



DEPARTMENT OF
ECOLOGY
State of Washington

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

Section 300

January 16, 2020

Purpose of this document:

This document provides a preliminary draft of Ecology's proposed changes to Section 300 of Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations, for review and consideration by the Stakeholder & Tribal Advisory Group (STAG) in advance of the January 30, 2020, STAG meeting. The document also includes background information and a list of questions that Ecology would like STAG members to consider when reviewing the preliminary draft to facilitate discussions at the meeting.

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 & 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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Acronyms and Abbreviations

Acronym or Abbreviation	Definition
CSL	Contaminated Sites List
ERTS	Environmental Response Tracking System
MTCA	Model Toxics Control Act
PLIA	Pollution Liability Insurance Agency
RCW	Revised Code of Washington
STAG	Stakeholder & Tribal Advisory Group
TCP	Toxics Cleanup Program
UST	Underground Storage Tank
WAC	Washington Administrative Code

Background

Cleanup process

The basic steps of the cleanup process for contaminated sites under the Model Toxics Control Act (MTCA), Chapter [70.105D](#) RCW, were established in 1990 and included in Chapter [173-340](#) WAC (Cleanup Rule). These are:

1. Site discovery and reporting
2. Initial investigation
3. Site hazard assessment
4. Hazard ranking
5. Remedial investigation/feasibility study
6. Cleanup action selection
7. Site cleanup

Read more about the [cleanup process](#).

Site discovery and reporting

The Model Toxics Control Act requires Ecology to establish a program to identify sites potentially contaminated with hazardous substances (RCW [70.105D.030](#)(2)(c)). This program is established in WAC [173-340-300](#), and is set forth in more detail in [TCP Policy 300: Site Discovery–Reporting Releases](#).

Under this program, Ecology requires site owners and operators to report releases of hazardous substances occurring as a consequence of past practices. Releases caused by current practices, such as releases from regulated UST systems, must be reported under other authorities. Ecology strongly encourages other persons to report any discovery of a release of hazardous substances to the environment.

In general, releases must be reported within 90 days of discovery. However, if an owner or operator completes an independent interim or cleanup action within that timeframe, a single written report may be submitted on both the release and action within 90 days of completing the action. This provides an incentive to get simple sites cleaned up quickly.

Once a release report is received, Ecology must determine whether an initial investigation is necessary based on the information in the report and other available information. If Ecology determines an initial investigation is necessary, Ecology must complete it within 90 days unless an extension is provided as set forth in WAC [173-340-310](#). The process for conducting an initial investigation is set forth in more detail in [TCP Policy 310A: Initial Investigations](#).

Most release reports come to TCP through Ecology's [Environmental Report Tracking System \(ERTS\)](#). In 2019, TCP received 865 release reports for review through ERTS. Based on an initial investigation of these and other reports, TCP identified 279 new contaminated sites in 2019. This means that less than one-third of release reports received in 2019 resulted in listings.

Copies TCP Policy 300 and Policy 310 are provided separately as background for discussions at the STAG meeting on January 30.

Overview of Proposed Changes

Purpose of Changes

Ecology is not proposing significant changes to the release reporting requirements in Section 300. However, Ecology is proposing several changes to:

- Update outdated parts of the rule.
- Clarify parts of the rule to improve compliance.
- Improve integration of the rule with Chapter 173-360A WAC.
- Update language to align with current rule writing practices.

Overview of Changes

The following is a summary of the proposed changes to Section 300 of Chapter 173-340 WAC, Model Toxics Control Act (MTCA) Cleanup Regulations. The proposed changes are also footnoted in the preliminary draft of the rule text.

- Eliminated defunct provision about releases discovered before the effective date of the regulation.
- Moved and consolidated references to release reporting obligations for regulated UST systems in subsection (1) of this section. References are currently included in WAC 173-340-300(2) and (4) and WAC 173-340-450(2)(a).
- Moved description of other reporting obligations from subsection (6) to subsection (1).
- Moved release reporting requirement from subsection (2)(a) to subsection (2).
- Moved examples of reportable releases from subsection (2)(b) to subsection (2).
- Corrected and updated reference to release reporting requirements for regulated underground storage tank (UST) systems. The requirements are specified in Chapter 173-360A WAC, not WAC 173-340-450.
- Added release reporting exemption for releases from heating oil tanks required to be reported to the Pollution Liability Insurance Agency (PLIA) under RCW 70.149.040(13). The reporting requirement was added by the Legislature in 2017 in House Bill 1266.
- Moved requirement governing content of release report from subsection (2)(a) to subsection (4).
- Moved combined release and action reporting requirements from WAC 173-340-515(4)(c) and changed deadline for reporting from 90 to 60 days after completing action. Deleted reference to additional reporting requirements for UST releases in WAC 173-340-450.
- Moved requirements governing Ecology's response to receipt of independent remedial action reports to WAC 173-340-515 and updated to apply to all sites on the contaminated sites list. The updated provision will state: "Ecology may, as resources permit, review reports that document independent cleanup actions. The review must include an evaluation of whether the site qualifies for removal from the contaminated sites list or whether further remedial action is necessary under this chapter."

Questions for Stakeholder & Tribal Advisory Group Members

For the January 30, 2020, meeting of the Stakeholder & Tribal Advisory Group (STAG), we would like you to review the preliminary draft of Section 300 of the Cleanup Rule and come prepared to discuss the following questions. Ecology also welcomes any other comments and questions about the proposed changes. Please submit any written comments on the proposed changes by **March 2, 2020**.

As additional background for the discussion, please also review current [TCP Policy 300: Site Discovery – Reporting Releases](#), provided separately in this review packet.

Questions about Section 300: Site discovery and reporting

1. Do the examples and exemptions provided in subsections (2) and (3) of the preliminary draft rule provide sufficient guidance for determining whether a release must be reported? What guidance should be included in rule versus guidance?

See Section 300(2) and (3) of the preliminary draft rule, and current TCP Policy 300.

2. In cases where an owner or operator completes an independent remedial action within 90 days of release discovery, Ecology proposes reducing the timeframe for submitting a combined release and action report from 90 to 60 days after completing the action. Is 60 days enough time?

See Section 300(5) of the preliminary draft rule.

Questions about economic impacts

1. What, if any, economic effects might the draft rule changes have on you or your constituents?
2. Can you identify a less burdensome regulatory approach for reporting releases that complies with statutory requirements?
3. Would the draft rule changes have a disproportionate impact on small businesses or local governments?
4. Would the draft rule changes provide an advantage or disadvantage to Washington businesses compared to businesses in other states?

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Preliminary Draft of Proposed Rule

IMPORTANT

This part of the document includes a preliminary draft of the proposed changes to Section 300 of Chapter 173-340 WAC. **The proposed changes are tracked and footnoted in the rule text.**

WAC 173-340-300 Site discovery and reporting.

- (1) **Purpose and applicability.** ~~As part of a program to identify hazardous waste sites, t~~This section sets forth the requirements for reporting a release of a hazardous substance due to past activities, whether discovered before or after the effective date of this regulation.¹ It also sets forth the requirements for reporting independent remedial actions and any independent interim or cleanup action completed prior to such reporting.
- (a) Releases from UST systems regulated under chapter 173-360A WAC must be reported to Ecology in accordance with that chapter.²
- (b) Nothing in this section eliminates any obligations to comply with reporting requirements in other laws or permits.³
- (c) The department may take Nothing in this section precludes Ecology from taking any other actions it deems appropriate to identify potential hazardous wastecontaminated sites consistent with chapter 70.105D RCW.
- (2) **Release report.** Within ninety days of discovering a release of a hazardous substance that may pose a threat to human health or the environment, owners and operators of the facility where the release occurred must report the release to Ecology unless exempted under subsection (3) of this section. All other persons are encouraged to report such releases to Ecology.⁴
- ~~(a) Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment shall report such information to the department within ninety days of discovery. Releases from underground storage tanks shall be reported by the owner or operator of the underground storage tank within twenty four hours of release confirmation, in accordance with WAC 173-340-450. To the extent known, the report shall include:~~
- ~~(i) The identification and location of the hazardous substance;~~
- ~~(ii) Circumstances of the release and the discovery; and~~
- ~~(iii) Any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.~~
- ~~(b) Persons should use best professional judgment in deciding whether a release of a hazardous substance may bepose a threat or potential threat to human health or the environment. The following, which is not an exhaustive list, are examples of situations that generally should be reported under this section:⁵~~

¹ Eliminated defunct provision about releases discovered before the effective date of the regulation.

² Moved and consolidated references to release reporting obligations for regulated UST systems in subsection (1) of this section. References are currently included in WAC 173-340-300(2) and (4) and WAC 173-340-450(2)(a).

³ Moved description of other reporting obligations from subsection (6) to subsection (1).

⁴ Moved release reporting requirement from subsection (2)(a) to subsection (2).

⁵ Moved examples of reportable releases from subsection (2)(b) to subsection (2).

- ~~(i)~~(a) Contamination in a water supply well.
- ~~(ii)~~(b) Contaminated seeps, sediment, or surface water.
- ~~(iii)~~(c) Vapors in a building, utility vault, or other structure that appear to be entering the structure from nearby contaminated soil or ground-water.
- ~~(iv)~~(d) Free product such as petroleum product or other organic liquids on the surface of the ground or in the ground-water.
- ~~(v)~~(e) Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law.
- ~~(vi)~~(f) Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances.
- ~~(vii)~~(g) Sites where unpermitted industrial waste disposal has occurred.
- ~~(viii)~~(h) Sites where hazardous substances have leaked or been dumped on the ground.
- ~~(ix)~~(i) Leaking underground petroleum storage tanks not already reported under ~~WAC 173-340-450~~ chapter 173-360A WAC.⁶

(3) Reporting Exemptions. Owners and operators are exempt from reporting Thethe following releases are exempt from these notification requirements under this chapter:

- (a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
- (b) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;
- (c) A release in accordance with a permit that authorizes the release;
- (d) A release previously reported to ~~the department~~Ecology in fulfillment of a reporting requirement in this chapter or in another law or regulation;
- ~~(e)~~ A release from a heating oil tank required to be reported to the pollution liability insurance agency under RCW 70.149.040(13);⁷
- ~~(e)~~(f) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 U.S.C. Sec. 9603(c));
- ~~(f)~~(g) Except for releases specified under subsection (2)~~(b)~~~~(iii)~~(c) of this section, a release to the air;

⁶ Corrected and updated reference to release reporting requirements for regulated underground storage tank (UST) systems. The requirements are specified in Chapter 173-360A WAC, not WAC 173-340-450.

⁷ Added release reporting exemption for releases from heating oil tanks required to be reported to the Pollution Liability Insurance Agency (PLIA) under RCW 70.149.040(13). The reporting requirement was added by the Legislature in 2017 in House Bill 1266.

- ~~(g)(h)~~ Releases discovered in public water systems regulated by the department of health; or
- ~~(h)(i)~~ A release to a permitted wastewater facility.

An exemption from the ~~notification~~reporting requirements in this section does not imply a release from liability under this chapter.

(4) **Content of release report.**⁸ Owners and operators must include the following information in a release report, to the extent known:

- (a) The identity and location of the hazardous substance;
- (b) The circumstances of the release and its discovery; and
- (c) Any remedial actions planned, completed, or underway.

~~**(4)(5)** **Report of independent remedial actions**~~**Combined release and action report.** ~~See WAC 173-340-515 for additional reporting requirements for independent remedial actions. See WAC 173-340-450 for reporting requirements for independent remedial actions for releases from underground storage tanks. If an independent interim or cleanup action is completed within ninety days of release discovery, a single written report may be submitted on both the release and action within sixty days of completing the action. The report must contain the information specified in WAC 173-340-515(4)(b) in addition to the information specified in subsection (4) of this section.~~⁹

~~**(5)(6)** **Department**~~**Ecology response.** Within ninety days of receiving ~~information~~a release report under this section, ~~the department shall~~Ecology must conduct an initial investigation in accordance with WAC 173-340-310. ~~For sites on the hazardous sites list, the department shall, as resources permit, review reports that document independent cleanup actions. The review shall include an evaluation of whether the site qualifies for removal from the hazardous sites list or whether further remedial action is required.~~¹⁰

~~**(6)** **Other obligations.** Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.~~

⁸ Moved requirement governing content of release report from subsection (2)(a) to subsection (4).

⁹ Moved combined release and action reporting requirements from WAC 173-340-515(4)(c) and changed deadline for reporting from 90 to 60 days after completing action. Deleted reference to additional reporting requirements for UST releases in WAC 173-340-450.

¹⁰ Moved requirements governing Ecology's response to receipt of independent remedial action reports to WAC 173-340-515 and updated to apply to all sites on the contaminated sites list. The updated provision will state: "Ecology may, as resources permit, review reports that document independent cleanup actions. The review must include an evaluation of whether the site qualifies for removal from the contaminated sites list or whether further remedial action is necessary under this chapter."

Current Rule

WAC 173-340-300 Site discovery and reporting.

- (1) Purpose.** As part of a program to identify hazardous waste sites, this section sets forth the requirements for reporting a release of a hazardous substance due to past activities, whether discovered before or after the effective date of this regulation. It also sets forth the requirements for reporting independent remedial actions. The department may take any other actions it deems appropriate to identify potential hazardous waste sites consistent with chapter [70.105D](#) RCW.
- (2) Release report.**

 - (a)** Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment shall report such information to the department within ninety days of discovery. Releases from underground storage tanks shall be reported by the owner or operator of the underground storage tank within twenty-four hours of release confirmation, in accordance with WAC [173-340-450](#). To the extent known, the report shall include:

 - (i)** The identification and location of the hazardous substance;
 - (ii)** Circumstances of the release and the discovery; and
 - (iii)** Any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.
 - (b)** Persons should use best professional judgment in deciding whether a release of a hazardous substance may be a threat or potential threat to human health or the environment. The following, which is not an exhaustive list, are examples of situations that generally should be reported under this section:

 - (i)** Contamination in a water supply well.
 - (ii)** Contaminated seeps, sediment or surface water.
 - (iii)** Vapors in a building, utility vault or other structure that appear to be entering the structure from nearby contaminated soil or groundwater.
 - (iv)** Free product such as petroleum product or other organic liquids on the surface of the ground or in the groundwater.
 - (v)** Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law.
 - (vi)** Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances.
 - (vii)** Sites where unpermitted industrial waste disposal has occurred.
 - (viii)** Sites where hazardous substances have leaked or been dumped on the ground.

- (ix) Leaking underground petroleum storage tanks not already reported under WAC [173-340-450](#).

(3) Exemptions. The following releases are exempt from these notification requirements:

- (a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
- (b) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;
- (c) A release in accordance with a permit that authorizes the release;
- (d) A release previously reported to the department in fulfillment of a reporting requirement in this chapter or in another law or regulation;
- (e) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 U.S.C. Sec. 9603(c));
- (f) Except for releases under subsection (2)(b)(iii) of this section, a release to the air;
- (g) Releases discovered in public water systems regulated by the department of health; or
- (h) A release to a permitted wastewater facility.

An exemption from the notification requirements in this section does not imply a release from liability under this chapter.

- (4) **Report of independent remedial actions.** See WAC [173-340-515](#) for additional reporting requirements for independent remedial actions. See WAC [173-340-450](#) for reporting requirements for independent remedial actions for releases from underground storage tanks.
- (5) **Department response.** Within ninety days of receiving information under this section, the department shall conduct an initial investigation in accordance with WAC [173-340-310](#). For sites on the hazardous sites list, the department shall, as resources permit, review reports that document independent cleanup actions. The review shall include an evaluation of whether the site qualifies for removal from the hazardous sites list or whether further remedial action is required.
- (6) **Other obligations.** Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.

References

Reference	Web Page
State Cleanup Program	
Cleanup Program Web Page	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup
Cleanup Process Web Page	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process
Chapter 70.105D RCW	https://apps.leg.wa.gov/RCW/default.aspx?cite=70.105D
Chapter 173-340 WAC	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340
WAC 173-340-300	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-300
WAC 173-340-310	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-310
WAC 173-340-450	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-450
WAC 173-340-515	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-515
TCP Policy 300: Site Discovery–Reporting Releases	https://fortress.wa.gov/ecy/publications/SummaryPages/0409102.html
TCP Policy 310A: Initial Investigations	https://fortress.wa.gov/ecy/publications/SummaryPages/0909050.html
Environmental Report Tracking System	https://ecology.wa.gov/About-us/Get-involved/Report-an-environmental-issue
State UST Program	
Program Web Page	https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Underground-storage-tanks
Chapter 90.76 RCW	https://apps.leg.wa.gov/RCW/default.aspx?cite=90.76
Chapter 173-360A WAC	https://apps.leg.wa.gov/WAC/default.aspx?cite=173-360A
Pollution Liability Insurance Agency	
Agency Home Page	https://plia.wa.gov/
Chapter 70.149 RCW	https://app.leg.wa.gov/RCW/default.aspx?cite=70.149
RCW 70.149.040	https://app.leg.wa.gov/RCW/default.aspx?cite=70.149.040