



Changes to the Model Toxics Control Act Cleanup Regulation

The Washington State Department of Ecology (Ecology) is adopting changes to the Model Toxics Control Act (MTCA) cleanup rule (Chapter 174-340 WAC), the Public Participation Grant rule (Chapter 173-321 WAC), and the Remedial Action Grant rule (Chapter 173-322 WAC).

It is intended that these changes will make the business of environmental cleanups fairer, easier to understand, more flexible, less ambiguous and less expensive.

Please note: Changes to the two grant rules are not discussed in this fact sheet.

Background

The changes to the rule were made in response to recommendations from the Model Toxics Control Act (MTCA) Policy Advisory Committee (this committee was mandated by Engrossed Substitute House Bill 1810 and was in existence for over a year); recommendations from the MTCA Science Advisory Board; requirements of WAC 173-340-702(3) that Ecology review, and as appropriate, update the rule every five years; requirements of the Administrative Procedure Act (RCW 34.05.230(8)) that existing Department policies be incorporated into rule; and finally, to add clarity to the existing rule.

The changes were developed through a negotiated rule-making process and took several years to accomplish. Negotiated rule-making is an approach that allows interest groups, people who may be affected by the rules, agency staff, and others to work together to make changes to a rule.

Adopted Changes to the Regulation

Following are brief summaries of the adopted changes to the Model Toxics Control Act cleanup regulation.

Cleanup Standards & Risk Assessment

How site-specific conditions and risk assessment can be used to establish cleanup standards is a key issue being addressed in this rule revision. The Model Toxics Control Act previously required cleanup standards be based on risk assessments that use “reasonable maximum exposure” assumptions, a method that assures more sensitive individuals (such as children) are considered when establishing cleanup standards at most sites. Only very limited changes in the assumptions were allowed under the previous rule.

Cleanup standards will continue to be based on reasonable maximum exposures under the adopted rule revision; however, some additional flexibility will be allowed in changing certain assumptions in a risk assessment where the changes can be justified based on site-specific information. An example is the addition of methods for calculating soil cleanup levels that will protect ground water.

The previous Model Toxics Control Act used a generic 100 times the ground water concentration to derive soil concentrations that will not pollute ground water. Working with the Science Advisory Board (a board that provides advice to Ecology on scientific issues related to MTCA), Ecology developed models and methods that take into account chemical properties and site-specific conditions that affect the mobility of contaminants. The adopted models and methods will update how to derive soil concentrations that are protective of ground water.

There are also two new additions to the rule that relate to site-specific conditions. First, there is a requirement that public notice be issued for cleanup plans that use a site-specific risk assessment or would restrict future site or resource use. And second, a new position – known as the Citizen’s Technical Advisor, will be housed in the Department of Ecology. The Citizen’s Technical Advisor will provide technical assistance to citizens on issues arising from the Model Toxics Control Act, such as site-specific risk assessments and other issues relating to the cleanup of contaminated sites.

Petroleum Cleanups

In January 1997, Ecology issued an “Interim Total Petroleum Hydrocarbons (TPH) Policy” that addressed Methods B and C cleanup levels for petroleum contamination. The Interim TPH Policy, which was a PAC recommendation, will be superseded by changes that are incorporated into the new Model Toxics Control Act cleanup regulation.

The Model Toxics Control Act allows cleanup levels to be set in three different ways, known as Methods A, B and C. In the past, Ecology discouraged the use of Methods B and C for deriving cleanup levels for TPH, because information about the nature of petroleum compounds was not available. To use Method A, those cleaning up a petroleum-contaminated site would look up the number for a TPH cleanup level and use that number to clean up their site. Under Methods B and C, those cleaning up a site can use formulas and other methods, along with information about their site and the type of petroleum compounds at their site, to develop site-specific cleanup standards.

Using a site-specific approach, such as Methods B and C, is more costly and complex in the early stages, because more sampling and evaluation are required. However, it may be less costly overall, because the cleanup is more tailored to the risks at that particular site.

Remedy Selection

Under the adopted rule revision, site cleanups must still be protective and “permanent to the maximum extent practicable.” Where permanent cleanups are not technically feasible or are too costly, the revision attempts to more clearly describe the process for evaluating less complete cleanup alternatives, including how cost, risk assessment, and other factors are used in deciding how much cleanup needs to be done at these sites.

Ecology will now allow *quantitative* risk assessments as part of evaluating a cleanup alternative for a site. In the past, the risks posed by each cleanup alternative were estimated *qualitatively*. What this means is that you can now use site-specific numerical parameters (such as how often people come in contact with the site) in evaluating the alternatives for a site. Quantitative risk assessments can be more complex and technical than qualitative assessments. The establishment of a Citizen's Technical Advisor is intended to help the public understand complex issues, such as quantitative risk assessments.

Additionally, under the adopted rule revision, Ecology now has the authority to develop model remedies. The purpose of model remedies is to streamline the remedy selection process by appropriately limiting the alternatives that are evaluated in detail. Model remedies may be developed for common categories of sites, types of contamination, types of media or specific geographic areas. This is something Ecology will be working on in the future.

This section of the regulation has also been reorganized and language has been added. This is intended to make cleanup requirements and the process for selecting a cleanup action clearer and more predictable for those selecting a cleanup remedy for a site.

Ecological Risk Assessment

While the original Model Toxics Control Act rules governing cleanup addressed human health concerns in detail, ecological concerns – such as impacts to wildlife – were addressed only superficially. The new Model Toxics Control Act provides a procedure (a tiered approach) on when, and to what extent, an ecological risk assessment must be conducted at a site with soil contamination. The new procedure makes certain that sites that need evaluations have them.

Institutional Controls & Financial Assurance

The criteria for using institutional controls and financial assurance has been strengthened under the adopted revision. An institutional control is a measure taken to limit or prohibit activities that may interfere with the integrity of a cleanup action. A deed restriction is one kind of institutional control. Under the new Model Toxics Control Act, deed restrictions will be tracked on properties that have contamination remaining on site.

Financial assurance pertains to funding for future site activities. Under the new Model Toxics Control Act, financial assurance mechanisms will be required where appropriate, unless the potentially liable person (PLP) can demonstrate that sufficient financial resources are available and in place to provide for future site expenses (such as ground water monitoring and operation and maintenance).

