



DEPARTMENT OF
ECOLOGY
State of Washington

MTCA Cleanup Rulemaking Chapter 173-340 WAC Preliminary Draft 2

Briefing Paper

September 8, 2022

Purpose of this document:

This document briefs the Stakeholder and Tribal Advisory Group (STAG) members on:

- The revised scope of the current rulemaking to update the cleanup process in Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations.
- The purpose of STAG's review of Preliminary Draft 2 of the proposed rule changes, and the materials available to facilitate STAG review.
- The planned STAG meeting schedule to discuss the proposed changes in Preliminary Draft 2.
- The proposed changes in Preliminary Draft 2.
- Questions that Ecology would like STAG members to consider when reviewing Preliminary Draft 2 to facilitate discussions at the meeting and written comments.

This document should be read in conjunction with the Preliminary Draft 2 materials available for review.

For more information about the cleanup rulemaking:

Visit Ecology's website at <http://www.ecy.wa.gov/programs/tcp/regs/wac173360/1602inv.html>.

For more information about the Stakeholder and Tribal Advisory Group:

Visit Ecology's website at https://www.ezview.wa.gov/site/alias_1988/37514/overview.aspx.

Contact information:

Clint Stanovsky
Department of Ecology
P.O. Box 47600, Olympia, WA 98504-7600
360-742-9703
MTCARule@ecy.wa.gov

Accommodation requests:

To request ADA accommodation including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

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Acronyms and Abbreviations

Acronym or Abbreviation	Definition
CAP	Cleanup Action Plan
CSL	Contaminated Sites List
DCA	Disproportionate Cost Analysis
Ecology	Washington State Department of Ecology
EJ	Environmental Justice
FS	Feasibility Study
HEAL Act	Healthy Environment for All Act, Chapter 70A.02 RCW
IRA	Independent Remedial Action
MTCA	Model Toxics Control Act
NFA	No Further Action
O&M	Operation & Maintenance
PD1	Preliminary Draft 1
PD2	Preliminary Draft 2
PLIA	Pollution Liability Insurance Agency
PLP	Potentially Liable Person
RCW	Revised Code of Washington
RI	Remedial Investigation
SHARP	Site Hazard Assessment and Ranking Process
SMS	Sediment Management Standards
STAG	Stakeholder and Tribal Advisory Group
TCP	Ecology's Toxics Cleanup Program
UST	Underground Storage Tank
WAC	Washington Administrative Code
WARM	Washington Ranking Method

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Scope of Rulemaking

Revised scope of first rulemaking

We have revised and limited the scope of this first rulemaking to the following:

Part or Section	Previously reviewed by STAG?
Part 1 – Overall cleanup process	NO
Part 2 – Definitions and usage	YES, except for some definitions
Part 3 – Site reports and cleanup	YES, except Sections 355, 357, 380, & 390
Part 6 – Public participation and tribal engagement	NO
Section 450 – Releases from regulated UST systems	YES
Section 510 – Administrative options for remedial actions	NO
Section 815 – Cultural resources protection (new)	NO
Section 830 – Sampling and analysis procedures	NO
Conforming changes in other sections	NO
Corrections in Part 7	NO

As part of this first rulemaking, we no longer plan on updating the remaining administrative process sections in Parts 4, 5, and 8. Ecology will update those sections in a future rulemaking.

Scope of Preliminary Draft 1 previously reviewed by STAG

As shown in the table above, the Stakeholder and Tribal Advisory Group (STAG) previously reviewed, discussed, and commented on the following sections of the rule in Preliminary Draft 1:

- Section 200 – Definitions → STAG reviewed most, but not all changes to definitions
- Section 300 – Site discovery and reporting
- Section 310 – Initial investigation
- Section 320 – Site hazard assessment and ranking
- Section 330 – Contaminated sites list
- Section 335 – No further action sites list → split off from Section 330 in Preliminary Draft 2
- Section 340 – Program planning and assessment
- Section 350 – Remedial investigation
- Section 351 – Feasibility study → split off from Section 350 in Preliminary Draft 2
- Section 360 – Cleanup action requirements
- Section 370 – Cleanup action expectations
- Section 450 – Releases from regulated underground storage tank systems

STAG meeting agendas and notes, rule drafts and other materials for review, and written comments are available on the STAG's website at: https://www.ezview.wa.gov/site/alias_1988/37514/overview.aspx.

Scope of Preliminary Draft 2 currently for review by STAG

Preliminary Draft 2 includes all of the sections previously reviewed by STAG in Preliminary Draft 1, and the following additional sections identified in the table above showing the revised rulemaking scope:

- All of Part 1 – Overall cleanup process
- Remaining definitions in Part 2 – Definitions and usage
- Remaining sections in Part 3 – Site reports and cleanup decisions
 - Section 355 – Development of cleanup action alternatives that include remediation levels
 - Section 357 – Quantitative risk assessment of cleanup action alternatives
 - Section 380 – Cleanup action plan
 - Section 390 – Model remedies
- Other selected sections:
 - Section 510 – Administrative options for remedial actions
 - Section 815 – Cultural resources protection (new)
 - Section 830 – Sampling and analysis procedures

However, the following non-substantive conforming changes in other sections of the rule are not included in Preliminary Draft 2, but will be included in the proposed rule submitted for public comment:

- Updated internal cross-references (such as reference to new Section 351 for feasibility studies).
- Updated terminology (such as change from “Site Register” to “Contaminated Site Register”).
- Updated references to the MTCA statute, based on recodification by the Legislature in 2020 (change from chapter 70.105D RCW to chapter 70A.305 RCW).
- Updated references to the MTCA accounts based on legislative changes in 2019.
- Updated references to any other statutes or rules to reflect recodification or re-promulgation.

Preliminary Draft 2 reflects our consideration of STAG comments on Preliminary Draft 1. We carefully considered all of your comments, discussed them with our technical experts, internal Rule Team, and Program Management Team, and made changes to incorporate much of your advice and ideas into the revised draft language.

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STAG Review and Meetings

Purpose and materials for this review

We would like you to review **Preliminary Draft 2** of our proposed changes to Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations, **to identify significant issues or concerns**. We are not seeking line edits at this stage of the review process.

In addition to this briefing document, which provides an overview of the proposed rule changes, we are providing the following materials for your review:

- **Preliminary Draft 2 – Tracked Changes to Preliminary Draft 1, with footnotes**

This document both tracks and footnotes changes to:

- Preliminary Draft 1, if the section **was** previously reviewed by STAG;
OR
- The current rule, if the section **was not** previously reviewed by STAG.

This document allows you to see how we changed the draft rule based on your comments on Preliminary Draft 1.

- **Preliminary Draft 2 – Tracked Changes to Current Rule**

This document tracks, but does not footnote, changes to the current rule.

- **Preliminary Draft 2 – No Tracked Changes**

This document does not track changes to either the current rule or Preliminary Draft 1 of the proposed rule.

You may want to view this document before viewing the tracked and footnoted changes since it is the easiest to read.

- **Preliminary Draft 2 – Environmental Justice & Tribal Engagement Excerpts**

This document includes excerpts from Preliminary Draft 2 related to **environmental justice** and **tribal engagement**. This document **does not track changes** to either the current rule or Preliminary Draft 1 of the proposed rule, which was previously reviewed by STAG.

You may want to view this document to see how all of the environmental justice and tribal engagement provisions work together.

Deadline to share feedback

Please submit your feedback on any **significant issues or concerns** on Preliminary Draft 2 during the scheduled meetings or in writing by **Thursday, October 13, 2022**.

Schedule and focus of STAG meetings (Zoom webinars)

We are planning the following multiple STAG meetings to reorient and brief you and then to discuss the proposed changes in Preliminary Draft 2. We will convene all Stakeholder and Tribal Advisory Group (STAG) meetings as webinars (via Zoom).

- **Meeting 1: Reorientation – Friday, September 9, 2022, 1:00 pm to 2:30 pm.**

The first meeting is a reorientation meeting. At this meeting, we plan to revisit the STAG charter, describe the updated rulemaking scope and the STAG meeting schedule, and introduce new Ecology and STAG members.

- **Meeting 2: Briefing – Wednesday, September 14, 2022, 1:00 pm to 3:00 pm.**

At the second meeting, Ecology plans to provide an overview and briefing of the proposed changes in Preliminary Draft 2, and answer clarifying questions about the changes.

- **Meeting 3: Discussion – Monday, September 26, 2022, 1:00 pm to 4:30 pm.**

The purpose of the third meeting is to start the discussion of the proposed rule changes in Preliminary Draft 2. Ecology will identify the planned focus and provide an agenda before the meeting. During the meeting, STAG members will have the opportunity to discuss the questions posed by Ecology, ask questions of Ecology or the rest of the group, and suggest other topics they would like the group to discuss. There will be an opportunity for public comment.

- **Meeting 4: Discussion – Friday, September 30, 2022, 8:30 am to 12:00 pm.**

The purpose of the fourth meeting is to complete the discussion of the proposed rule changes in Preliminary Draft 2. Ecology will identify the planned focus and provide an agenda before the meeting. During the meeting, STAG members will have the opportunity to discuss the questions posed by Ecology, ask questions of Ecology or the rest of the group, and suggest other topics they would like the group to discuss. We expect this meeting to be the last STAG meeting before the rule goes out for public comment. There will be an opportunity for public comment.

- **Contingency Meeting – Friday, October 7, 2022, 1:00 pm to 4:30 pm.**

We plan to complete our discussions of the proposed rule changes by the end of Meeting 4. In the event that a particular issue needs additional time for STAG discussion, we request that you hold this date and time on your calendar. All efforts will be made to get our work completed within the four meetings identified above.

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Overview of Proposed Changes

Theme 1 – Redesigning the hazard ranking system for program planning

The Model Toxics Control Act (MTCA) requires Ecology to “establish a hazard ranking system for hazardous waste sites” ([70A.305.030\(2\)\(b\)](#)). Updating Ecology’s process for assessing and ranking contaminated sites is one of the focal objectives of this rulemaking. Ecology will use the results of the updated site hazard assessment and ranking process (SHARP) to:

- At the program level, compare and prioritize the threats to human health and the environment posed by contaminated sites, including threats to vulnerable populations or overburdened communities.
- At the site level, serve as a starting point for remedial investigations into potential exposure pathways and receptors.

Preliminary Draft 1 (2020)

In Preliminary Draft 1, Ecology proposed replacing the current Washington Ranking Method (WARM) process specified in the rule (without change since 1992) with a general requirement that Ecology establish, implement, and maintain a new site hazard assessment and ranking process (SHARP) outside the rule, but subject to performance standards and public comment opportunities specified in the rule.

In addition to assessing the threats posed by the site, SHARP assessments will identify whether the site is likely to threaten vulnerable populations or overburdened communities.

Ecology will base SHARP assessments on readily available information at the time of assessment. For new sites, SHARP assessments will be based on the information available at the time of initial investigation. Thereafter, Ecology may update SHARP assessments and rankings when site conditions change or new information about the site is available. In this way, SHARP rankings can be instruments for tracking and reporting progress at individual sites.

Preliminary Draft 2 (2022)

In Preliminary Draft 2, Ecology retains the overall approach in Preliminary Draft 1. We replaced the list of information that must be considered, if available, with the simple requirement that SHARP assessments must be based on information readily available at the time of assessment. Ecology proposes keeping the rule requirements general, but including such details in policy and procedure.

The second preliminary draft clarifies that Ecology will complete a SHARP assessment of the over 4,000 currently unranked sites as soon as resources permit and in accordance with its strategic plan under Section 340. Over time, SHARP assessments of both new and existing contaminated sites will provide an increasingly comprehensive and reliable foundation for program planning and evaluation.

Consistent with changes throughout Preliminary Draft 2 related to public notification, Ecology will make SHARP rankings available on its website and provide regulated persons and the public with information on how to request automated notices of site changes, including site listing, ranking, and status.

Theme 2 – Using site information to plan and prioritize use of MTCA resources

Updating Ecology’s strategic plans for cleaning up contaminated sites based on SHARP rankings and other factors is another focal objective of this rulemaking. It is closely related to and depends on the increasing availability of SHARP rankings for all new sites, and all existing sites now awaiting remedial action or where cleanup has started but is not complete.

Section 340 of the current rule references a statutorily mandated biennial planning process that was removed from the statute and replaced with other legislative reports.

Preliminary Draft 1 (2020)

In the first preliminary draft update of Section 340, Ecology proposed updating the planning requirements needed to reflect statutory changes to (a) the biennial financial planning and expenditure legislative reports, and (b) the factors to be considered when allocating MTCA capital funds.

Preliminary Draft 2 (2022)

Based on STAG input and consultations with Toxics Cleanup Program leadership, the second preliminary draft refocuses Section 340 on Ecology’s strategic plan and performance assessments for cleaning up contaminated sites, rather than on its biennial reports to the legislature. The strategic planning and performance assessments will make our program more effective, efficient, and equitable. The process will also help inform Ecology’s budget requests and biennial financial planning and expenditure reports.

As proposed, Ecology commits to:

- Develop and periodically update a comprehensive and integrated strategic plan for cleaning up sites, including goals and strategies for all core program functions and major program initiatives.
- Prioritize vulnerable populations and overburdened communities impacted by contaminated sites.
- Allocate staff resources and capital funds based on:
 - The threats posed by a site to human health or the environment.
 - Whether the population threatened by a site is a vulnerable population or an overburdened community.
 - The land reuse potential and planning for a site.
 - Other factors specified by the Legislature or Ecology.
- Establish performance metrics and periodically assess progress toward its strategic goals, including progress in cleaning up sites that impact vulnerable populations and overburdened communities.
- Make the strategic plan and performance assessments available to the public on Ecology’s website, and provide notice of any update in the *Contaminated Site Register*.

Theme 3 – Focusing on environmental justice

Incorporating environmental justice goals into the rule, at both the program and site level, is one of the focal objectives of this rulemaking.

Preliminary Draft 1 (2020)

Preliminary Draft 1 incorporated environmental justice (EJ) goals into the MTCA cleanup regulations at both the program level and the site level. The draft relied on the term “highly impacted community,” as used and defined in Chapter 173-322A WAC, Remedial action grants and loans.

- **At the program level**, we required consideration of whether the population threatened by a site was a highly impacted community when allocating MTCA capital funds. This allowed Ecology to prioritize funding and staff resources in the communities that need it most.
- **At the site level**, we proposed a separate equitability requirement and related expectation for cleanup actions (whether the alternative equitably distributes its benefits and burdens between any highly impacted and other communities).

Passage of HEAL Act (2021)

- In 2021, almost a year after STAG reviewed Preliminary Draft 1, the Legislature passed Chapter [70A.02](#) RCW, the HEAL Act, to reduce environmental and health disparities in Washington state and improve the health of all Washington state residents.
- Ecology’s goal is to align the MTCA Cleanup Rule with the goals and implementation of the HEAL Act to best achieve environmental justice for vulnerable populations and overburdened communities impacted by contaminated sites in Washington state.

Preliminary Draft 2 (2022)

Preliminary Draft 2 strengthens how EJ goals are integrated at both the program level and the site level by making more specific commitments and imposing more specific requirements. We made many of these changes in response to STAG input on the Preliminary Draft 1.

- **At the program level**, we strengthened our commitments by requiring Ecology to:
 - Develop and periodically update a comprehensive and integrated strategic plan for cleaning up all contaminated sites that prioritizes cleanup of sites likely to impact vulnerable populations or overburdened communities.
 - Consider whether the populations threatened by a site are vulnerable populations or overburdened communities when allocating capital funds and staff resources. This may include consideration of likely cumulative environmental health impacts.
 - Periodically assess our progress in promoting environmental justice by cleaning up sites likely to impact vulnerable populations and overburdened communities.

By adhering to these commitments, we expect to reduce environmental and health disparities in Washington state.

- **At the site level**, we emphasized accountability and transparency when making cleanup decisions by specifically requiring the following:
 - Investigations of how vulnerable populations and overburdened communities are threatened by a site based on their land and resource uses.
 - Consideration of such threats when developing cleanup action alternatives.
 - Studies of whether cleanup action alternatives:
 - Protect vulnerable populations and overburdened communities.
 - Provide a reasonable restoration time frame, in consideration of the threats posed to vulnerable populations and overburdened communities.
 - Are permanent to the maximum extent practicable, in consideration of the threats posed to vulnerable populations and overburdened communities from both the site and the cleanup.
 - Documentation of evaluations in feasibility study reports, which are subject to public review and comment for Ecology-conducted or Ecology-supervised remedial actions.
 - For Ecology-conducted and Ecology-supervised remedial actions, facilitate participation by vulnerable populations and overburdened communities and seek engagement of Indian tribes.

By adhering to these requirements, we expect that cleanup actions will result in more equitable outcomes for vulnerable populations and overburdened communities. For this reason, we removed the separate site-level equitability requirement for cleanup actions proposed in Preliminary Draft 1.

Theme 4 – Updating and clarifying site-level decisions and processes

One of the focal objectives of this rulemaking is to update and clarify the process for investigating and cleaning up contaminated sites.

Remedial investigations and feasibility studies

- In Preliminary Draft 1, we clarified and restructured the requirements for remedial investigations and feasibility studies in Sections 350. We introduced stepwise procedures for feasibility studies, clarified reporting requirements, and added specific requirements for environmental justice and climate change resilience.
- In Preliminary Draft 2, we made the following additional changes:
 - Further clarified and reorganized remedial investigation (RI) and feasibility study (FS) requirements by creating a new section for the FS and by creating stepwise procedures for the RI as previously done for the FS. We also further clarified the applicability of the requirements, including for sediment-impacted sites.
 - Revised how EJ goals are incorporated into the RI and FS. See Theme 3 above.
 - Incorporated cultural resource consultation and inadvertent discovery plan requirements for remedial actions conducted, required, or funded by Ecology. See new Section 815.
 - Other technical updates or clarifications based on STAG or internal input.

Cleanup action requirements and expectations

- In Preliminary Draft 1, we clarified and restructured the requirements and expectations for cleanup actions in Sections 360 and 370. We added specific requirements for environmental justice and climate change resilience and introduced stepwise procedures for the disproportionate cost analysis (DCA).
- In Preliminary Draft 2, we made the following additional changes:
 - Further clarified the requirements and their applicability based on STAG or internal input.
 - Revised how EJ goals are incorporated into the cleanup action requirements. See Theme 3 above.
 - Revised and clarified how public concerns and tribal rights and interests are considered and documented when selecting a cleanup action by:
 - Moving the requirement to consider public concerns from the general requirements in Section 360(3)(a) to a separate provision in Section 360(3)(d).
 - Separating consideration of tribal rights and interests from consideration of public concerns. Both must be considered when selecting a cleanup action.

- Clarifying that the requirement applies only to Ecology-conducted or Ecology-supervised remedial actions.
- Specifying that public concerns and tribal rights and interests must be considered when analyzing whether a restoration time frame is reasonable.
- Changing how public concerns and tribal rights and interests are considered when analyzing whether a cleanup action is permanent to the maximum extent practicable. We replaced the separate public concerns criteria with a requirement to consider public concerns and tribal rights and interests when both determining and weighting each of the criteria. This change eliminates an unintended competition between public concerns and the other criteria.
- Specifying that the cleanup action plan must summarize how public concerns and tribal rights and interests were considered when selecting the cleanup action.

Remainder of Part 3 of the rule

Preliminary Draft 2 includes proposed changes to the remaining sections in Part 3.

- In Section 355, we reorganized, simplified, and clarified various provisions and examples related to the development of cleanup action alternatives that include remediation levels, with no intended substantive changes.
- In Section 357, we reorganized and clarified provisions related to the use of quantitative risk assessments of cleanup action alternatives, with no intended substantive changes.
- In Section 380, we proposed the following changes to cleanup action plan requirements:
 - Clarified the applicability of the requirements, including for sediment impacted sites and independent remedial actions.
 - Added the following content to the plans: identify any model remedies and the basis for selection, summarize how public concerns and tribal interests were considered, and document any changes to the default assumptions or exposure scenarios used to establish cleanup standards.
- In Section 390, we updated the rules governing the development and selection of model remedies to reflect legislative changes to MTCA in SB [5296](#) in 2013. See RCW [70A.305.030](#)(1)(j)).

Interim actions for releases from regulated UST systems

- In Preliminary Draft 1, we proposed several changes to help accelerate the investigation and cleanup of such releases from regulated underground storage tank (UST) systems. We intend the changes to streamline, clarify, and update the rule and improve integration of the rule with Chapter [173-360A](#) WAC.
- In Preliminary Draft 2, we further clarified or revised the requirements based on STAG or internal input, including consideration of the leaching and vapor intrusion pathways during the

initial site characterization, timeframes for initiating free product recovery and progress reports, and frequency of periodic updates of remedial actions.

Sampling and analysis procedures

Preliminary Draft 2 includes proposed changes to Section 830, replacing the list of Ecology-approved methods in the rule with a requirement to maintain and make available to the public a list of Ecology-approved methods. Ecology may add or remove methods from the list without changing the rule. Ecology must maintain a record of any such decision, and notify the public of any such decision in the *Contaminated Site Register*. We also clarified that sediment impacted sites, sampling and analysis activities must also comply with requirements in Chapter [173-204](#) WAC.

Theme 5 – Updating public participation and tribal engagement requirements

Based on STAG and internal input regarding proposed changes to Part 3 of the MTCA cleanup rule, and changes in practice over the past 20 years, we added updating the outdated public participation and tribal engagement requirements in Part 6 of the rule as another focal objective of this rulemaking.

Since Preliminary Draft 1 did not include Part 6 of the rule, tracked changes in Preliminary Draft 2 refer back to the current rule.

Tribal engagement

We established requirements for tribal engagement in a new Section 620 that are separate from the public participation requirements in Section 600.

For Ecology-conducted and Ecology-supervised remedial actions, Ecology must:

- Develop a tribal engagement plan for each site. See Section 620(3).
- Consider tribal rights and interests when selecting a cleanup action, including when analyzing whether the restoration time frame is reasonable and whether the cleanup action is permanent to the maximum extent practicable. See Section 360(3)(d), (4)(c)(xi), and (5)(c)(i)(C).
- Document in the cleanup action plan how tribal rights and interests were considered when selecting the cleanup action. See Section 380(4)(c).

Notification methods

We updated the notification methods specified in the rule to reflect changes in technology and practice, and to enable us to provide more information sooner to the public in a way that is more efficient.

Updates include:

- Adding additional notification methods, including:
 - Posting specified site-specific information on Ecology’s website (see Section 600(5)).
 - Providing site-specific electronic alerts to interested persons, if requested, whenever the information required on Ecology’s website is added or changed (see Section 600(6)).
- Updating the use of the existing *Site Register*, including changing its name, allowing alternate methods of publication, and changing what notices must be included (see Section 600(7)).

Independent remedial actions

We updated and consolidated the requirements for independent remedial actions (see Section 600(20)).

Updates include:

- Replacing notices on the *Contaminated Site Register* with notices on Ecology’s website and, if requested, through site-specific electronic alerts to interested persons. This includes:
 - The site’s listing and remedial action status identified under Section 330.
 - The site’s current hazard rankings identified under Section 320.

- Any initial investigation report prepared under Section 310.
- Any independent remedial investigation, interim action, or cleanup action report required under Section 515(4) and received by Ecology.
- The results of any Ecology review of an independent remedial action, including any written opinion issued by Ecology under Section 515(5).
- Any periodic review of a site under Section 420.
- Any document implementing, amending, or removing an institutional control under Section 440.

See Section 600(7) and (20). See also Theme 6 below.

- Eliminating opportunity to comment on post-cleanup actions (periodic reviews and removal of institutional controls), consistent with proposal in Preliminary Draft 1 to eliminate such opportunities when delisting sites. See Sections 330(7) and 600(17) through (20). See also Theme 6 below.

Ecology-conducted and Ecology-supervised remedial actions

We clarified the requirements for Ecology-conducted and Ecology-supervised remedial actions and made several updates, including:

- Updated the definition of “public notice” to include additional notification methods (website, electronic alerts, and *Site Register*) and limit the required use of newspaper publication. See Section 600(2).
- For public participation plans, emphasized facilitating participation of vulnerable populations, overburdened communities, and non-federally recognized tribes. See Section 600(9)(a) and (b).
- Added consideration of the factors in Section 600(3) when deciding whether to consolidate public notice of a RI/FS report and a draft cleanup action plan. See Section 600(13)(b).
- Eliminated any requirements related to Ecology-designated “high priority sites.”

Theme 6 – Distinguishing independent remedial actions

Preliminary Draft 1 (2020)

In Preliminary Draft 1, we focused on clarifying the applicability of substantive requirements to independent remedial actions (e.g., conducting a feasibility study) and identifying the differences in administrative requirements between independent remedial actions and Ecology-conducted and Ecology-supervised remedial actions (e.g., reporting feasibility study results and whether subject to public comment).

We also proposed eliminating the opportunity to comment on the removal of a site from the contaminated sites list that was cleaned up through independent remedial action. See Section 330(7).

Preliminary Draft 2 (2022)

In Preliminary Draft 2, we updated Section 510, Administrative options for remedial actions, to provide a more complete and integrated overview of the options. We also further clarified applicable requirements based on STAG and internal input.

In addition, in Preliminary Draft 2, we are proposing the following additional updates to the requirements for independent remedial actions (IRAs) in Parts 3 and 6 of the rule:

- Adding requirement that persons report independent remedial investigations within 90 days of completion, just as for interim actions and cleanup actions. Ecology will make the reports publicly available on its website and may use the information to update SHARP assessments and rankings. See Section 350(4)(b).
- Eliminating the opportunity to comment on post-cleanup actions (periodic reviews of IRAs and the removal of institutional controls required as part of an IRA), consistent with our proposal in Preliminary Draft 1 to eliminate the opportunity to comment when delisting such sites. Ecology will still notify the public of such actions on its website and, if requested, through site-specific electronic alerts. See Sections 330(7) and 600(17) through (20). See also Theme 5 above.
- Replacing notices of IRAs on the *Contaminated Site Register* with notices on Ecology's website and, if requested, through site-specific electronic alerts to interested persons. See Sections 600(7) and (20). See also Theme 5 above.

We also made conforming changes to Sections 420(5), 440(12), and 515(4) and (5) to reflect the changes in Parts 3 and 6 of the rule.

We plan to further update the requirements in Section 515 for independent remedial actions, and particularly the voluntary cleanup program, in a future rulemaking.

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List of Notable Changes to Preliminary Draft 1

The following list highlights notable changes in Preliminary Draft 2 of our proposed rule changes to Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations. Except for the definitions in Part 2, the list reflects changes to Preliminary Draft 1 (if the section **was** previously reviewed by STAG), or the current rule (if the section **was not** previously reviewed by STAG).

Part 1 – Overall cleanup process

- Emphasizes that one of the goals of the chapter is to protect the health and environment of vulnerable populations and overburdened communities (Section 100).
- Updates and clarifies overview of cleanup process, and integrates overview of administrative options for cleaning up sites in Section 510 (Sections 120).
- Updates administrative principles regarding facilitating public participation and engaging Indian tribes (Section 130).
- Clarifies Ecology’s authority to determine compliance with regulatory requirements (Section 130).
- Eliminates the concept of “high priority sites,” which Ecology has not utilized in over 20 years, and related schedules (Section 140).

Part 2 – Definitions and usage

Term	Note
Added	
Confirmation monitoring	Added for ease of reference; relies on description in Section 410
Contaminated site	Replaces hazardous waste site
Contaminated sites list	Replaces hazardous sites list
Disposal	Based on definition in Chapter 173-303 WAC
Ecology-conducted remedial action	Added for ease of reference
Ecology-supervised remedial action	Added for ease of reference
Feasibility study	Added since term used separately from RI/FS
Financial assurance	Added for ease of reference; relies on description in Section 440
Inadvertent discovery plan	Added to reflect cultural resource protection requirement
Indian tribe	Added to distinguish engagement of federally-recognizes tribes; relies on definition in Chapter 43.376 RCW
Model remedy	Relies on definition in MTCA statute
National priorities list	Added for ease of reference
No further action sites list	Added for ease of reference
Overburdened community	Added to implement environmental justice principles; relies on definition in Chapter 70A.02 RCW

Performance monitoring	Added for ease of reference; relies on description in Section 410
Periodic review	Added for ease of reference; relies on description in Section 420
PLIA	Added for referencing pollution liability insurance agency
Prospective purchaser	Added for clarity; relies on definition in MTCA statute
Protection monitoring	Added for ease of reference; relies on description in Section 410
Remedial investigation	Added since term used separately from RI/FS
Sediment	Relies on definition in Chapter 173-204 WAC
State cleanup law	Added for ease of reference to both cleanup law and regulations
Tribal lands	Relies on definition in Chapter 70A.02 RCW
Regulated substance, UST system, UST system operator, and UST system owner	Added for requirements for releases from regulated UST systems; rely on definitions in Chapter 173-360A WAC
Vulnerable population	Added to implement environmental justice principles; relies on definition in Chapter 70A.02 RCW
REMOVED	
Hazardous sites list	Replaced by contaminated sites list
Hazardous waste site	Replaced by contaminated site
Mail	Definition of term not needed based on changes to definition of public notice
Science advisory board	Board eliminated by legislature
Secondary maximum contaminant level	Term not used in current or proposed rule
CHANGED	
Conceptual site model	To clarify and enhance
Public notice	To reflect additional regulatory requirements
Site hazard assessment and ranking	To reflect new process
Wetlands	To reflect definition in Chapter 173-201A WAC

Section 300 – Site discovery and reporting

- Eliminates release reporting extension when undertaking independent remedial actions; all releases must be reported within 90 days of discovery.
- Clarifies release reporting requirements.

Section 310 – Initial investigation

- Updated and clarified the purpose of an initial investigation.
- Adds requirement that, as part of initial investigation, Ecology make a preliminary determination as to whether the population threatened may be a vulnerable population or an overburdened community. That determination is used in the SHARP assessment (see Section 320(a)).
- Retains Ecology’s authority to extend initial investigations to enable review of completed independent remedial actions, including investigations, but limits such extensions to avoid delays in alerting the public of a release. Extensions are limited to cases where the remedial action is completed within 90 days of release discovery. Ecology may extend investigations no more than 90 days after receiving an action report or 180 days after learning of the release.
- Adds requirement that Ecology include in the early notice to owners and operators the site’s hazard rankings, a link to the site’s webpage (see Section 600(5), and instructions on how to sign up to receive electronic alerts when the site’s status changes (see Section 600(6)).
- Adds requirement that Ecology notify the public in *Contaminated Site Register* when Ecology initially adds a site to either the contaminated sites list or the no further action sites list based on an initial investigation. The notice must include instructions on how to sign up to receive electronic alerts when the site’s status changes (see Section 600(6)).

Section 320 – Site hazard assessment and ranking

- Clarifies the purpose of the site hazard assessment and ranking process (SHARP), including how Ecology will use the rankings, which result from the assessments. However, we declined to include disclaimers in the rule about what SHARP does not provide.
- Updates the requirement to identify in SHARP, based on readily available information, whether the population exposed may be a vulnerable population or an overburdened community to reflect HEAL Act terminology. The first assessment is done during the initial investigation.
- Removes the list of information that must be considered in SHARP, allowing this to be established in policy and procedure. To assure timely ranking and listing, emphasized that SHARP is based on information readily available at the time of assessment, and can be updated when site conditions change or when other new information becomes available.
- Adds requirement that Ecology provide notice and opportunity to comment on any substantive changes to the SHARP process. While we declined to require by rule a response to comments, Ecology is committed to responding to comments.
- Adds policy regarding conducting a SHARP assessment of sites already on the contaminated sites list as of the effective date of the new rule. Ecology will conduct such assessments as resources permit and in accordance with its strategic plan under Section 340.
- Declines to provide a right to petition for a site to be re-ranked. The rule specifies when Ecology must conduct a SHARP assessment during the cleanup process, and provides Ecology the

discretion to update assessments at other times when new information becomes available or when site conditions change.

- Changes how Ecology notifies regulated persons and the public of changes to a site's rankings. The current rankings will be publicly available on Ecology's website, and interested persons can request site-specific electronic alerts of changes to the site's rankings. Ecology will provide instructions on how to sign up for such alerts in our notices to regulated persons and the public when we add the site to Contaminated Sites List. See similar changes in Sections 330 and 335 about how we provide notice of changes in site listing and status.

Sections 330 and 335 – Contaminated Sites List and No Further Action Sites List

- Moves requirements governing the no further action sites list from Section 330 to new Section 335 to clearly communicate the different purposes and requirements for the two lists.
- Replaces requirement to include site hazard rankings on the contaminated sites list with a requirement to include the rankings on Ecology's website (on the site's webpage).
- Clarifies that the determination as to whether further remedial action is necessary at a site to address threats is based on the delisting criteria Section 330(5)(b). A site that does not meet the delisting criteria is a "contaminated site" and is included on the "contaminated sites list." Once a site meets the delisting criteria, the site is removed from the "contaminated sites list" and added to the "no further action sites list."
- Clarifies the delisting criteria in Section 330(5)(b). For solid waste landfills, updated the operation and maintenance (O&M) criteria to allow a site to be delisted even when active O&M of some specified systems is needed, provided that the landfill is permitted under either chapter [173-304](#), [173-350](#), or [173-351](#) WAC.
- Updates to recognize that PLIA may also determine whether further remedial action is necessary under state cleanup law based on reviews of independent remedial actions, either during an initial investigation or under their technical assistance programs (see RCW [70A.330.040](#)(7), (12)).
- Clarifies delisting petition requirements based on the type of claim. For delisting petitions based on independent remedial action, added requirement that the petitioner must include a written no further action (NFA) opinion from Ecology or PLIA, as applicable, under their relevant technical assistance programs.
- Eliminates Ecology's authority to recover its delisting costs when it determines the listing is erroneous.
- Moves requirements governing the no further action sites list to the new Section 335 to clearly communicate the different purposes and requirements for the two lists.
- Added requirement that Ecology will make the contaminated sites list publicly available on Ecology's web site. We will not publish a printed document.
- Adds requirement that Ecology will make the current list of remedial action status categories publicly available on Ecology's website. This is in place of listing them in the rule.

- Changes how Ecology provides notice of changes to a site’s listing or status. The current listing and status will be publicly available on Ecology’s website, and interested persons can request site-specific electronic alerts of changes to the site’s listing or status. Ecology will provide instructions on how to sign up for such alerts in our notices to regulated persons and the public when we add a site to Contaminated Sites List. See similar change in Section 320 about how we provide notice of changes in site rankings.

Section 340 – Program planning and assessment

Refocuses section on Ecology’s strategic planning and performance assessment for cleaning up contaminated sites, which will inform Ecology’s budget requests and biennial legislative planning and expenditure reports.

- Requires Ecology to prepare and periodically update a comprehensive and integrated strategic plan for cleaning up sites, including goals and strategies for all core cleanup program functions and major initiatives.
- Requires the strategic plan to prioritize vulnerable populations and overburdened communities impacted by contaminated sites.
- Requires Ecology to consider the following when allocating staff resources and capital funds:
 - The threats posed by a contaminated site to human health and the environment;
 - Whether the population threatened by a contaminated site is a vulnerable population or an overburdened community;
 - The land reuse potential and planning for a contaminated site; and
 - Other factors specified by the legislature or Ecology.
- Requires Ecology to develop performance metrics and periodically assess its progress, in accomplishing its goals and implementing its strategies for cleaning up contaminated sites, including its progress in cleaning up sites impacting vulnerable populations and overburdened communities.
- Requires Ecology to make the strategic plan and performance assessments publicly available on Ecology’s website, and to provide notice on any update in the *Contaminated Site Register*.
- Removes reference to statutorily mandated biennial legislative reports. See RCW 70A.305.030(4) and (5). Ecology will continue to provide notice of such reports in the *Contaminated Site Register*. See Section 600(7).

Sections 350 and 351 – Remedial investigation and feasibility study

- Further clarifies and reorganizes remedial investigation (RI) and feasibility study (FS) requirements by creating a new section for the FS, and by creating stepwise procedures and separating work planning and reporting requirements for the RI, as previously done for the FS.

- Further clarifies that performing an RI and an FS is a substantive requirement, applicable to all sites, irrespective of whether remedial action is Ecology-conducted, Ecology-supervised, or independent.
- Further clarifies administrative requirements, including reporting and public notification or participation.
- Adds a requirement that independent RIs must be reported to Ecology within 90 days of completion, and that Ecology must make these reports publicly available.
- Updates definition of “conceptual site model” in Section 200, and replaced duplicative statements about conceptual site models in Section 350 with references to definition.
- Requires an RI work plan to also include the following:
 - A target concentration for each hazardous substance in each contaminated environmental medium (to enable selection of an analytical method).
 - A cultural resource inadvertent discovery plan, consistent with new Section 815.
 - Any studies needed to develop or evaluate cleanup action alternatives in the FS.
- Emphasizes that remedial investigations of land and resource and affected human populations must include consideration of vulnerable populations and overburdened communities.
- Eliminates requirements for cumulative impact analysis of existing burdens on vulnerable populations or overburdened communities for the specific purpose of remedy selection at a given contaminated site. (Cumulative impact analyses may still be relevant for purposes of program planning and prioritization for cleanup, funding, or enforcement.)
- Emphasizes that the number and type of alternatives considered in the FS should account for threats posed by the site, including threats to vulnerable populations and overburdened communities.
- Clarifies that addition RI may be necessary to complete a FS, including in particular a terrestrial ecological evaluation.
- Retains requirement to document in FS report how impacts on vulnerable populations and overburdened communities were considered in the evaluation. Updated language to reflect terminology in the HEAL Act, chapter 70A.02 RCW.

Section 355 – Development of cleanup action alternatives that include remediation levels

- Reorganizes, simplifies and clarifies various provisions and examples related to the development of cleanup action alternatives that include remediation levels, with no intended substantive changes.

Section 357 – Quantitative risk assessment of cleanup action alternatives

- Reorganizes and clarifies provisions related to the use of quantitative risk assessments of cleanup action alternatives, with no intended substantive changes.

- Emphasizes that cleanup action alternatives must protect vulnerable populations and overburdened communities.

Section 360 – Cleanup action requirements

Requirements

- Further clarifies that the cleanup action requirements in Section 360 apply to all sites, irrespective of whether remedial action is Ecology-conducted, Ecology-supervised, or independent.
- Retains the overall reorganization proposed in Preliminary Draft 1, but makes the following additional adjustments:
 - Moves requirements related to reliance on institutional controls and reliance on dilution or dispersion from the action-specific requirements in Section 360(3)(b) to the general requirements in Section 360(3)(a).
 - Moves consideration of public concerns from the general requirements in Section 360(3)(a) to a separate subsection in Section 360(3)(d).
 - Separates consideration of tribal rights and interests from consideration of public concerns. Both must be considered when selecting a cleanup action.
- Replaces the separate equitability requirement included in Preliminary Draft 1 in Section 360(3)(d) with the following:
 - A general requirement that cleanup actions must protect vulnerable populations and overburdened communities (see Section 360(3)(a)(i)).
 - A specific requirement that potential risks to vulnerable populations and overburdened communities must be considered when determining whether a restoration time frame is reasonable (see Sections 360(3)(a)(ix) and (4)(c)(i)).
 - A specific requirement that impacts to vulnerable populations and overburdened communities must be considered when determining whether a cleanup action is permanent to the maximum extent practicable (see Sections 360(3)(a)(x) and (5)(d)(i), (iii), and (iv)).

Restoration time frame

- Clarifies the applicability of the restoration time frame analysis. The applicability is the same as for the larger feasibility study. The evaluation is not required if a model remedy is selected as the cleanup action.
- Clarifies the applicability of the restoration time frame analysis requirements in this section to sediment. The requirements apply to environmental media other than sediment. The requirements applicable to sediment are specified in WAC [173-204-570\(5\)](#).

- Emphasizes that the analysis must consider the risks posed by the site to the health and environment of vulnerable populations and overburdened communities.
- For Ecology-conducted or Ecology-supervised remedial actions, adds requirement that public concerns and tribal rights and interests must be considered as part of the analysis.

Permanent to the maximum extent practicable

- Clarifies the applicability of the disproportionate cost analysis (DCA). The applicability is the same as for the larger feasibility study. The evaluation is not required if a model remedy is selected as the cleanup action.
- Retains the step-wise DCA procedure proposed in Preliminary Draft 1.
- In Step 1, clarifies that Ecology has the discretion to both weight the benefit and cost criteria and favor or disfavor qualitative benefit and cost estimates in the analysis based on best professional judgment.
- In Step 1, replaces the separate public concerns DCA benefits criterion with a general requirement that Ecology must consider both public concerns and tribal rights and interests when determining or weighting each of the remaining DCA benefits criteria (protectiveness, permanence, long-term effectiveness, management of implementation risks, and technical and administrative implementability).
- In Step 1, when estimating “permanence,” retains “mass,” removes “volume,” and adds “exposure” as factors that must be considered.
- In Step 1, when estimating “technical and administrative implementability,” clarifies that one should consider the relative technical difficulty of implementing an alternative, not just whether the alternative is technically possible.
- In Step 1, when estimating “costs,” retains the option to discount future nominal (inflation-adjusted) costs using an appropriate construction cost index with a discount rate equal to the current US Treasury nominal interest rate for bonds of maturity most comparable to the period of analysis.
- In Step 3, changes the test for selecting the initial baseline when the feasibility study includes more than one permanent alternative from “most practicable” to “most cost-effective” (lowest cost per degree of benefit).
- In Step 4, changes the test from whether incremental costs “substantially exceed” incremental degree of benefits to whether incremental costs “are disproportionate to” incremental degree of benefits. We intend to retain Ecology’s discretion to choose the more permanent alternative if it is uncertain whether the estimated incremental costs of the more permanent alternative exceed its estimated incremental benefits.

Section 370 – Cleanup action expectations

- Removes the equitability expectation proposed in Preliminary Draft 1, consistent with removal of the equitability requirement in Section 360.
- Removes the climate resilience expectation proposed in Preliminary Draft 1, as duplicative requirement in Section 360(3)(a)(v).

Section 380 – Cleanup action plan

- Clarifies that the cleanup action plan (CAP) requirements in Section 380 apply to all sites (irrespective of whether remedial action is Ecology-conducted, Ecology-supervised, or independent), although reporting requirements differ.
- Clarifies that for sites where there is a release or threatened release to sediment, the CAP must also comply with the requirements in WAC [173-204-575](#).
- Adds provision to clarify timing for selecting a cleanup action and developing a CAP, consistent with provisions in Sections 350 and 351 for the remedial investigation and feasibility study.
- Consolidates and clarifies differences in administrative requirements for CAPs, including reporting and public participation, consistent with provisions in Sections 350 and 351 for the remedial investigation and feasibility study.
 - For Ecology-conducted and Ecology-supervised remedial actions:
 - Emphasizes that Ecology selects the cleanup action.
 - Modifies how Ecology will notify the public if it subsequently determines the cleanup action cannot achieve cleanup standards.
 - For independent remedial actions, clarifies that independent remedial actions must be reported in accordance with Section 515. Note that persons conducting such actions:
 - Are not required to submit a separate CAP to Ecology for review and approval before conducting a cleanup action, although they may request Ecology's review and written opinion on a CAP through the voluntary cleanup program under Section 515(5).
 - Are required to submit an independent cleanup action report to Ecology within 90 days of completing a cleanup action. The report must include sufficient information to serve the purposes of all remedial action plans and reports required under the rule. See Sections 515(3) and (4).
- Adds the following to the content of a CAP:
 - Identify any model remedy selected as part of the cleanup action, and the basis for its selection, consistent with the requirement in Section 390(4).
 - Summarize how public concerns and tribal interests were considered when selecting the cleanup action, consistent with the requirement in Section 360(3)(d).

- Document any changes to the default assumptions or reasonable maximum exposure scenarios used to establish cleanup standards or to demonstrate the protectiveness of the cleanup action.

Section 390 – Model remedies

- Updates to reflect legislative changes to MTCA in SB [5296](#) in 2013. See RCW [70A.305.030\(1\)\(j\)](#).

Section 450 – Releases from regulated UST systems

- Clarifies that this section applies to confirmed releases of regulated substances from an UST system, and that all regulated substances (as defined in the UST rule) are hazardous substances (as defined in the MTCA cleanup rule).
- Emphasizes that further remedial action may be necessary to investigate or clean up a release from an UST system after completing the interim actions specified in this section.
- Regarding initial site characterization:
 - Consistent with the UST rule, clarifies that the sampling and analysis plan must be based on the substances currently or previously stored in the UST system.
 - Emphasizes that the vapor intrusion pathway must be considered when developing the sampling and analysis plan, and for sites at which no potential vapor intrusion pathways have been identified, requires the investigation report to include a demonstration that there are no potential vapor intrusion pathways.
- Regarding when groundwater must be investigated:
 - Eliminates examples of observations that might instigate a groundwater investigation.
 - Does not add further guidance in rule as to what constitutes a sufficient demonstration that a release does not pose a threat to groundwater.
- Regarding free product recovery:
 - Changes deadline to initiate free product recovery to “as soon as possible but no later than 30 days” from “as soon as possible but no later than 60 days.” This is the same deadline as for completing the initial site characterization.
 - Allows Ecology to modify the frequency of free product monitoring reports on a site-specific basis. While more frequent reporting is needed early in the process, less frequent reporting may be appropriate later in the process as the volume recovered decreases over time.
- Regarding periodic updates of remedial actions conducted after the interim actions required in this section are complete:
 - Changes the frequency of periodic updates from 5 years to 3 years to reflect the UST inspection cycle.

- Allows Ecology to require more frequent reporting on a site-specific basis.
- For all sites, including those regulated under Section 450, we also expanded the independent remedial action reporting requirement to include investigations, not just interim actions and cleanup actions. See Section 350(4)(b).

Section 510 – Administrative options for remedial action

- Updates and reorganizes to provide a more complete overview of administrative options for remedial action. Also integrates the overview included in Section 120(8) of the current rule.

Section 600 – Public notification and participation

Section 600(2) – “Public notice”

- Replaces statutory definition of term “public notice” in Section 200 with a reference to the requirements governing public notice in Section 600(2). The regulatory requirements meet or exceed the statutory requirements.
- Adds posting proposed actions on Ecology’s website under Section 600(5) as a required method of public notice.
- Adds site-specific electronic alerts of a proposed action under Section 600(6) as a required method of public notice.
- Clarifies that notice of a proposed action in the Contaminated Site Register under Section 600(7) is a required method of public notice.
- Limits the applicability of newspaper publication as a required method of public notice to instances where such notice is required by the MTCA statute or by Ecology. Publication in the newspaper of largest circulation is no longer always the best or more cost-effective method.

Sections 600(5) through (7) – Notification methods

- Adds posting site-specific information on Ecology’s website as a required method of providing notice about each site. The website must include at least the site information specified in the rule. This includes proposed actions requiring “public notice.” See Section 600(5).
- Adds providing site-specific electronic alerts to interested persons, if requested, as a required method of providing notice about each site. Ecology will provide such alerts when the information required on Ecology’s website under Section 600(5) is added or changed. This includes proposed actions requiring “public notice.” See Section 600(6).
- Makes several changes to the *Site Register*, including:
 - Changing the name to the *Contaminated Site Register*, making its name more meaningful to the general public.
 - Adding flexibility in how Ecology may publish the *Register*, which would allow Ecology to convert the *Register* into an online database that is updated continuously.

- Adding to the *Register* notices of the following:
 - Any rulemaking notice requiring publication in the Washington State Register under chapter 34.05 RCW related to remedial action.
 - Any proposed substantive change to the site hazard assessment and ranking process (SHARP) developed under Section 320.
 - Any update to Ecology’s strategic plans or performance assessments required under Section 340(1) and (3).
 - Any additional resource allocation factors specified by Ecology under Section 340(2)(d).
 - Any proposed model remedy developed under Section 390(2).
 - Any change to the list of Ecology-approved sampling and analysis methods maintained under Section 830(4)(a).
 - Any initial listing of a site, based on an initial investigation, on either the contaminated sites list or the no further action sites list.
 - For Ecology-conducted or Ecology-supervised remedial actions, any Ecology determination that the selected cleanup action cannot achieve established cleanup standards.
- Removing from the *Register* notices of the following:
 - Any changes in the listing, ranking, or status of a site.
 - Any schedules for Ecology-designated “high priority sites,” consistent with the elimination of the approach in Section 140.
 - Any notices related to independent remedial actions (IRAs), including IRA reports received by Ecology, written opinions on IRAs issued by Ecology, delisting of IRA sites, periodic reviews by Ecology of IRAs, and any amendment or removal of institutional controls for IRAs. See alternative methods in Section 600(20).

Sections 600(8) through (19) – Participation requirements for Ecology-conducted and Ecology-supervised remedial actions

- Clarifies that participation requirements in Sections 600(8) through (19) apply only to Ecology-conducted or supervised remedial actions.
- Restructures and clarifies participation requirements for orders and decrees in Sections 600(10) through (12) and for each step of the cleanup process in Sections 600(13) through (19).
- Consolidates participation requirements for site delisting, periodic reviews, and institutional control amendment or removal in Sections 600(17) through (19).

- Eliminates any requirements related to Ecology-designated “high priority sites,” consistent with the elimination of the approach in Section 140.
- For public participation plans, expands applicability to include all Ecology-conducted or supervised remedial actions, adds equitable participation as a goal, and emphasizes need to address participation of vulnerable populations, overburdened communities, and non-federally recognized tribes. See Section 600(9)(a) and (b).
- For remedial investigation/feasibility study (RI/FS) reports, adds requirement that Ecology must consider the factors in Section 600(3) when deciding whether to consolidate public notice of a RI/FS report and a draft cleanup action plan. See Section 600(13)(b).
- For draft cleanup action plans, adds requirement that notice identify any model remedy. See Section 600(14)(a).
- For final cleanup action plans, adds requirement that, in addition to providing notice in the *Register*, Ecology must also provide notice on its website and, if requested, through a site-specific electronic alert. See Section 600(14)(b).
- For cleanup action implementation, eliminates requirement that Ecology provide opportunity to comment on a remedy failure determination since Ecology is already required to provide such an opportunity when proposing any substantial change to the cleanup action plan. See Section 600(15)(c).

Section 600(20) – Notification requirements for independent remedial actions

- Provides consolidated list of notification requirements for independent remedial actions for ease of reference.
- Requires Ecology to notify the public of specific information about independent remedial actions on Ecology’s website and, if requested, through site-specific electronic alerts. Except for the initial listing of a site and as specified in Section 600(20)(b), this notice replaces Ecology’s notice in the *Contaminated Site Register*.
- Emphasizes Ecology’s existing discretion to provide, on a site-specific basis, public notice (which includes opportunity to comment) for independent remedial actions.

Section 600(22) – Other requirements

- Updates and corrects the list of references to other public notification or participation requirements in the rule.

Citizen technical advisor

- Eliminates reference to a citizen technical advisor to reflect the fact that this pilot concept, added to the rule in 2001, was never implemented. Eliminating the reference in the rule does not eliminate Ecology’s authority to establish such a position in the future.

Section 610 – Regional citizens’ advisory committees

- Eliminates section, which governed use of regional citizens’ advisory committees. They were eliminated by the Legislature in 2001 (see [Laws of 2001, Chapter 291](#) and [SB 5401](#)).

Section 620 – Tribal engagement (new)

- Establishes requirements for tribal engagement that are separate from the public participation requirements of Section 600.
- Limits these requirements to Ecology-conducted or Ecology-supervised remedial actions.
- Requires Ecology to develop a tribal engagement plan for each site that identifies affected Indian tribes and opportunities for engagement about the site cleanup.

Section 815 – Cultural resource protection (new)

- Establishes requirements for cultural resource protection. The requirements are intended to be consistent with state Executive Order [21-02](#), which seeks to avoid, minimize or mitigate adverse effects from remedial actions on archeological and historic archeological sites, historic buildings and structures, traditional cultural places and other cultural resources. The section:
 - Identifies federal and state laws applicable to cultural resource protection.
 - Adds cultural resource consultation and inadvertent discovery planning for remedial actions that Ecology either conducts, requires, or funds.

Section 830 – Sampling and analysis procedures

- Replaces list of Ecology-approved methods in the rule with requirement to maintain and make available to the public a list of Ecology-approved methods. Ecology may add or remove methods from the list without changing the rule. Ecology must maintain a record of any such decision, and notify the public of any such decision in the *Contaminated Site Register*. As under the current rule, when Ecology has not identified an approved method, a standard method (such as those specified by ASTM) may be used, if available.
- Clarifies that for sites where there is a release or threatened release to sediments, sampling and analysis activities must also comply with requirements in the Sediment Management Standards, Chapter [173-204](#) WAC.

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Questions for Discussion

Q1. Balancing the functions of Initial Investigations

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

References:

- Section 300(2), regarding timing of release report.
- Section 310(5), regarding timing of initial investigation.
- Section 310(6), regarding notice of Ecology’s determination.

Background. Preliminary Draft 2 makes the following changes based on STAG input:

- **To avoid delays in alerting Ecology of a release,** eliminates release reporting extensions when persons undertake independent remedial actions upon release discovery. All releases must be reported to Ecology within 90 days of discovery.
- **To avoid delays in alerting the public of a release,** limits Ecology’s authority to extend initial investigations to enable review of completed independent remedial actions. Extensions are limited to cases where the remedial action is completed within 90 days of release discovery. Ecology may extend investigations no more than 90 days after receiving an action report or 180 days after learning of the release.

These proposed changes reflect Ecology’s attempt to better balance two important roles of initial investigations:

- First, they capture primary information about sites, for use in SHARP evaluations and listing decisions. In turn, rankings and listing decisions inform the public about releases, and support program planning and prioritization of resource expenditures.
- Second, initial investigations can promote quick independent cleanups of minor or uncomplicated releases (usually permanent cleanups of releases impacting only soils). Historically, initial investigations and site hazard assessments have accounted for about half of all no further action determinations for independent cleanups.

Q2. Developing site hazard assessment and ranking policies and procedures

Question: 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?

References: Section 320.

Background: In Preliminary Draft 1, Ecology proposes replacing the current Washington Ranking Method (WARM) process specified in the rule (without change since 1992) with a general requirement that Ecology establish, implement, and maintain a new site hazard assessment and ranking process (SHARP) outside the rule, but subject to performance standards and public comment opportunities specified in the rule.

In Preliminary Draft 2, Ecology retains the overall approach in Preliminary Draft 1. Ecology proposes replacing the current Washington Ranking Method (WARM) specified in the rule (without change since 1992) with a general requirement that Ecology establish, implement, and maintain a new site hazard assessment and ranking process (SHARP) outside the rule. The development and amendment of the SHARP Tool is subject to performance standards and public comment opportunities specified in the rule. Ecology expects to make a final version of the SHARP Tool available for public comment during the proposal phase of this rulemaking, and to provide a written summary of how we responded to the comments received.

Q3. Program planning and assessment

Question: 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?

References: Section 340.

Background: The current rule requires Ecology to submit a biennial program plan the legislature, as required under the original MTCA initiative. That requirement has since been superseded by subsequent statutory changes.

In Preliminary Draft 1, Ecology proposed updating the planning requirements needed to reflect statutory changes to (a) the biennial financial planning and expenditure legislative reports, and (b) the factors to be considered when allocating MTCA capital funds.

Based on STAG input and consultations with TCP leadership, Preliminary Draft 2 refocuses Section 340 by committing Ecology to develop and periodically update a comprehensive and integrated strategic plan for cleaning up contaminated sites and to periodically assess its performance. The strategic planning and performance assessments will inform Ecology's biennial financial planning and expenditure reports and budget requests.

Preliminary Draft 2 also requires Ecology to make the strategic plan and performance assessments publicly available on Ecology's website, and provide notice of any update in the *Contaminated Site Register*. We plan to develop online dashboard to communicate this information to the public.

Q4. Environmental Justice in program planning

Question: 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?

References:

- Sections 310(1)(c) and 320(2)(a)(iii), regarding assessing whether vulnerably populations or overburdened communities are likely threatened by a release

- Section 340(1)(c), regarding prioritizing vulnerable populations and overburdened communities impacted by contaminated sites
- Section 340(2)(b), regarding consideration of such impacts when allocating resources
- Sections 340(1)(b) and (3), regarding assessing progress in cleaning up sites impacting vulnerable populations and overburdened communities.

Background: In Preliminary Draft 2, we strengthened our Environmental Justice commitments at the program planning level by requiring Ecology to:

- Initially assess during the initial investigation whether vulnerable populations or overburdened communities are likely threatened by a release, which will enable strategic planning.
- Develop and periodically update a comprehensive and integrated strategic plan for cleaning up contaminated sites that prioritizes vulnerable populations and overburdened communities impacted by such sites.
- Consider whether the populations threatened by a site are vulnerable populations or overburdened communities when allocating capital funds and staff resources. This includes consideration of cumulative environmental health impacts.
- Periodically assess its progress in accomplishing goals and implementing strategies for cleaning up contaminated sites, including progress in cleaning up sites impacting vulnerable populations and overburdened communities.

By adhering to these commitments, we expect to reduce environmental and health disparities in Washington state.

Q5. Environmental Justice in site remedy selection

Question: 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?

References:

- Section 200, regarding definitions of “vulnerable populations,” “overburdened communities,” and “reasonable maximum exposure”
- Sections 350(6)(g) and (h), regarding investigating threats
- Section 351(6)(b)(i), regarding developing cleanup action alternatives
- Section 351(6)(f)(vii), regarding documenting feasibility studies
- Section 360(3)(a)(i) (4)(c)(i), and (5)(d)(i), (iii), and (iv), regarding cleanup action requirements

Background: In Preliminary Draft 2, we emphasized accountability and transparency in site level decisions by specifically requiring the following:

- Investigations of how vulnerable populations and overburdened communities are threatened by a site based on their land and resource uses.
- Consideration of such threats when developing cleanup action alternatives.
- Studies of whether cleanup action alternatives:
 - Protect vulnerable populations and overburdened communities.
 - Provide a reasonable restoration time frame, in consideration of the threats posed to vulnerable populations and overburdened communities.
 - Are permanent to the maximum extent practicable, in consideration of the threats posed to vulnerable populations and overburdened communities from both the site and the cleanup.
- Documentation of evaluations in feasibility study reports.
- For Ecology-conducted and Ecology-supervised remedial actions, facilitate participation by vulnerable populations and overburdened communities and seek engagement of Indian tribes.

By adhering to these requirements, we expect that cleanup actions will result in more equitable outcomes for vulnerable populations and overburdened communities. For this reason, we removed the separate site-level equitability requirement for cleanup actions proposed in Preliminary Draft 1.

Q6. Tribal engagement

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

References:

- Section 200, regarding definitions of “Indian tribes” and “tribal lands”
- Sections 620, and conforming changes in Section 130(6), regarding tribal engagement
- Sections 360(3)(d), (4)(c)(xi), and (5)(c)(i), regarding consideration of tribal rights and interests
- Section 380(4)(c), regarding documenting consideration in cleanup action plan

Background: For Ecology-conducted and Ecology-supervised remedial actions, Preliminary Draft 2 proposes separate requirements for tribal engagement in a new Section 620. This engagement is intended to be in addition to, and independent of, public participation processes under Section 600 or other laws. Ecology will seek to engage Indian tribes by providing timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site. In particular, Ecology must:

- Develop a tribal engagement plan for each site.
- Consider tribal rights and interests when selecting a cleanup action, including when analyzing whether the restoration time frame is reasonable and whether the cleanup action is permanent to the maximum extent practicable.

- Document in the cleanup action plan how tribal rights and interests were considered when selecting the cleanup action.

Q7. Public concerns and tribal rights and interests in remedy selection

Question: 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?

References: Sections 360(3)(d), (4)(c)(xi), and (5)(c)(i) and Section 380(4)(c).

Background: In Preliminary Draft 2, Ecology revised and clarified how public concerns and tribal rights and interests are considered and documented when selecting a cleanup action by:

- Moving the requirement to consider public concerns from the general requirements in Section 360(3)(a) to a separate provision in Section 360(3)(d).
- Separating consideration of tribal rights and interests from consideration of public concerns. Both must be considered when selecting a cleanup action.
- Clarifying that the requirement applies only to Ecology-conducted or Ecology-supervised remedial actions.
- Specifying that public concerns and tribal rights and interests must be considered when analyzing whether a restoration time frame is reasonable.
- Changing how public concerns and tribal rights and interests are considered when analyzing whether a cleanup action is permanent to the maximum extent practicable. We replaced the separate public concerns criterion with a requirement to consider public concerns and tribal rights and interests when both determining and weighting each of the criteria. This change eliminates an unintended competition between public concerns and the other criteria.
- Specifying that the cleanup action plan must summarize how public concerns and tribal rights and interests were considered when selecting the cleanup action.

Q8. Public notification and participation for independent remedial actions

Questions: 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?

Again, these proposals are limited to sites where independent remedial actions are performed.

References: Section 600(20) and (7), regarding requirements for independent remedial actions. See also conforming changes in:

- Sections 330(7) and 600(17), regarding removing sites from contaminated sites list
- Sections 420(5) and 600(18), regarding periodic reviews
- Sections 440(12) and 600(19), regarding institutional controls
- Sections 515(4) and (5), regarding notices of reports and opinions

Background: In Preliminary Draft 2, Ecology updated and consolidated the requirements for independent remedial actions. Updates include:

- Replacing notices on the *Contaminated Site Register* with notices on Ecology’s website and, if requested, through site-specific electronic alerts to interested persons. This includes:
 - The site’s listing and remedial action status identified under Section 330.
 - The site’s current hazard rankings identified under Section 320.
 - Any initial investigation report prepared under Section 310.
 - Any independent remedial investigation, interim action, or cleanup action report required under Section 515(4) and received by Ecology.
 - The results of any Ecology review of an independent remedial action, including any written opinion issued by Ecology under Section 515(5).
 - Any periodic review of a site under Section 420.
 - Any document implementing, amending, or removing an institutional control under Section 440.
- Eliminating opportunity for public to comment on periodic reviews and removal of institutional controls, consistent with proposal in Preliminary Draft 1 to eliminate such opportunities when delisting sites. Again, this proposal is limited to sites where independent remedial actions are performed. Such actions are not subject to public comment during the cleanup process, even under the current rule.

Q9. Updating public notification methods

Question: Do you support Ecology’s proposed changes in Section 600 to how notice is provided and information is communicated to the public?

References: Sections 600(2) and (5) through (7) in Preliminary Draft 2.

Background: We updated the notification methods specified in the rule to reflect changes in technology and practice, and to enable us to provide more information sooner to the public in a way that is more efficient. Updates include:

- Adding additional notification methods, including:
 - Posting specified site-specific information on Ecology’s website.

- Providing site-specific electronic alerts to interested persons, if requested, whenever the information required on Ecology’s website is added or changed.
- Updating the use of the existing *Site Register*, including changing its name, allowing alternate methods of publication, and changing what notices must be included.
- For Ecology-conducted and Ecology-supervised remedial actions, updating the definition of “public notice” to include additional notification methods (website, electronic alerts, and *Site Register*) and limit the required use of newspaper publication. See Section 600(2).

Q10. Sampling and analysis methods

Question: 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?

References: Section 830 in Preliminary Draft 2.

Background: In Preliminary Draft 2, Ecology proposes replacing the list of Ecology-approved sampling and analytical methods with a more flexible requirement for Ecology to maintain and make publicly available a list of Ecology-approved methods outside of the rule. Under the proposal, Ecology would be allowed to add or remove methods from the list without changing the rule. Ecology would be required to maintain a record of any such decision and notify the public of any such decision in the *Contaminated Site Register*. This more flexible approach is consistent with the approach in the Sediment Management Standards, which allows for Ecology approval of alternate methods outside of the rule (see WAC [173-204-130\(4\)](#)).

Q11. Nominate your own question for STAG discussion

Question: From your own perspective and based on your review of Preliminary Draft 2, is there a question or issue that you would like the STAG to discuss as a group during one of the scheduled discussion meetings in September or October?

Background: If you identify a topic, please let Ecology know by September 26, 2022, the date of the first STAG discussion meeting. Ecology will do its best to identify one or more salient topics for discussion as time allows during the remaining STAG discussion meetings.

Quick References

Reference	Web Page
Rulemaking webpage	http://www.ecy.wa.gov/programs/tcp/regs/wac173360/1602inv.html
STAG webpage	https://www.ezview.wa.gov/site/alias_1988/37514/overview.aspx
Chapter 70A.305 RCW, Model Toxics Control Act	https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305
Chapter 173-340 WAC, MTCA cleanup regulations	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340
Chapter 173-204 WAC, Sediment management standards	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204
Chapter 173-322A WAC, Remedial action grant & loans	https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A
Cleanup program webpage	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup
Cleanup process webpage	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process
Cleanup policies & guidance webpage	https://ecology.wa.gov/Regulations-Permits/Plans-policies/Toxics-cleanup-policies
Contaminated sites webpage (including <i>Site Register</i>)	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites
Contaminated site lists webpage	https://apps.ecology.wa.gov/cleanupsearch/
Chapter 70A.02 RCW, Environmental justice (HEAL act)	https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02
Chapter 43.376 RCW, Government- to-government relationship with Indian tribes	https://app.leg.wa.gov/rcw/default.aspx?cite=43.376
Ecology's Environmental Justice webpage	https://ecology.wa.gov/About-us/Who-we-are/Environmental-Justice/HEAL
Pollution Liability Insurance Agency	https://plia.wa.gov/
Chapter 70A.330 RCW	https://app.leg.wa.gov/RCW/default.aspx?cite=70A.330
Chapter 374-45 WAC, Reporting & initial investigations	https://app.leg.wa.gov/WAC/default.aspx?cite=374-45
Chapter 374-80 WAC, Advice & technical assistance	https://app.leg.wa.gov/WAC/default.aspx?cite=374-80