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Mr. Clint Stanovsky, Rule Making Lead
Cleanup Rule Update, AO# 18-09
Washington Department of Ecology
300 Desmond Dr. SE, Lacey
P.O. Box 47600 | Olympia, WA 98504-7600

RE: September 9th, 14th, 26th, 30th 2022 MTCA STAG Meeting Comments

Dear Mr. Stanovsky:

Thank you for the continued opportunities for King County Department of Natural Resources and Parks (DNRP) and Public Health – Seattle & King County (PHSKC) to share our perspectives on Ecology's ongoing revisions to the Model Toxics Control Act (MTCA) implementing regulations. We especially welcome Ecology's efforts to prioritize vulnerable and overburdened communities through new language in MTCA's implementing rules and as part of implementing RCW 70A.02.005 also known as the HEAL Act. Our comments span multiple levels of detail and we have also addressed the questions you specifically posed to the Stakeholder & Tribal Advisory group (STAG) group.

Definitions and related comments:

1. In definitions, the term "threatened release" is absent despite being used throughout the rule. If this is defined elsewhere in another controlling statute or regulation, please reference that.
2. The definitions for "disposal" are confusing because they now seem to include recycling of wastes. WAC 173-340-360 has always encouraged recycling of materials, which inherently changes a material from a waste into a feedstock or possibly a product. We presume you intended to address remediation wastes and inadvertently broadened the definition to include any recycled materials. Please clarify.
3. At various points in the draft rules Ecology uses the term "threat" and in others the term "potential threat" (or both). Please clarify the distinction if there is one. We presume that "threat" could be defined to be broadly inclusive and the word "potential" could be removed throughout for clarity.

4. "Cleanup standards" is used in the definitions. Throughout the text "cleanup levels" is apparently used synonymously, but is not otherwise defined. Please clarify with additional definitions or choose one term and use consistently.
5. Parts 173-340-310(6)d and (6)e appear to be redundant.

Expanded Comments:

6. Part 1: section 13) Public notice and participation and tribal engagement – We are concerned the current public notification process is inequitable because it relies largely on electronic distribution of information through website notification and changes to site status are only provided to individuals who actively request notifications. While remedial action public notices (section 600 (2)) are quite robust, other processes lack public engagement opportunities (e.g., SHARPS listing or changes in status, voluntary cleanups, independent actions).

Many people living in impacted communities have no or little access to the internet. Furthermore, English language access is limited in many areas, which exacerbates their already limited ability to access information about MTCA sites near them (e.g., 30% of households in King County speak a language other than English at home). Within King County alone, almost 500,000 people are considered to have limited internet capacity often due to the cost of service or devices and over 350,000 people have no home internet access at all. We are concerned that they will continue to be left behind and inequitably impacted through lack of resources, access, or knowledge.

People who live in under-represented communities – meaning their race, or culture are not represented in government and decision-making – bear inequitable burdens from climate change and environmental damage. And it is often because of a lack access to clear and easily understood information about their environment, the health, and economic risks they face, and what they can do about it. Without this information, people can't fully participate in decisions that affect them. Therefore, we propose that you:

- a. Use plain and culturally competent language in all public communications.
- b. Communicate in multiple languages and use non-traditional channels to reach everyone.
- c. Make data and information openly available to everyone.
- d. Whenever possible, provide communications and documents that are optimized for mobile devices.

7. Regarding periodic site reviews: are these occurring on five-year cycles as intended? We recommend that Ecology's future performance metrics address this issue, particularly as they relate to sites in vulnerable and overburdened communities or within Tribal usual and accustomed fishing areas.

8. WAC 173-340-330(6)(a)(ii) appears to exclude a person who conducts a fully independent cleanup (not through VCP, or under order or decree) from petitioning to remove their site from the contaminated sites list. Does Ecology intend all independent cleanups obtain an opinion in VCP before a site can be removed from the list? This seems inconsistent with the desire to facilitate independent cleanup.

9. Similarly, under WAC 173-340-330(6)(b), the process around site delisting appears to make delisting a separate agency review process for all sites, even those closed out under an order or decree, or for which an NFA has issued through the VCP. Furthermore, the new language makes clear the agency reserves discretion *not* to review the petition or delist the site. Subjecting responsible parties to a separate review process in which they must fund additional (potentially unfamiliar) agency staff to review a petition for delisting, or the agency could actually decline to review a petition, makes little sense when a cleanup was conducted under formal oversight or has an informal opinion in VCP. Ecology should make the commitment to delist sites wherever possible. In general, the delisting decision should be made as part of the cleanup process by staff already familiar (formal site manager or VCP site reviewer) with the site. Or that staff should send a simple notification to those in charge of public notice/delisting and implementation should then be *pro forma* to ensure that sites for which parties have incurred significant time/investment to clean up will be delisted.

10. Clarity is requested in WAC 173-340-335(2). As written, it appears that removal from the contaminated site list does not automatically place a site on the no further action list.

11. Under WAC 173-340-340(2), we encourage Ecology to add one or more factors addressing agency resource allocation for facilitating or fulfilling other recognized governmental needs. For instance, a local government agency may request cleanup oversight or VCP assignment for designated governmental purposes that benefit the public interest. Ecology should expeditiously facilitate when cleanups are a component of floodplain management, fish passage barrier removal, or salmon habitat improvement.

12. WAC 173-340-355(6)(b) is confusing and should be changed to a more direct example of a site that does not meet soil clean up levels at the point of compliance (e.g., without containment as part of the remedy) or clarified further. When a soil containment remedy is implemented and effective, then the site *is* meeting standards — containment is either itself creates a ‘conditional point of compliance’ or is in lieu of needing an otherwise-established ‘conditional point of compliance.’

Ecology’s specific questions to STAG:

Question 1) *Does the Initial Investigation process proposed in Section 310 strike the right balance between providing timely public information and promoting early independent cleanups?*

We have no concerns about the proposed changes to release reporting or initial investigations.

Question 2) *Do you support Ecology’s proposal in Section 320 to remove the site hazard ranking system procedures from the rule, replacing them with performance standards and public participation requirements?*

We support these changes, but request Ecology incorporate requirements to update the SHARP tool on a regular basis and as more tools become available. Furthermore, the public notification and participation requirements around SHARP listing are not clear in this section other than they will be required and public comment must be at least 30 days. We have serious concerns about how people will even know that this tool exists. Please include requirements for public notice to ensure that people know about sites relevant to them are on the list. At a minimum, neighbors should be notified

when sites nearby go on the list or come off for example. Tribal engagement should be specifically discussed in the rulemaking as well.

It is not clear in the current language how people are notified beyond Ecology's website and email if requested. Many of our communities have no idea that the site register exists or that they live or conduct their businesses near a MTCA site. PHSKC receives questions about sites and their proximity to child cares, schools, or other businesses often and more should be done to bolster the public notification/engagement part of this guidance/rule, especially to overburdened and vulnerable populations. Proactive changes to anticipate public engagement requirements put in place by the HEAL act would be good to ensure.

Question 3) *Does the proposed strategic planning and performance assessment process provide a satisfactory level of management accountability, transparency, and efficiency in cleaning up contaminated sites? Would an online dashboard be a satisfactory means of communicating our strategic plans and performance assessments? What level and kind of information would you like to see in an online dashboard?*

We are mostly concerned about how the information about the strategic plan will be disseminated. Communication of this information should be done in a way that reaches the impacted communities, not just placed on a website where only experts familiar with MTCA will read it. We would also like to encourage Ecology to describe how it will improve upon problems and identify sites that are falling behind on cleanup metrics.

Question 4) *Do you support Ecology's proposal in Section 340 to prioritize vulnerable populations and overburdened communities impacted by contaminated sites? Does the proposed strategic planning and assessment process provide a satisfactory level of management accountability and transparency for achieving the goal of reducing environmental health disparities related to contaminated sites?*

We are happy to see Ecology's commitment to environmental justice in their prioritization of MTCA processes. We encourage Ecology to ensure program funds are dedicated to community engagement and public input from vulnerable and overburdened communities. Targeted grants or other state support to remediate, control and reduce hazardous substance exposures and impacts on vulnerable and overburdened communities will be required to help achieve equity in the future.

Question 5) *Do the proposed changes to the remedy selection requirements in Part 3 of the rule emphasizing protection of vulnerable populations and overburdened communities provide sufficient accountability and transparency? Will they help provide more equitable outcomes? Is compliance with these requirements doable?*

We appreciate this added emphasis in the rulemaking. It is unclear how this wording will change impacts to overburdened and vulnerable communities. We encourage Ecology to develop a measure that gauges the impacts of these changes in the rulemaking in improving MTCA cleanup actions for these communities.

Question 6) *Do the proposed requirements in new Section 620 adequately provide for engagement with Indian tribes during Ecology-conducted and Ecology-supervised remedial actions?*

We recommend that Ecology clarify that tribal engagement requirements apply to remedial actions affecting: 1) Indian tribal rights, including fishing and other off reservation rights and 2) Tribal interests in their lands including private parcels within reservation boundaries. As written, WAC 173-340-620(2) could be interpreted to apply only to Ecology actions affecting tribal rights and interests on their actual lands and not to the remainder of Washington's treaty obligations.

While not in Section 620, the paragraph at 173-340-130(4) requiring "specific comments" from Tribes seems unnecessary and out of place as a matter of regulation.

Question 7) *Do the proposed changes to the cleanup action requirements in Section 360 provide for adequate consideration of public concerns and tribal rights and interests for Ecology-conducted and Ecology-supervised remedial actions?*

We appreciate the language in section 360 (3)(d) encouraging Ecology to consider tribal concerns and those of vulnerable and overburdened populations. However, we remain apprehensive that public engagement and outreach may not be consistently conducted in a comprehensive way. Commitment to engage these populations and fully understand their concerns and burdens should be added into this section.

Questions 8) *For independent remedial actions:*

a. Do the proposed requirements in Section 600(20) provide adequate notice and information about independent remedial actions?

b. Do you support Ecology's proposal to eliminate public comment opportunities for periodic reviews and amendment or removal of institutional controls, consistent with Ecology's proposal in Preliminary Draft 1 for eliminating such opportunities when delisting sites?

If independent remedial actions will only be described in the contaminated site register, then impacted individuals will likely not be aware of them. Relying solely on the contaminated site register to provide notice of these actions seems especially insufficient to reach overburdened and vulnerable populations, particularly those who do not have access to electronic resources or do not speak English. Depending on the site, at the very least, neighbor notifications by mail seems appropriate. We encourage Ecology to expand the minimum notifications required for independent cleanups to more fully engage the public in the cleanup actions in their neighborhoods.

Question 9) *Do you support Ecology's proposed changes in Section 600 to how notice is provided and information is communicated to the public?*

We are pleased with the methods of engagement and outreach listed in 600(2). However, for some agency actions, such as site listing and hazard ranking changes, it is important that the same robust outreach and engagement is conducted to inform impacted individuals/communities. In section 600 (6) we would like more specific information on how Ecology will engage overburdened and vulnerable individuals and evaluate if the electronic alert system is effective with these communities, or if there are better or additional mechanisms that communities recommend be utilized. We also encourage Ecology to inform people of changes/alerts when they do not have access electronic information as well the extent of translation services for non-English speaking populations.

Question 10) *Do you support Ecology's proposal in Section 830 to replace the list of Ecology-approved sampling and analytical methods in the rule with a requirement to maintain and make publicly available a list of Ecology-approved methods outside of the rule?*

We understand Ecology's perspective and the scientific merit behind the proposed changes to WAC 173-340-830(4). We agree that analytical methods are rapidly evolving, and the approved list is poorly suited for formal rulemaking. We are concerned about the lack of public involvement in how Ecology plans to manage the approved method list outside of the rulemaking process. As a middle ground, we suggest revising the approved methods on a quarterly basis. Additionally, we recommend Ecology provide at least 30 days public notice and some allowances for investigations or long-term monitoring already Ecology approved and/or in progress.

If methods are clearly outdated, less reliable, or superseded, Ecology will need a robust transition protocol to remove them from the list. Lastly, Ecology should clarify that analysis conducted via methods which were approved at the time for the investigation or site monitoring remain valid even if they are superseded in the future.

Thank you once again for the opportunity to comment and participate in the MTCA rule revision process. Please do not hesitate to contact Richard Jack (richard.jack@kingcounty.gov) or Shirlee Tan (shirlee.tan@kingcounty.gov) for clarification or questions.

Respectfully,

(Via email)

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