

Exploratory Rulemaking Process

Notice to Interested Parties (No.1) – Cleanup Rule (WAC 173-340)

The **Washington State Department of Ecology** is beginning an exploratory process to update Chapter 173-340 WAC, the Model Toxics Control Act Cleanup Regulation (known as the Cleanup Rule). We expect this to include multiple rulemakings over the next five to ten years. As we move forward, we welcome your input about how we prioritize our efforts and update this rule. Read Washington’s cleanup law and regulation (Ecology publication no. 94-06), available online at: <https://fortress.wa.gov/ecy/publications/summarypages/9406.html>

What is the Cleanup Rule, and why do we need to update it?

In 1988 the voters of Washington state passed Initiative 97. In 1989 the Model Toxics Control Act was adopted into law, which governs the cleanup of hazardous waste sites in our state. The initiative directs Ecology to adopt rules for cleanup that preserve and enhance the right of each person to a healthful environment. Since we first published the Cleanup Rule in 1990 and 1991, we have amended it four times in response to legislative changes and the needs of people working to clean up sites.

Sections 100 through 600 and section 800 of the Cleanup Rule define the process and administration of cleaning up sites where hazardous substances have been released to the environment of Washington. Sections 700 and 900 of the Cleanup Rule establish cleanup standards and set requirements for selecting cleanup actions for contaminated sites.

The Cleanup Rule requires Ecology to “review and, as appropriate, update” the cleanup standards (Section 700) at least once every five years (WAC 173-340-702(11)). Ecology made the last comprehensive updates to the Cleanup Rule in 2001. In 2007, as part of the settlement of a lawsuit, Ecology changed the cleanup standards for a few specific hazardous substances, without updating other parts of the cleanup standards or the process and administration sections of the Cleanup Rule.

Soon after the 2007 changes, we conducted a full review of the Cleanup Rule and began rulemaking for the entire rule in 2009. Work stopped in 2010 pursuant to Executive Order 10-06, which suspended most rulemaking by state regulatory agencies through the end of 2011. (At that time, Ecology prioritized its limited resources to complete work on other more urgent rulemaking tasks.)

What is our new approach to rulemaking?

Beginning with this exploratory process, we intend to establish a new way of updating the Cleanup Rule. Instead of trying to update the rule all at once we are planning a series of rulemakings, each focused on a few selected topics. This approach will help speed the adoption of rule changes that are most urgent for current rule users. It will also help us balance staff resources between updating the Cleanup Rule and actually applying it to clean up contaminated sites.

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The first rulemaking

Within this new approach, we have two principal objectives for the first rulemaking:

1. Make needed corrections and clarifications identified since 2001 in all nine sections of the Cleanup Rule.
2. Focus on one or two selected rulemaking topics that update the process and administration of site cleanups (Sections 100 through 600 and Section 800).

Beginning in January 2018, we will use this exploratory process to select the administrative topic or topics for the first rulemaking. We will also collect stakeholder comments and suggestions on all parts of the rule. Our goal is to complete the first rulemaking by or before the end of 2020.

The second rulemaking

In 2018, Ecology also plans to begin internal and public reviews of the cleanup standards in Sections 700 and 900 of the Cleanup Rule. 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.

The third rulemaking

Finally, beginning in 2023 (or earlier), Ecology envisions a third rulemaking focusing on one or more administrative topics identified and deferred from the first rulemaking, or identified after. This rulemaking may also capture topics deferred from the second rulemaking.

The attached table, *An Exploratory Process for Updating the Cleanup Rule* and figure, *Sequence of Cleanup Rule Updates*, summarize Ecology's current strategy for updating the Cleanup Rule. Please note that Ecology may change the schedule and sequence of planned rulemakings and reviews shown, as a result of this exploratory rulemaking.

How does this affect me?

The Cleanup Rule affects human health and the environment throughout the state of Washington. The exploratory rulemaking process and later rule changes could affect many private and public property owners in Washington, as well as:

- Tribal governments
- Federal, state, and local government agencies
- Environmental service professionals
- Environmental, business, and civic organizations, and
- The general public.

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How can I participate?

We invite all interested parties to provide suggestions for general rulemaking topics, as well as specific changes to any part of the Cleanup Rule. We will catalog your comments and consider them at the most appropriate time during future rulemakings. We also welcome comments on our overall rulemaking approach. You will have additional opportunities to comment within the scope of each future rulemaking.

Next steps

We intend to host public listening sessions to hear stakeholder suggestions and comments before beginning the first focused rulemaking in 2018. If you would like to receive emails about these and other cleanup rulemaking events, please visit the [Cleanup Rule exploratory rulemaking webpage](#) to subscribe to our Listserv. You can provide comments on our exploratory rulemaking through April 15, 2018, using the online comment form on the website.

We want your involvement

We look forward to working with you as we move through this process. Please understand that new legislation, resource changes, and new information may influence our path and the timing of future rulemaking(s).

More information:

Visit our Cleanup Rule exploratory rulemaking webpage:

<http://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Rules-directing-our-cleanup-work/Model-Toxics-Control-Act/Exploratory-rulemaking>

Questions:

If you have questions about any aspect of our exploratory Cleanup Rulemaking process, please contact Clint Stanovsky, Cleanup Rulemaking Lead, at Clinton.Stanovsky@ecy.wa.gov, (360) 407-7193.

An Exploratory Process for Updating the Cleanup Rule

(Ecology may change the schedule of planned rulemaking and reviews.)

MTCA Cleanup Rule	<u>Parts 1-6 and 8</u> Process and Administration	<u>Parts 7 and 9</u> Cleanup Standards	Any Part
Corrections and Clarifications	First Rulemaking 2017-2020	First Rulemaking 2017-2020	Third Rulemaking 2023-2027
Changes or Additions (changes in effect)	First Rulemaking 2017-2020 selected topics	Rule Review 2018-2020 Second Rulemaking 2021-2022	Third Rulemaking 2023-2027 deferred or emerging topics

Sequence of Cleanup Rule Updates

(Ecology may change the schedule of planned rulemaking and reviews.)

