Copper Smelter—1,000 square miles
- Mapping and information/education tools
- Public service announcements
- Cleanup actions in existing residential neighborhoods— excavate/replace contaminated soil in areas with exposed ground cover (e.g., yards and playgrounds)
- New residential developments require permanent remedies, complete removal of contamination (MTCA preference)

## Schools & Parks on Former Orchards

- 26 schools, 2 parks in Chelan, Douglas, Okanogan, Yakima, and Spokane Counties
- Mitigate school grounds where kids interact with exposed ground surface (e.g., playgrounds and ballfields)
- Removal/deep mixing of contaminated soil, or combination of the two
- Capping with 8 to 12 inches of clean topsoil over geotextile fabric, and an environmental covenant



# Case Studies: WA State

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## ○ LeRoi Co Smelter Site (Northport)

- Copper/gold smelting 1896-1921, Lumber mill 1953-2001, resulted in area-wide lead and arsenic contamination on site and throughout community
- USEPA-lead effort to excavate contaminated soils, stockpile, cover with containment barrier; institutional controls (environmental covenant) for the site
- Implement exposure reduction measures

## ○ Pacific Wood Treating Co (Ridgefield)

- Wood-treating facility 1964 to 1993, resulted in release of dioxins with area-wide impacts, which are persistent in soil, like lead and arsenic
- Full excavation and replacement of soil on existing residential properties to avoid deed restrictions on individual properties

# Case Studies: National

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## New Jersey

- Proactive process to address transition of contaminated orchard areas to residential use by Historic Pesticide Contamination Task Force (HPCTF)
- Estimate is 5% of state's acreage may have been contaminated
- Technical, economically viable strategies and guidance developed by HPCTF
- State-wide historical aerial mapping resource provided
- Remedies include capping with clean fill and deed notice, soil mixing to reduce concentrations, excavation, and off-site disposal
- Several recommendations related to soil sampling and best management practices: maintain grass cover, wash produce from gardens, wash hands and face, clean indoor surfaces where kids play



# Case Studies: National

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## Wisconsin

- 50,000 acres of potentially contaminated orchards
- State developed guidance documents: FAQ information sheet and soil sampling guide for homeowners
- No mapping is available to the public, must request historical aerial photos from state agency
- Common BMPs include keeping lawns vegetated, using raised garden beds, keeping kids out of exposed soil
- Seller discloses, if known; buyer responsibility is the emphasis

# Case Studies: National

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## North Idaho – Bunker Hill Superfund Site

- Area-wide impacts from early milling, mining, and mining waste
- Basin Property Remediation Program:
  - Over 7,000 individual properties remediated (site specific)
  - Typically, 6 to 12 inches contaminated soil excavated, demarcation layer installed, property is capped
- Residential clean fill/soil disposal program:
  - 1 cubic yard of gravel/topsoil per property allocated for cap maintenance
  - Free contaminated disposal containers available for regular home improvement or landscaping projects

# Case Studies: National

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## New York City

- Clean Soil Bank: No-cost, virtual soil exchange operated by the city
- Matches projects generating surplus clean soils with new construction projects needing soil; government projects are prioritized to lower costs to taxpayers
- Uses clean soil only, from depths of 10' or greater; contaminated soil from surface excavations is sent to licensed disposal facility
- Purpose is clean soil recycling with the following benefits:
  - Retains clean soil resource
  - Minimizes soil transport and related fuel consumption
  - Reduced greenhouse gas emissions

# Solutions We've Heard



## Notification

- Notice to buyers (Federal Lead Paint Disclosure example), renters
- Notice to existing homeowners/renters



## Public Education

- Widespread, reach variety of audiences
- Clear, transparent, don't create panic



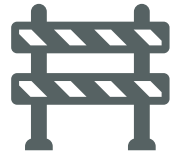
## Mapping

- Online, central hosting
- Accurate data
- Include mapping in local government planning documents



## Permitting

- Early information, guidance for development
- Clarity of comments during review
- SEPA checklist or application question



## Construction & Development

- BMP's, guidance
- Soil bank/exchange
- Remove and replace
- Sod & demarcation layer
- Deed restriction, environmental covenant

# MFA's Next Steps

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## Overview of Solutions

- Conceptual description of potential solutions
- Recommendation for “deep dive” analysis

## Deep Dive Analysis

- Detailed analysis/feasibility study into selected solutions/remedies/approaches

## Public Outreach & Education

- Target audiences & methods
- Content

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M A U L F O S T E R A L O N G I



# Brainstorm Buyer Notification, Soil Sampling & Mapping Solutions

lead paint form  
keep it general simple  
lead based paint form  
avoid adding liability  
dont destroy economy  
low economic impact



# Top Three Ideas - Any Solutions

clean soil bank  
no additional cost pilot projects  
avoid over regulation  
community notification  
avoid creating panic  
dont destroy economy  
clear path help available