



DEPARTMENT OF
ECOLOGY
State of Washington

**MTCA Cleanup Rulemaking
Chapter 173-340 WAC
Preliminary Draft 2**

*Environmental Justice &
Tribal Engagement Excerpts*

September 8, 2022

Purpose of this document:

This document includes **excerpts** from **Preliminary Draft 2** of proposed changes to Chapter 173-340 WAC, Model Toxics Control Act (MTC) Cleanup Regulations, 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.

This document is provided for review and consideration by the Stakeholder and Tribal Advisory Group (STAG). The document should be read in conjunction with a **separate briefing document** that provides an overview of rule changes and a list of questions that Ecology would like STAG members to consider when reviewing the rule draft to facilitate discussions and written comments.

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.

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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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Introduction

What is included in this document?

This document includes **excerpts** from **Preliminary Draft 2** of proposed changes to Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations, related to **environmental justice** and **tribal engagement**, including excerpts from:

- WAC 173-340-100 Purpose.
- WAC 173-340-130 Administrative principles.
- WAC 173-340-200 Definitions.
- WAC 173-340-310 Initial investigation.
- WAC 173-340-320 Site hazard assessment and ranking.
- WAC 173-340-340 Program planning and assessment.
- WAC 173-340-350 Remedial investigation.
- WAC 173-340-351 Feasibility study.
- WAC 173-340-357 Quantitative risk assessment of cleanup action alternatives.
- WAC 173-340-360 Requirements for cleanup actions.
- WAC 173-340-380 Cleanup action plan.
- WAC 173-340-600 Public notice and participation.
- WAC 173-340-620 Tribal engagement.
- WAC 173-340-815 Cultural resource protection.

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.

What do the highlights show?

Draft rule language highlighted **blue** is related to environmental justice (consideration of vulnerable populations and overburdened communities).

Draft rule language highlighted **green** is related to tribal engagement.

How can I navigate the document?

You can navigate the document using the Table of Contents in the document or using the Navigation Pane in Microsoft Word. To use the Navigation Pane, select the “View” menu and then click on “Navigation Pane” under “Show.” Under Navigation, click on “Headings.”

Excerpted Rule Provisions

WAC 173-340-100 Purpose.

This chapter is promulgated under chapter [70A.305](#) RCW, the Model Toxics Control Act. It establishes administrative processes and standards to identify, investigate, and clean up sites where hazardous substances have come to be located. It defines the role of Ecology and encourages public and tribal involvement in decision making at these sites.

The goal of this chapter is to implement chapter [70A.305](#) RCW, the Model Toxics Control Act. **This chapter provides a workable process to accomplish effective and expeditious cleanups in a manner that protects human health and the environment, including vulnerable populations and overburdened communities.** This chapter is primarily intended to address releases of hazardous substances caused by past activities although its provisions may be applied to potential and ongoing releases of hazardous substances from current activities.

Note: All materials incorporated by reference in this chapter are available for inspection at the Department of Ecology's Toxics Cleanup Program, 300 Desmond Drive, Lacey, Washington, 98503.

WAC 173-340-130 Administrative principles.

Ecology will conduct or require remedial actions, or provide technical assistance for independent remedial actions, consistent with the provisions of this section.

...

(5) Encouraging and facilitating public participation. For Ecology-conducted and Ecology-supervised remedial actions, Ecology seeks to encourage public participation and facilitate equitable participation in all steps of the cleanup process under WAC 173-340-600. Ecology will encourage a level of participation appropriate to the threats posed by a site and the level of the public's interest in the site. When assessing public participation needs at a site, Ecology will consider the interests of vulnerable populations, overburdened communities, and non-federally recognized tribes.

(6) Engaging and collaborating with Indian tribes.

(a) For Ecology-conducted and Ecology-supervised remedial actions, Ecology will seek to engage affected Indian tribes under WAC 173-340-620 by providing timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site.

(b) To facilitate collaboration, it is important that Indian tribes provide specific comments, including the identification of other applicable state and federal laws and any additional information or mitigating measures that are necessary or desirable to satisfy their concerns.

...

WAC 173-340-200 Definitions [excerpts]

“Overburdened community” means the term as defined in RCW [70A.02.010\(11\)](#).

“Vulnerable population” means the term as defined in RCW [70A.02.010\(14\)](#).

“Reasonable maximum exposure” means the highest exposure that can be reasonably expected to occur for a human or other living organisms at a site, [including a vulnerable population or an overburdened community](#), under current and potential future site use.

“Indian tribe” means the term as defined in RCW [43.376.010\(1\)](#).

“Tribal lands” means the term as defined in RCW [70A.02.010\(13\)](#).

WAC 173-340-310 Initial investigation.

- (1) **Purpose.** The purpose of an initial investigation is to determine:
- (a) Whether there has been a release or threatened release of a hazardous substance to the environment;
 - (b) Whether the release or threatened release may pose a threat to human health or the environment;
 - (c) Whether the population threatened may be a vulnerable population or an overburdened community;
 - (d) Whether further remedial action is necessary under state cleanup law to confirm whether there has been a release or threatened release that poses a threat to human health or the environment;
 - (e) Whether further remedial action is necessary under state cleanup law to address the threat to human health and the environment posed by the release or threatened release. This determination is based on the criteria in WAC 173-340-330(5)(b);
 - (f) Whether an emergency remedial action or an interim action is necessary under state cleanup law to address the threat, and whether persons in the potentially affected vicinity need to be notified of such action;
 - (g) Whether action under another state or federal law is appropriate; and
 - (h) The current owners and operators of the site.

...

WAC 173-340-320 Site hazard assessment and ranking.

- (1) Purpose.** The site hazard assessment and ranking process provides a method for Ecology to assess and rank threats to human health and the environment posed by a site based on information readily available at the time of assessment. The site hazard assessment and ranking process satisfies the requirements of RCW [70A.305.030\(2\)\(b\)](#), and is not a substitute for a remedial investigation. Ecology uses site hazard assessments and rankings to:

 - (a)** Support decisions to add or remove sites from the contaminated sites list under WAC 173-340-330 or the no further action sites list under WAC 173-340-335;
 - (b)** Prioritize remedial actions and allocate agency resources among and within sites under WAC 173-340-340;
 - (c)** Reflect changes in threats posed by a site based on new information or changes in site conditions; and
 - (d)** Inform the legislature and the public about the threats posed by contaminated sites.
- (2) Development.** Ecology will establish and maintain a site hazard assessment and ranking process.

 - (a) Standards.** A site hazard assessment and ranking process must enable Ecology to use readily available information to:

 - (i)** Assess and rank the potential exposure of human and environmental receptors to confirmed or suspected releases of hazardous substances through each environmental medium;
 - (ii)** Assess and rank the severity of such exposures to human health and the environment;
 - (iii)** Identify whether the population exposed may be a vulnerable population or an overburdened community; and
 - (iv)** Report the assessor’s level of confidence in the information used for the assessment.
 - (b) Public participation.** When establishing a site hazard assessment and ranking process or any substantive change to the process, Ecology will provide the public with notice and an opportunity to comment. The public comment period must be at least thirty days.

WAC 173-340-340 Program planning and assessment.

- (1) Strategic plan.** Ecology will develop and periodically update a comprehensive and integrated strategic plan for cleaning up contaminated sites. **The strategic plan must prioritize vulnerable populations and overburdened communities impacted by contaminated sites and consider the resource allocation factors in subsection (2) of this section.** The strategic plan must include:

 - (a)** Goals and strategies for all core program functions and major initiatives;
 - (b)** Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and
 - (c)** Staffing and capital funds needed to accomplish the goals and implement the strategies.
- (2) Resource allocation.** In fulfilling the objectives of this chapter, **Ecology will allocate staffing and capital funds based on the following factors:**

 - (a)** The threats posed by a contaminated site to human health and the environment;
 - (b)** **Whether the population threatened by a contaminated site is a vulnerable population or an overburdened community;**
 - (c)** The land reuse potential and planning for a contaminated site; and
 - (d)** Other factors specified by the legislature or Ecology.
- (3) Performance assessment.** **Ecology will 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,** using the metrics established under subsection (1)(b) of this section.
- (4) Notification.**

 - (a)** Ecology will make the strategic plans and performance assessments required under subsections (1) and (3) publicly available on Ecology’s website.
 - (b)** Ecology will provide notice in the *Contaminated Site Register* of the following:

 - (i)** Any update to the strategic plans or performance assessments required under subsections (1) and (3) of this section; and
 - (ii)** Any additional resource allocation factors specified by Ecology under subsection (2)(d) of this section.

WAC 173-340-350 Remedial investigation.

(1) **Purpose.** The purpose of a remedial investigation is to adequately characterize a contaminated site, including the distribution of hazardous substances and the threat they pose to human health and the environment, to enable:

- (a) Cleanup standards to be established under Part 7 of this chapter; and
- (b) Cleanup action alternatives to be developed and evaluated in a feasibility study under WAC 173-340-351.

...

(6) **Investigations.** A remedial investigation must collect and evaluate sufficient information about a site and the surrounding area to meet the purposes in subsection (1) of this section, including the following as applicable to the site.

...

(g) **Land and resource use.** Sufficient information must be collected on the present and proposed land and resource uses, comprehensive plan, and zoning for the site and potentially affected areas to determine the exposure or potential exposure of human and ecological receptors, including vulnerable populations and overburdened communities, to hazardous substances at the site.

(h) **Human receptors.** Sufficient information must be collected on human receptors, including vulnerable populations and overburdened communities, that are reasonably likely to be exposed or potentially exposed to hazardous substances based on the land and resource uses identified in (g) of this subsection to determine the impact or potential impact of such exposure.

...

WAC 173-340-351 Feasibility study.

(1) Purpose. The purpose of the feasibility study is to develop and evaluate cleanup action alternatives to enable the selection of a cleanup action that meets the requirements in WAC 173-340-360 and conforms, as appropriate, to the expectations in WAC 173-340-370.

...

(6) Steps. Except as otherwise directed by Ecology, a feasibility study of cleanup action alternatives must be conducted in accordance with the following steps. The study should remain flexible to avoid collecting unnecessary information or conducting unnecessary evaluations.

(a) Step 1: Identify cleanup goals. Identify the goals for the cleanup action, in addition to compliance with the requirements in WAC 173-340-360.

(b) Step 2: Identify alternatives. Identify cleanup action alternatives for evaluation in the study. The alternatives must achieve the goals identified in Step 1 and comply with the requirements in WAC 173-340-360. **Include:**

(i) A reasonable number and type of alternatives, taking into account:

(A) The characteristics and complexity of the site, including current site conditions and physical constraints; and

(B) The threats posed by the site to human health and the environment, including vulnerable populations and overburdened communities;

(ii) At least one permanent cleanup action alternative;

(iii) For each environmental medium, at least one alternative with a standard point of compliance (see Part 7 of this chapter);

(iv) As appropriate, alternatives with a conditional point of compliance for one or more environmental media (see Part 7 of this chapter); and

(v) As appropriate, alternatives relying on a combination of cleanup action components for an environmental medium (such as treatment of some soil contamination and containment of the remainder). The alternatives must specify remediation levels for each component (see WAC 173-340-355).

(c) Step 3: Screen alternatives and components. Based on a preliminary analysis, eliminate from further evaluation the following cleanup action alternatives or components identified in Step 2:

(i) Alternatives that clearly do not meet the requirements for a cleanup action in WAC 173-340-360, including alternatives for which costs are clearly disproportionate to benefits under WAC 173-340-360(5);

(ii) Alternatives or components that are not technically possible at the site.

- (d) **Step 4: Evaluate remaining alternatives.** Conduct a detailed evaluation of each remaining cleanup action alternative to determine whether it meets the requirements in WAC 173-340-360 and conforms to the expectations in WAC 173-340-370. If necessary, conduct additional remedial investigations under WAC 173-340-350 to complete the evaluation, including any investigations needed to complete a terrestrial ecological evaluation;
- (e) **Step 5: Select preferred alternative.** Based on the detailed evaluation in Step 4, select a preferred cleanup action alternative that meets the requirements in WAC 173-340-360 and conforms, as appropriate, to the expectations in WAC 173-340-370.
- (f) **Step 6: Report results.** Report the results of the feasibility study in accordance with subsection (4) of this section. **Include the following information in the report:**

...

- (vii) **Documentation of the detailed evaluation process in Step 4 of the feasibility study, including how impacts on vulnerable populations and overburdened communities were considered in the evaluation, and the basis for eliminating any alternative from further evaluation;**

...

WAC 173-340-357 Quantitative risk assessment of cleanup action alternatives.

- (1) **Purpose.** A cleanup action must protect human health and the environment, including vulnerable populations and overburdened communities (see WAC 173-340-360(3)(a)(i)). A quantitative site-specific risk assessment may be used to help determine whether cleanup action alternatives, including those relying on engineered or institutional controls to limit exposure to contamination remaining at a site, protect human health and the environment. Other methods may be used in addition to, or instead of, a quantitative site-specific risk assessment to determine whether a cleanup action alternative is protective.

...

WAC 173-340-360 Cleanup action requirements.

(1) Purpose. This section specifies requirements for cleanup actions and the procedures for determining whether a cleanup action alternative meets those requirements.

...

(3) Requirements. A cleanup action must meet all of the requirements in this subsection. When a cleanup action includes more than one cleanup action component, the overall cleanup action must meet the requirements. Ecology recognizes that some of the requirements contain flexibility and require the use of professional judgment in determining how to apply them at a particular site.

(a) General requirements. A cleanup action must:

(i) Protect human health and the environment, including vulnerable populations and overburdened communities;

(ii) Comply with cleanup standards (see Part 7 of this chapter);

(iii) Comply with applicable state and federal laws (see WAC 173-340-710);

(iv) Prevent or minimize present and future releases and migration of hazardous substances in the environment;

(v) Provide resilience to climate change impacts that have a high likelihood of occurring and severely compromising its long-term effectiveness;

(vi) Provide for compliance monitoring (see WAC 173-340-410 and Part 7 of this chapter);

(vii) Not rely primarily on institutional controls and monitoring at a site, or portion thereof, if it is technically possible to implement a more permanent cleanup action;

(viii) Not rely primarily on dilution and dispersion unless the incremental costs of any active remedial measures over the costs of dilution and dispersion grossly exceed the incremental degree of benefits of active remedial measures over the benefits of dilution and dispersion. Determine the benefits and costs using the criteria in subsection (5)(d) of this section;

(ix) Provide for a reasonable restoration time frame (see subsection (4) of this section); and

(x) Use permanent solutions to the maximum extent practicable (see subsection (5) of this section).

(b) Action-specific requirements. ...

(c) Media-specific requirements. ...

(d) Public concerns and tribal rights and interests. For Ecology-conducted or Ecology-supervised remedial actions, Ecology must consider the following when selecting a cleanup action:

(i) Public concerns identified under WAC 173-340-600(13) and (14); and

(ii) Indian tribes' rights and interests in their tribal lands identified under WAC 173-340-620.

(4) Determining whether a cleanup action provides for a reasonable restoration time frame.

(a) Purpose. The restoration time frame is the period of time needed for a cleanup action to achieve cleanup levels at the point of compliance (see WAC 173-340-200). This subsection specifies the requirements and procedures for determining whether a cleanup action alternative provides for a reasonable restoration time frame, as required under subsection (3)(a)(ix) of this section.

...

(c) Evaluation. To determine whether a cleanup action alternative provides for a reasonable restoration time frame, the following factors must be considered at a minimum:

(i) Potential risks posed by the site to human health and the environment, including vulnerable populations and overburdened communities;

(ii) Practicability of achieving a shorter restoration time frame. A restoration time frame is not reasonable if an active remedial measure with a shorter restoration time frame is practicable;

(iii) Long-term effectiveness of the alternative. A longer restoration time frame may be reasonable if the alternative has a greater degree of long-term effectiveness than one that primarily relies on on-site or off-site disposal, isolation, or containment;

(iv) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(v) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(vi) Availability of alternative water supplies;

(vii) Likely effectiveness and reliability of institutional controls;

(viii) Ability to control and monitor migration of hazardous substances from the site;

(ix) Toxicity of the hazardous substances at the site;

(x) Natural processes that reduce concentrations of hazardous substances and have been documented to occur at the site or under similar site conditions; and

(xi) For Ecology-conducted or Ecology-supervised remedial actions, public concerns identified under WAC 173-340-600(13) and (14) and Indian tribes' rights and interests in their tribal lands identified under WAC 173-340-620.

...

(5) **Determining whether a cleanup action uses permanent solutions to the maximum extent practicable.**

(a) **Purpose.** This subsection specifies the requirements and procedures for determining whether a cleanup action uses permanent solutions to the maximum extent practicable, as required under RCW [70A.305.030](#)(1) and subsection (3)(a)(x) of this section. A permanent cleanup action or permanent solution is defined in WAC 173-340-200.

...

(c) **Procedure.** To determine which cleanup action alternative included in the feasibility study uses permanent solutions to the maximum extent practicable, do the following:

(i) **Step 1:** Determine the benefits and costs of each cleanup action alternative using the criteria in (d) of this subsection.

(A) The estimation and comparison of benefits and costs may be quantitative, but will often be qualitative and require the use of best professional judgment.

(B) On a site-specific basis, Ecology may weight the criteria in (d) of this subsection and favor or disfavor qualitative benefit and cost estimates in the analysis.

(C) For Ecology-conducted or Ecology-supervised remedial actions, when determining or weighting the benefits in (d) of this subsection, Ecology must consider:

(i) Public concerns identified under WAC 173-340-600(13) and (14); and

(ii) Indian tribes' rights and interests in their tribal lands identified under WAC 173-340-620.

...

(d) **Criteria.** When conducting a disproportionate cost analysis under this subsection, use the following criteria to evaluate and compare the costs and benefits of each cleanup action alternative:

(i) **Protectiveness.** The degree to which the alternative protects human health and the environment, including vulnerable populations and overburdened communities. When assessing protectiveness, consider at least the following:

(A) The degree to which the alternative reduces existing risks;

- (B) The time required for the alternative to reduce risks at the site and attain cleanup standards;
 - (C) The on-site and offsite risks remaining after implementing the alternative; and
 - (D) Improvement of the overall environmental quality;
- (ii) **Permanence.** The degree to which the alternative permanently reduces the toxicity, mobility, or mass of, or exposure to, hazardous substances, including:
- (A) The adequacy of the alternative in destroying the hazardous substances;
 - (B) The reduction or elimination of hazardous substance releases and sources of releases;
 - (C) The degree of irreversibility of waste treatment process; and
 - (D) The characteristics and quantity of treatment residuals generated;
- (iii) **Effectiveness over the long term.** The degree to which the alternative is likely to be effective over the long term, including for vulnerable populations and overburdened communities.
- (A) **Factors.** When assessing the long-term effectiveness of the alternative, consider at least the following:
- (I) The degree of certainty that the alternative will be successful;
 - (II) The reliability of the alternative during the period of time hazardous substances are expected to remain on-site at concentrations that exceed cleanup levels;
 - (III) The resilience of the alternative to climate change impacts;
 - (IV) The magnitude of residual risk with the alternative in place; and
 - (V) The effectiveness of controls required to manage treatment residues or remaining wastes.
- (B) **Hierarchy.** Except as provided for sediment sites and cleanup units in WAC [173-204-570](#)(4), when assessing the relative degree of long-term effectiveness of cleanup action components, the following types of components may be used as a guide, in descending order:
- (I) Reuse or recycling;
 - (II) Destruction or detoxification;
 - (III) Immobilization or solidification;
 - (IV) On-site or offsite disposal in an engineered, lined and monitored facility;

- (V) On-site isolation or containment with attendant engineering controls; and
- (VI) Institutional controls and monitoring;
- (iv) **Management of implementation risks.** The risks to human health and the environment, including vulnerable populations and overburdened communities, associated with the alternative during construction and implementation, and the effectiveness of the alternative to manage such risks;
- (v) **Technical and administrative implementability.** The ability to implement the alternative, including consideration of:
 - (A) The technical difficulty of designing, constructing, and otherwise implementing the alternative in a reliable and effective manner, regardless of cost;
 - (B) The availability of necessary offsite facilities, services, and materials;
 - (C) Administrative and regulatory requirements;
 - (D) Scheduling, size, and complexity;
 - (E) Monitoring requirements;
 - (F) Access for construction operations and monitoring; and
 - (G) Integration with existing facility operations and other current or potential remedial actions; and
- (vi) **Costs.** The costs of remedial actions necessary to implement the alternative, including:
 - ...

WAC 173-340-380 Cleanup action plan.

- (1) **Purpose.** The purpose of a cleanup action plan is to document the selected cleanup action and to specify the cleanup standards and other requirements the cleanup action must meet.

...

- (4) **Content of cleanup action plan.** A cleanup action plan must include the following information and provide a level of detail commensurate with the complexity of the site and cleanup action:

- (a) A general description of the cleanup action selected in accordance with WAC 173-340-350 through 173-340-390, including any model remedy;
- (b) A summary of the rationale for selecting the cleanup action, including any model remedy;
- (c) For Ecology-conducted or Ecology-supervised remedial actions, a brief summary of how Ecology considered the following when selecting the cleanup action:
 - (i) Public concerns identified under WAC 173-340-600(13) and (14); and
 - (ii) Indian tribes' rights and interests in their tribal lands identified under WAC 173-340-620;
- (d) A brief summary of the other cleanup action alternatives evaluated in the remedial investigation/feasibility study;
- (e) Cleanup standards and, where applicable, remediation levels, for each hazardous substance and for each environmental medium of concern at the site;
- (f) 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;
- (g) The schedule for implementing the cleanup action plan including, if known, the restoration time frame;
- (h) Any institutional controls required as part of the cleanup action;
- (i) Any applicable state and federal laws for the cleanup action known at this step in the cleanup process. This does not preclude subsequent identification of applicable state and federal laws;
- (j) A preliminary determination by Ecology that the cleanup action will comply with WAC 173-340-360; and
- (k) If the cleanup action involves on-site containment, specification of the types, concentrations, and amounts of hazardous substances remaining on site and the measures that will be used to prevent migration of and exposure to the substances.

...

WAC 173-340-600 Public notification and participation.

(1) **Purpose.** Public participation is an integral part of Ecology’s responsibilities under chapter 70A.305 RCW, the Model Toxics Control Act. Ecology’s goal is to provide the public with timely information and meaningful opportunities for participation that are commensurate with each site. Ecology will meet this goal through a public participation program that includes:

- (a) Site-specific information on Ecology’s website;
- (b) A *Contaminated Site Register* and, if requested, site-specific electronic alerts of changes to site information; and
- (c) For Ecology-conducted and Ecology-supervised remedial actions, early planning and development of site-specific public participation plans, public notice of proposed actions, and public meetings or hearings.

...

(9) **Public participation plans.** For Ecology-conducted and Ecology-supervised remedial actions, except emergency remedial actions, Ecology will ensure that a public participation plan is developed and implemented.

(a) **Purpose and scope.** A public participation plan is intended to encourage a coordinated and effective public involvement tailored to the public's needs at a site, and facilitate equitable participation by the public. The scope of the plan must be commensurate with:

- (i) The threats posed by the site to human health and the environment, including vulnerable populations and overburdened communities;
- (ii) The level of public concern regarding the threats; and
- (iii) The nature of the proposed remedial actions to address the threats.

...

WAC 173-340-620 Tribal engagement.

- (1) Purpose.** Tribal engagement is an integral part of Ecology’s responsibilities under chapter 70A.305 RCW, the Model Toxics Control Act. Ecology’s goal is to provide Indian tribes with timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site.
- (2) Applicability.** This section applies to Ecology-conducted and Ecology-supervised remedial actions affecting Indian tribes’ rights or interests in their tribal lands.
- (3) Tribal engagement plan.**
 - (a)** Ecology will develop a site tribal engagement plan that identifies Indian tribes that may be adversely affected by the site, opportunities for government-to-government collaboration and consultation, and protocols for communication.
 - (b)** Ecology encourages early planning and engagement. Ecology will seek to engage affected Indian tribes before initiating a remedial investigation or an interim action at a site.
- (4) Relationship with public participation.** Engagement of Indian tribes under this section must be in addition to and independent of any public participation process under this chapter or applicable laws.

WAC 173-340-815 Cultural resource protection.

- (1) **Purpose.** This section specifies requirements that are intended to avoid, minimize, or mitigate adverse effects from remedial actions on archeological and historic archaeological sites, historic buildings and structures, traditional cultural places, sacred sites, and other cultural resources.

...

(3) **Consultations and inadvertent discovery plans.**

- (a) **Applicability.** The requirements in this subsection apply to:

- (i) Ecology-conducted remedial actions, except initial investigations;
- (ii) Ecology-supervised remedial actions; and
- (iii) Ecology-funded independent remedial actions.

- (b) **Requirements.** Before any person conducts a field activity capable of affecting a cultural resource, if encountered, Ecology will:

- (i) Consult with the department of archaeology and historic preservation and affected Indian tribes on the potential effects of planned remedial actions on cultural resources at the site, unless the remedial action is subject to Section 106 review under the National Historic Preservation Act of 1966, as amended ([54 U.S.C. 300101 et seq.](#)); and

...