



Citizens for a
Healthy
Bay

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Clint Stanovsky
Rulemaking Lead
Washington State Dept. of Ecology
PO Box 47600
Olympia, WA 98504-7600
clinton.stanovsky@ecy.wa.gov

Re: Comments on Exploratory Rulemaking, WAC 173-340 Model Toxics Control Act Cleanup Regulation

Executive Director
Melissa Malott

Dear Mr. Stanovsky,

Thank you for providing the opportunity to review and comment on the exploratory process to update Chapter 173-340 WAC, the Model Toxics Control Act Cleanup Regulation (“the Cleanup Rule.”)

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Citizens for a Healthy Bay (CHB) is a 28-year-old organization whose mission is to represent and engage people in the cleanup, restoration, and protection of Commencement Bay, its surrounding waters and natural habitat. We are a 501(c)3 nonprofit providing practical, solutions-based environmental leadership in the Puget Sound area. We work side-by-side with local residents, businesses, and government to prevent water pollution and make our community more sustainable. Citizens for a Healthy Bay has been engaging with the Model Toxics Control Act (MTCA) since our founding in 1990.

Staff and expert members of CHB’s Policy and Technical Advisory Committee have reviewed the exploratory rulemaking process, documents, and related materials. We also attended the rulemaking webinar hosted by the Washington State Department of Ecology (Ecology.) Our comments are outlined below.

Length of Process

Our first concern is regarding the length of this update process, which is currently slated for completion in 2027. Reform of MTCA is long overdue, with the last update occurring in 2001. Citizens for a Healthy Bay is particularly concerned about the timeliness in addressing cleanup standards. As Ecology's proposal stands, "This will allow a second rulemaking focused on the cleanup standards to begin in 2021 (or earlier) with adoption anticipated before the end of 2022." ^[1] Due to the significant changes needed in the Cleanup Rules, this phase should occur earlier in the process. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Include defined timeline for activities taking place during the proposed update;
- Expedite the update process; and
- Address cleanup standards earlier in the update process.

Creation of New, and Enhancement of Existing Advisory Committees

We would like to see the creation of both administrative and technical advisory committees to oversee the direction of this update process. Committees should equitably represent stakeholders from communities most impacted by contaminated sites, environmental groups, and tribal nations. Steps should be taken to ensure that these committees are not dominated by industry representatives who are being paid to participate. Ecology should also create a Citizens Advisory Committee.

Additionally, the people and communities most impacted by toxic pollution, including local tribes, communities of color, and low-income communities, are less likely to engage in advisory committee processes dominated by well-paid industry representatives. We recommend formalizing assurances of participation from these vulnerable groups. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Formalize the process for creating Administrative, Technical and Citizen advisory committees and add language to the exploratory rulemaking process.
- Enhance Regional Citizens' Advisory Committees by presenting any work from technical committees to the Regional Citizens Advisory Committees (RCW 173-340-610.)

Transparency

Ecology must incorporate broader notification for interim actions and early phases of cleanups. For example, Ecology worked on the Superlon Plastic cleanup in the Tacoma Tidelands for over two years before CHB was notified. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Formalize the process and include language for a broad, inclusive notification process for interim actions and early phases of cleanups. Consider press releases at all phases of cleanup (RCW 173-340-600.)

Incorporate Environmental Justice

Environmental justice mapping should be incorporated throughout the prevention and cleanup process and program. For example, as resources are prioritized to take advantage of private or public developers, we need to ensure that this does not systematically leave tribes, communities

of color, and low-income communities further behind. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Incorporate rule changes that institutionalize environmental justice, from site evaluation to cleanup to where prevention resources are prioritized; and
- Define “Environmental Justice”, “Disproportionate Impacts”, and “Sensitive Populations” in WAC 173-340-200.

Incentivize Consent Decrees for Liable Parties

We have observed that Ecology has removed incentives for liable parties to engage in Consent Decrees (CDs) and is, instead, relying purely upon Agreed Orders for cleaning up contaminated sites. We find this approach to be short-sighted. Consent Decrees have been very effective in the cleanups in the Tacoma Tidelands, offering contribution protections and streamlining the cleanup process. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Include formal language clarifying the benefits of CDs to liable parties.

Cleanup Prioritization and Disproportionate Cost-Benefit Analyses

The current system leads to prioritizing economic development drivers at the expense of communities impacted by toxic pollution. Developers can “jump the line” by paying for cleanup of sites prioritized as a lower hazard, while liable parties can opt for lower cleanup standards and use the high cost-benefit analysis as their defense, as seen in the ongoing Occidental Chemical Cleanup in Tacoma. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Reevaluate regional cleanup priorities to fully consider all long-term community and environmental impacts;
- Define methodology used for the feasibility study’s cost-benefit analysis in WAC 173-340-355; and
- Define “practicable” in WAC 173-340-360

Funding Public Participation Grants

We recommend protecting MTCA funding of Public Participation Grants from raiding. Citizens for a Healthy Bay lost \$83,000 during the 2015-2017 biennium due to the legislature zeroing out the fund. We also recommend reforming the grant facilitation process, as it is currently very time-intensive for reporting requirements, and overly burdensome on small grantee organizations. Citizens for a Healthy Bay recommends the following changes be incorporated in the rulemaking process:

- Create protected funding account so revenues from Hazardous Substance Tax cannot be raided during State budget shortfalls;
- Contract with new grant tracking software developer to modernize and streamline grant reporting activities;
- Simplify reporting requirements to more accurately capture impacts of grant monies; and
- Formalize process to disperse grant award monies at time of contract period, rather than rely on reimbursement from grantees.

Please contact me if there are questions regarding my comments. Thank you for the opportunity to provide feedback on the exploratory rulemaking process to update MTCA.

Sincerely,

A handwritten signature in black ink that reads "Melissa Malott". The signature is written in a cursive, flowing style.

Melissa Malott
Executive Director, Citizens for a Healthy Bay
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