

**MTCA Cleanup Rule
Stakeholder & Tribal Advisory Group (STAG)
Meeting No. 2 Summary (Final)**

Thursday, November 21, 2019 – Embassy Suites Hotel, Bellevue WA

See References on last page for web addresses found in this document.

The [Stakeholder & Tribal Advisory Group \(STAG\)](#) for the Model Toxics Control Act Cleanup Rule update met for the second time on November 21, 2019, in Bellevue, Washington. All [members](#) were present and participated. Observers included people who listened through a Zoom webinar, and people who were present at the meeting.

Agenda items included the following:

- Introductions
- Environmental Justice, Diversity, and Equity
- Initial Investigation, Site Hazard Assessment, Listing, and Delisting
- Briefing on potential Rule Changes for the Leaking Underground Storage Tank (LUST) process
- Public comments
- Wrap up, assignments, feedback

The project team introduced itself and each STAG member then introduced themselves and shared their organization. Elizabeth McManus (facilitator) briefly went over the [draft STAG charter and ground rules](#), which had been distributed ahead of time. No changes were requested to the charter or ground rules.

Environmental Justice, Diversity and Equity

Millie Piazza, Department of Ecology's Environmental Justice Coordinator, gave an overview of Environmental Justice, diversity and equity. Millie emphasized the importance of relating Environmental Justice work to MTCA work.

Millie noted that since the early 1980's, research has shown that communities of color are impacted the most by Environmental Justice. In 1995, the State of Washington published a statewide environmental justice study that showed low-income populations and communities of color are disproportionately burdened by contaminated sites and facilities that are regulated by the government (Ridgway, 1995).

Millie emphasized the importance of engaging the public and being aware of the different accessibility factors. [The EJ Screen](#) is an Environmental Justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. The [Washington Tracking Network \(WTN\)](#) is a specific Washington tool that allows you to look at different health disparities across the state.

The [Environmental Justice Task Force](#) goals are to improve health outcomes, especially within communities that are most severely and frequently impacted by environmental health hazards in the state. The Task Force will work diligently to center the voices of those who belong to communities that are most impacted by environmental justice issues throughout its work.

STAG Discussion & Feedback:

- Participants had a question about differences between the WTN and the EPA EJ Screen. The WTN is specifically a Washington map; the EJ Screen is a national tool.
- Participants asked about EJ considerations in the SHARP Tool and suggested that the EJ Taskforce (along with the STAG) be used to advise on how best to incorporate EJ into site hazard assessment, initial investigation, and listing. Participants cautioned about the need to strike a balance between streamlining the cleanup process and ensuring there is adequate time for communities to engage.
- One participant had concerns about the Yakima area generally being challenged by equity issues and land use, and the fact that the Department of Commerce was often engaged on these issues as part of their engagement in growth management. She recommended closer coordination between Commerce and Ecology as the SHARP tool is developed and incorporation of land use / zoning information into the final assessment and ranking process.
- **Next step:** Ecology will post [Millie's presentation slides](#) on the STAG website.

Initial Investigation Section 310

The following questions were asked to inform this discussion:

- Ecology is proposing to incorporate an existing policy that allows Ecology to extend the deadline for completing an initial investigation to encourage quick cleanups. Do you have any concerns with the policy, including the circumstances under which Ecology may provide an extension or how long Ecology may extend the deadline? See [Section 310\(3\) in the preliminary draft](#).
- Should Ecology always notify owners and operators of the result of an initial investigation even if no further action is necessary under MTCA? And should such notice be in the form a letter sent by mail, or are other methods adequate? See [Section 310\(6\) in the preliminary draft](#).

STAG Discussion & Feedback:

- Participants asked about the process for submitting written comments and feedback. Written comments will be accepted until December 31 and will be shared with STAG members. **[NOTE: Ecology updated this due date to 5PM on Monday, January 27, 2020.]**
- **Next step:** STAG members who wish to send written comments should send them to Elizabeth or to Clint by December 31, 2019. **[NOTE: Ecology updated this due date to 5PM on Monday, January 27, 2020]**
- **Tribal and public engagement.** One participant had questions around tribal involvement in the initial investigation and site hazard assessment and ranking process. The participant suggested that tribes be notified about complaints and initial investigations if a site is within tribal lands of interest such as usual and accustomed areas or near tribal reservations. This would allow them to provide information such as cultural resources. Similar questions were raised by other participants about engaging local governments, neighbors, and the general public in these processes.
 - There was discussion of the balance between engaging people and completing initial investigations quickly.
 - Some participants pressed for more engagement during the initial investigation process including routine notifications of potentially interested tribes and other governments (i.e., local governments) as well as neighbors.
 - Other participants noted that at least some reports are false, the result of disputes between neighbors or misunderstandings, and there should be some time and effort to sort out the real reports from the false ones before mobilizing lots of people to engage.
 - It was noted that although release reporting is required, this requirement may not always be understood or followed, and sometimes releases/potential releases are reported years after the fact to facilitate a property sale or transfer.
 - The [Site Register](#) was discussed as a potential notification mechanism.
- A participant asked if Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) applies to the initial investigation process. Ecology clarified that CERCLA applies wherever it is triggered, and that it applies to all sites on tribal lands.
- **Ability of sites to complete cleanup during the initial investigation.** Participants had questions around the reporting process for small cleanups and the process used when sites are completely cleaned up during the initial investigation.
 - These sites meet the same cleanup standards as any other MTCA site.

- Ecology must have adequate time to review the cleanup record if the sites are going to be determined to be successfully cleaned up.
 - Sites that are successfully cleaned up during the initial investigation are published on the Site Register as a No Further Action decision.
 - Participants were concerned that sites might get a No Further Action determination with limited public engagement.
 - Participants were also concerned to maintain the ability for small, straightforward “simple” sites to complete cleanups during the initial investigation.
 - Participants recognized that the ability to successfully complete cleanup during the initial investigation and go directly to an “NFA listing” instead of being listed on the Site Register as a “site,” is motivating to some site owner/operators and helps accomplish cleanup.
- **Next step:** It was agreed to:
 1. Provide a briefing for STAG on the details of the SHARP Tool process **[NOTE: webinar was held [Wednesday, January 8, 2020](#)]**, and
 2. Provide a briefing on tribal and public engagement in initial investigation and site hazard assessment and ranking, and
 3. Return to this discussion in more detail at the January STAG meeting.
 - **180-day timeframe.** Participants had mixed perspectives about the 180-day timeframe and extensions.
 - Some participants were concerned that initial investigation time limits should be kept short and that if cleanups were to take longer additional public engagement should be provided.
 - Some participants were concerned that more time (including an extension) might be needed, especially on a case-by-case basis to ensure sites can be cleaned up during the initial investigation step and provide adequate time for Ecology review.
 - If extensions are to be offered, participants felt there should be a clear explanation of the process and protocols for decisions about them.

- **Notifications to owner/operators.** Participants suggested that the notification be in the form of an email and letter at least, and that care be taken to ensure that the notifications really reach people in an understandable way.
 - Use of the Site Register and the Ecology website was also discussed as a potential notification mechanism.
 - Ensuring notifications are understandable to “regular people” not just environmental professionals should be a priority.

Site Hazard Assessment Section 320

The following questions were asked to inform this discussion:

- Do you agree that the current site hazard assessment and ranking process should be replaced? *See Sections 320 and 330(2) in the current rule.*
- Do you have any concerns with Ecology developing a new process outside of the rule guided by performance standards in the rule? Do the performance standards in the draft rule provide sufficient direction? Does the draft rule strike the right balance between specificity and flexibility? *See Sections 320(2), (3), and (5) in the preliminary draft.*
- Does the draft rule provide the right level of public involvement for developing a new site hazard assessment and ranking process? *See Section 320 (2) in the preliminary draft.*
- Does the new process properly account for Environmental Justice concerns? *See Section 320(3)(c) in the preliminary draft. Also see page 5 of the [SHARP Tool Memorandum](#) and the “flagged factors” worksheet of the SHARP Tool.*
- Should Ecology always assess and rank the hazard of sites before listing or de-listing sites? *See Section 330(4) in the preliminary draft.*
- Should Ecology re-rank sites when new information becomes available or site conditions change? Do you think any other situations should trigger re-ranking? *See Section 330(4) in the preliminary draft.*

STAG Group Discussion & Feedback:

- **Ranking method in rule v policy.** In general participants seemed supportive of the idea of creating performance standards for the ranking method and ranking process in rule, and establishing the details of the ranking method and process in policy.
- **Policy v. process.** It was suggested that the SHARP Tool and assessment process be treated and referred to as a policy rather than a process.

- **Transition from WARM.** Participants asked how transition from WARM to the SHARP Tool would be addressed. Sites currently ranked (under WARM) and backlog sites will be ranked as resources allow. Ecology's goal is that all sites will have a ranking under the new method.
- **Prioritization.** There were numerous questions about how the results of the SHARP Tool assessments would be used to create a prioritized list of sites from highest to lowest priority (as opposed to just a list of ranking results).
 - Participants in general seemed to think that the ability to create a prioritized list is important to ensure appropriate investment of Ecology's limited resources.
 - Clarification was requested for how Ecology decides where to invest their resources (oversight and grant).
- **Next Step:** Ecology will distribute existing policies relevant to prioritization and funding allocations.
- **Re-ranking sites.** There was openness to the idea of re-ranking sites if conditions change but also concerns that re-ranking would result in sites never getting completely finished because they would get partially done and then move to a lower rank. More discussion is needed on this and the procedures and "meaning" of re-ranking in terms of an ongoing cleanup.
- **Resources required.** Participants asked for more information on the plan to implement a new ranking method. It was acknowledged that WARM has been implemented at relatively few sites over the year. If the goal is to ensure that all sites get a SHARP ranking, what resources would be needed to do that and are those resources likely to be available.
- **Clear implementation guidance needed.** If ranking is to be carried out under a policy instead of through rule language, participants suggested that very clear guidance on the ranking method and ranking process would be needed for both practitioners and the public. It was noted that examples would be helpful.
- **MTCA budget.** Participants noted with concern that the MTCA budget has been declining in recent years. There also were questions about how the budget is put together and how the number of sites on various lists ([Confirmed and Suspected Contaminated Sites List](#), NFA list, other) informs the budget both in terms of how Ecology puts it together and how the Legislature receives it. Participants advised that Ecology be very clear about the workload there is on contaminated sites to support adequate budget funding.

- Ecology also described their MTCA Biennial Report of Expenditures, a report to the legislature that describes work completed over the last biennium. The report is produced every two years and is available at:
<https://fortress.wa.gov/ecy/publications/SummaryPages/1909045.html>
- You can request a hardcopy at:
<https://fortress.wa.gov/ecy/publications/UIPages/ProgramOrder.aspx?pubno=19-09-045>
- **Flags vs criteria.** Some elements (e.g., contaminant type) are included in the draft SHARP Tool as criteria that are incorporated into the numeric ranking. Other elements (e.g., environmental justice) are included as “flags” that supplement the numeric ranking. In particular, participants questioned whether environmental justice should be a flag or incorporated in some other way.
- **Voluntary cleanups and independent cleanups.** There were questions about the ranking (and the initial investigation and listing) processes for voluntary and independent cleanups and how the new rule language might change them, if at all. More information and discussion is needed on this.

Listing and Delisting Section 330

The following questions were asked to inform this discussion:

- Does the draft rule language provide the right level of public involvement for removing a site from the contaminated sites list? *See Section 330 (4)(c) in the preliminary draft*
- How should Ecology inform the public when it:
 - a. Adds or removes a site from the contaminated sites list? *See Section 330 (7)(b) in the preliminary draft.*
 - b. Ranks or re-ranks the hazard of a site on the contaminated sites list? *See Section 320(7)(b) in the preliminary draft.*
 - c. Specifies or updates the cleanup status of a site on the contaminated sites list? *See Section 320(7)(b) in the preliminary draft.*

STAG Discussion & Feedback

- **Informing people of listing and delisting decisions.** There was general support for continued use of the Site Register and for continuing Site Register- related email alerts.
 - Participants also suggested that Ecology should inform the public by having a dashboard and alerts every two weeks on the Ecology website and/or distributed by other means.

- The participants also acknowledged that electronic and email resources aren't accessible to everyone and suggested that other methods of public notification and access also are needed to reach everyone.
- It was noted that the EJ Task Force could be a vehicle for better understanding what methods might best reach communities of color; it also was noted that not all communities are the same and different methods might be needed to effectively reach people.
- It was suggested that communities themselves be consulted to better understand what communication methods work best for them.
- The [What's in My Neighborhood?](#) application was discussed and generally supported along with the notion of making site data available in a geographic system so people can see sites on maps.
- **Listing/delisting notifications.** Who should receive notification of different decisions was again discussed with participants again having a variety of perspectives about whether and when tribes, local governments, neighbors, and other should receive notice.
 - Some participants are in favor of multiple notices beginning at the earliest phases of the cleanup process.
 - Other participants are concerned that these notices might cause confusion and delay. They are more supportive of notices at specific decision points, largely after the initial investigation (and any potential cleanup conducted during that phase) is complete.
- **Understandability of information.** Participants suggested that information on listing and delisting is understandable for environmental professionals but may not be understandable by the "general public" or environmental justice communities. Ensuring information is understandable by everyone is important.

Briefing on Potential Rule Changes for the Leaking Underground Storage Tank

Kris Grinnell gave an overview of the initial draft proposed changes to [WAC 173-340-450](#). As part of the rulemaking, Ecology is not proposing changes to its overall strategy for getting releases from regulated [UST Systems](#) cleaned up. However, Ecology is proposing several changes to help accelerate the investigation and cleanup of such releases. The changes are intended to:

- Streamline the existing rule
- Update outdated parts of the rule
- Clarify parts of the rule to improve compliance

- Improve integration of the rule with Chapter 173-360A WAC
- Update language to align with current rule writing practices

Public Comments

- A commenter asked where presentation materials will be posted. The materials will be uploaded onto the [STAG website](#).
- Tom Zelman is an attorney in Yakima; he addressed reportable release requirements under CERCLA and the Oil Pollution Act OPA and the role those requirements have in ensuring public information on releases. Some of the reportable quantities are quite low.
- Written Comment: I understand that tribal fireworks stands are causing well water contamination. He had questions about where the Suquamish stands where detonation of fireworks occurs for many weeks during the summer and what are they doing to control it.
- There were no other public comments provided.

Wrap Up and Next Steps

Clint Stanovsky thanked participants for their time and engagement during the meeting. The group can submit additional comments and feedback to Clint at Clinton.Stanovsky@ecy.wa.gov by the end of December [Ecology has since updated the due date to January 27, 2020].

The next meeting will be on Thursday, January 30, 2020, at the Embassy Suites in Bellevue, WA. More details and logistics will be communicated via email.

References

Site	Link
STAG website on EZView	https://www.ezview.wa.gov/site/alias_1988/37514/default.aspx
STAG member list	https://www.ezview.wa.gov/site/alias_1988/37516/contacts.aspx
STAG Charter	https://www.ezview.wa.gov/Portals/_1988/Documents/Documents/STAG_Charter.pdf
STAG Facilitators	Elizabeth McManus, Ross Strategic emcmanus@rossstrategic.com https://www.rossstrategic.com/ Melissa Bañales, Ross Strategic mbanales@rossstrategic.com
Exploratory Rulemaking Scoping Comments from the public and staff (2009–2018)	https://ecology.wa.gov/DOE/files/1f1fd4bd85-17d8-41f9-9394-5146b9d6ee10.pdf
Hazardous Sites List (access through this page)	https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Site-Register-lists-and-data

MTCA Cleanup Rule Chapter 173-340 WAC
Stakeholder & Tribal Advisory Group Meeting Summary

Site	Link
Ecology's rulemaking webpage, Chapter 173-340 WAC	https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340
Ecology's Exploratory Rulemaking webpage	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking
Model Toxics Control Act Cleanup Regulations, Chapter 173-340 WAC (Cleanup Rule)	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340
Cleanup Rule language re: regional citizens' advisory committees	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-610
Model Toxics Control Act, Chapter 70.105D RCW (Cleanup Statute)	https://app.leg.wa.gov/rcw/default.aspx?cite=70.105D&full=true
Toxics Cleanup Program's policies and procedures	https://ecology.wa.gov/Regulations-Permits/Plans-policies/Toxics-cleanup-policies
Site Register	https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Program&NameValue=Toxics+Cleanup&DocumentTypeName=Newsletter
Environmental Justice presentation by Millie Piazza, Ecology's EJ Coordinator	https://www.ezview.wa.gov/Portals/_1988/Documents/Documents/EJ_POWERPOINT_EnvironmentalJustice_MPiazza_11-21-2019.pptx
MTCA Biennial Report of Expenditures: 2017-19	https://fortress.wa.gov/ecy/publications/SummaryPages/1909045.html
SHARP Tool memo: Prototype – Site Hazard Assessment and Ranking Process (SHARP) Tool (Nov 12, 2019)	https://www.ezview.wa.gov/Portals/_1988/Documents/Documents/FinalDraftMemoForSTAGreSHARP_Tool_2019.pdf
Preliminary Draft: Chapter 173-340 WAC, Sections 310 through 330 (Nov 8, 2019)	https://www.ezview.wa.gov/Portals/_1988/Documents/Documents/II_SHA_Listing_PreliminaryDraftRuleDistributedForSTAGReview11-08-2019.pdf
TCP's Web Reporting (which includes NFA List, Confirmed & Suspected Contaminated Sites Lists, et al.)	https://apps.ecology.wa.gov/tcpwebreporting/
What's in My Neighborhood?	https://apps.ecology.wa.gov/neighborhood/
Environmental equity study in Washington State	Ridgway, J. (1995). Environmental equity study in Washington state. ECY (Washington Department of Ecology). Publication number 95-413.