

October 21, 2022

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**Re: MTCA Rule Update – Stakeholder and Tribal Advisory Group  
Comments from the Washington Public Ports Association**

Clint:

Thank you for your work with the Model Toxics Control Act (MTCA) rule-making process. This letter presents comments on behalf of the Washington Public Ports Association (WPPA) who I have represented during the Stakeholder and Tribal Advisory Group (STAG) process. Please consider the following comments during finalization of the Phase 1 rule making.

1. **STAG Process During Rule-Making:** Ecology should be commended for the effort the agency put into the STAG process. The group was balanced with meaningful representation from diverse parts of the State including business, municipalities, tribes, lenders, Ports, environmental groups, attorneys and environmental professionals all represented. The Ecology staff engagement during the multi-year process and the meeting materials developed to support STAG engagement were both excellent, and the resulting discussions were fruitful in identifying areas of consensus as well as areas requiring further work and discussion.

**Recommendation:** Continue investing in this type of meaningful engagement during development of the next phases of the rule making. Some of the upcoming phases will require additional technical discussions and potential sub-groups, but the broad representation and STAG's forum for discussion of key issues represents a best practice that should be maintained going forward.

2. **Proposed Elimination of the Science Advisory Board:** The toxics cleanup program operates not just using the MTCA regulation, but also using a growing toolbox of guidance, policies, technical reports and other Ecology-sanctioned tools (e.g., models, calculators, lists and databases such as the CLARC database). In the past the science advisory board was one check and balance available to ensure that these parts of the toolbox aligned with the MTCA statute, the MTCA regulation and best available science. The funding for the Science Advisory

Board was stripped by the legislature during a previous recession, and the current draft rule language proposes to formally eliminate the Science Advisory Board from the regulation. Before Ecology takes that step, we encourage that the agency consider 1) how policies, guidance, technical papers and other tools are reviewed and vetted prior to being adopted, and 2) whether it is time to reactivate the Science Advisory Board to assist in that function. It is unlikely that we have seen the last of emerging contaminants, complex technical issues or innovative solutions to environmental problems that require a thorough vetting. The need for a body like the Science Advisory Board is as great today as it was in the early 1990s. In the event that the Science Advisory Board is to be permanently deleted from the MTCA rule, this will place even greater emphasis on the role of public comment to gather input from engaged members of the scientific community to vet and improve the MTCA toolbox. While most policies, guidance, papers and tools are issued for public comment, many important ones are not. Some are updated with only internal Ecology review, such as the periodic updates to the CLARC database.

**Recommendation:** Look again at whether the Science Advisory Board (or a modern equivalent) can be re-established to support the review of policies, guidance, technical papers and other tools prior to their adoption. If the Science Advisory Board is to be deleted permanently from the rule, then public comment opportunities should be expanded to cover all policies, guidance, technical papers and other tools (e.g., CLARC database) used in the administration of the Toxics Cleanup Program.

- 3. New SHARP Tool and Site Ranking Procedures:** The draft rule language moves the site ranking procedures out of the rule and into guidance and the new SHARP ranking tool. While no tool is perfect, the SHARP tool is a significant improvement over the previous WARM ranking method. The proposal to move the detailed procedures out into guidance and tool is appropriate, provided that these are vetted and issued for public comment. Public review should be conducted initially, and in the future if changes are made to the guidance or tool. The proposal to update site rankings over time as sites gather more information and move through the investigation cleanup process will be helpful for users of the ranking information.

**Recommendation:** Issue the SHARP tool and associated guidance for public comment prior to adoption and in the future if changes are made to the guidance or tool.

- 4. Resource Needs for Re-Ranking of Sites:** With over 6,000 active cleanup sites throughout the State, the process of re-ranking cleanup sites using the SHARP tool will be a significant resource burden for the agency. For the re-ranking process to produce meaningful information, it will be important that the work be completed thoughtfully by experienced

MTCA practitioners. Ideally this work would be completed by the agency staff working on the sites. If a portion of the work is to be outsourced, then the agency will need to establish strong quality controls on the work to guard against potential “garbage-in, garbage out” concerns that could result in ranking data that doesn’t meet the intent of the process.

**Recommendation:** Recognize the large resource burden to complete the re-ranking the 6,000-plus active cleanup sites in the State. Incorporate appropriate phasing and quality assurance procedures to maximize the quality of the re-ranking process.

- 5. Rule Updates Addressing Environmental Justice and Tribal Issues:** The proposed rule language for how environmental justice and tribal issues are to be recognized and addressed within the cleanup process is a big improvement over previous versions. The proposed updates include effective methods to identify sites with potential concerns, engage with affected communities and tribes, evaluate potential impacts during the cleanup decision process, and document how environmental justice and tribal concerns have been considered. For some sites where these issues are already being proactively addressed, the proposed changes largely back-stop these best practices. But for many other sites, the updated procedures will raise the expectations bar to align with those best practices. Of importance, the expectations are, for the most part, clear and actionable for MTCA practitioners. We understand that tools will continue to be developed (e.g., use of EPA’s EJTOOL during site ranking) to help clarify, standardize and support site-specific decision-making. The proposed language also acknowledges that addressing environmental justice and tribal concerns has always been an integral part of MTCA remedy decision-making, and is appropriately captured and documented through the existing disproportionate cost analysis process. The clarifications in the draft rule about where these concerns should be evaluated are clear and actionable and a big improvement over previous versions. The rule updates will improve the consistency with which these important issues are addressed throughout the program.

**Recommendation:** Retain the current rule language (improved over previous versions) for how environmental justice and tribal concerns are addressed for the site-specific investigation, engagement, remedy decision-making and implementation steps. The current language is clear and actionable and aligned with best practices.

- 6. Resource Needs for Addressing Environmental Justice and Tribal Issues:** During evaluation of the economic impact of the rule changes and in other planning efforts, the agency should acknowledge that there will be an increase in resource needs for both Ecology and parties leading site cleanups. The rule update’s improvements to the investigation, engagement and documentation steps will likely result in added investments on the order of \$50,000-150,000 for many sites. Additional costs will be incurred inside the agency for

programmatic elements related to these issues. These investments are important, but their cost should be acknowledged during rule update and other agency resource planning (e.g., is it time to raise the grant limit for VCP-implemented cleanups?).

**Recommendation:** Acknowledge during the economic impact review that the updates relating to environmental justice and tribal issues will increase resource needs for the Toxics Cleanup Program and for many individual site cleanups. The impacts of these additional costs should be considered in agency planning efforts and also in grant funding conversations. One potential need is to raise the funding limits for remedial action grants for VCP cleanups.

7. **Climate Resilience, Remedy Sustainability and Site-Level Decisions:** The current rule language regarding remedy decisions is clear and actionable with respect to how climate resiliency should be considered. It may be equally helpful to clarify that within the DCA process, the criteria for “management of short-term risks” can be used to highlight differences in climate impacts and greenhouse gas emissions associated with different remedial alternatives where those differences are significant. Such clarification could be performed either in the rule or in guidance.

**Recommendation:** Retain the current improved draft rule language for how climate resilience is addressed during site-level remedy decision-making. Consider adding language clarifying that differences in climate impacts associated with different remedial alternatives may be considered within the DCA criteria for “management of short-term risks” where those differences are significant.

Thank you for your consideration of these comments.

Sincerely,



Mark Larsen  
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