



# The Model Toxic Control Act (MTCA): Rulemaking Update

## **Washington Public Ports Association**

2018 Environmental Seminar

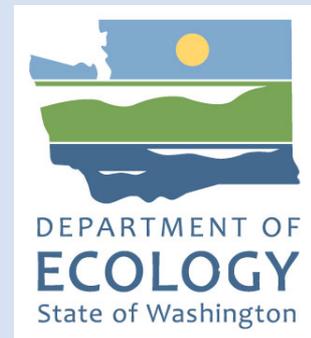
September 28, 2018

### **Jeff Johnston, PhD**

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Toxics Cleanup Program

Washington State Department of Ecology





# Cleanup Rule History

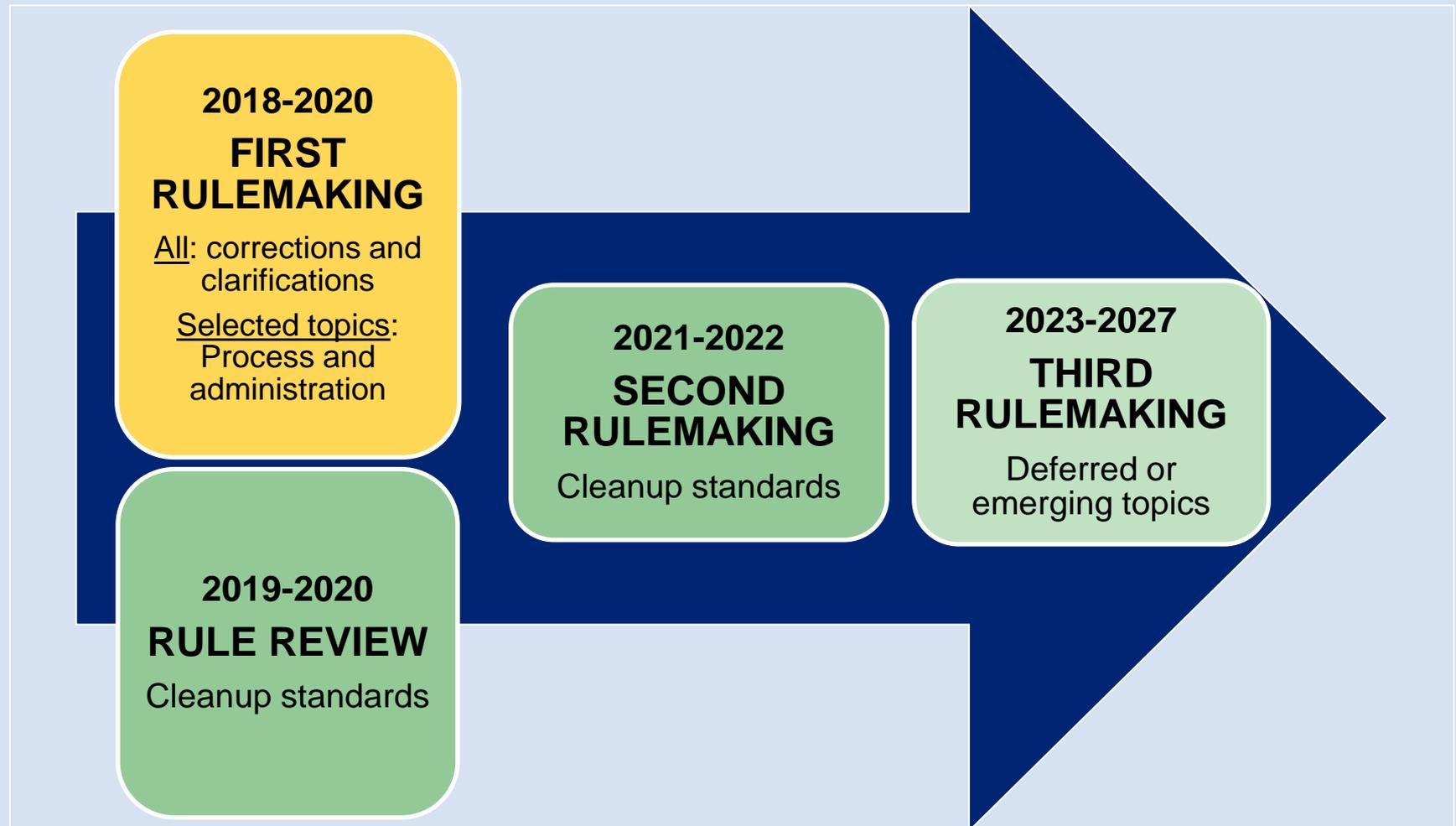
- **Initiative I-97 passed in 1988: The Model Toxics Control Act (MTCA)**
  - The first Cleanup Rule implementing MTCA was adopted in 1990 and 1991.
  - The rule was amended in 1993, 1996, 2001 and 2007.
  
- **The last comprehensive Cleanup Rule amendment was in 2001**
  - Only cleanup standards for dioxin & furan, cPAH and PCB mixtures changed in 2007.
  
- **The 2009-10 rulemaking was suspended by Executive Order 10-06**
  - Though not finished, the last draft reflected extensive internal and stakeholder review
  
- **In 2018 we launched an Exploratory Rulemaking process**
  - Multiple, shorter rulemakings focusing on selected parts or topics within the rule.
  - Start with long-deferred corrections, clarifications, and administrative improvements.
  - Begin a simultaneous review of Cleanup Standards, in time for a second rulemaking.

# Structure of the Cleanup Rule

<b>Chapter 173-340 WAC</b>	<b>Sections</b>
<b>Cleanup Process and Administration</b>	
Part 1. Overall Cleanup Process	100-140
Part 2. Definitions and Usage	200-210
Part 3. Site reports and Cleanup Decisions	300-390
Part 4. Site Cleanup and Monitoring	400-450
Part 5. Administrative Procedures for Remedial Actions	500-560
Part 6. Public Participation	600-610
Part 8. General Provisions	800-890
<b>Cleanup Standards</b>	
Part 7. Cleanup Standards	700-760
Part 9. Tables	900

# Exploratory Rulemaking

Updating the Cleanup Rule in a series of quicker, focused rulemakings



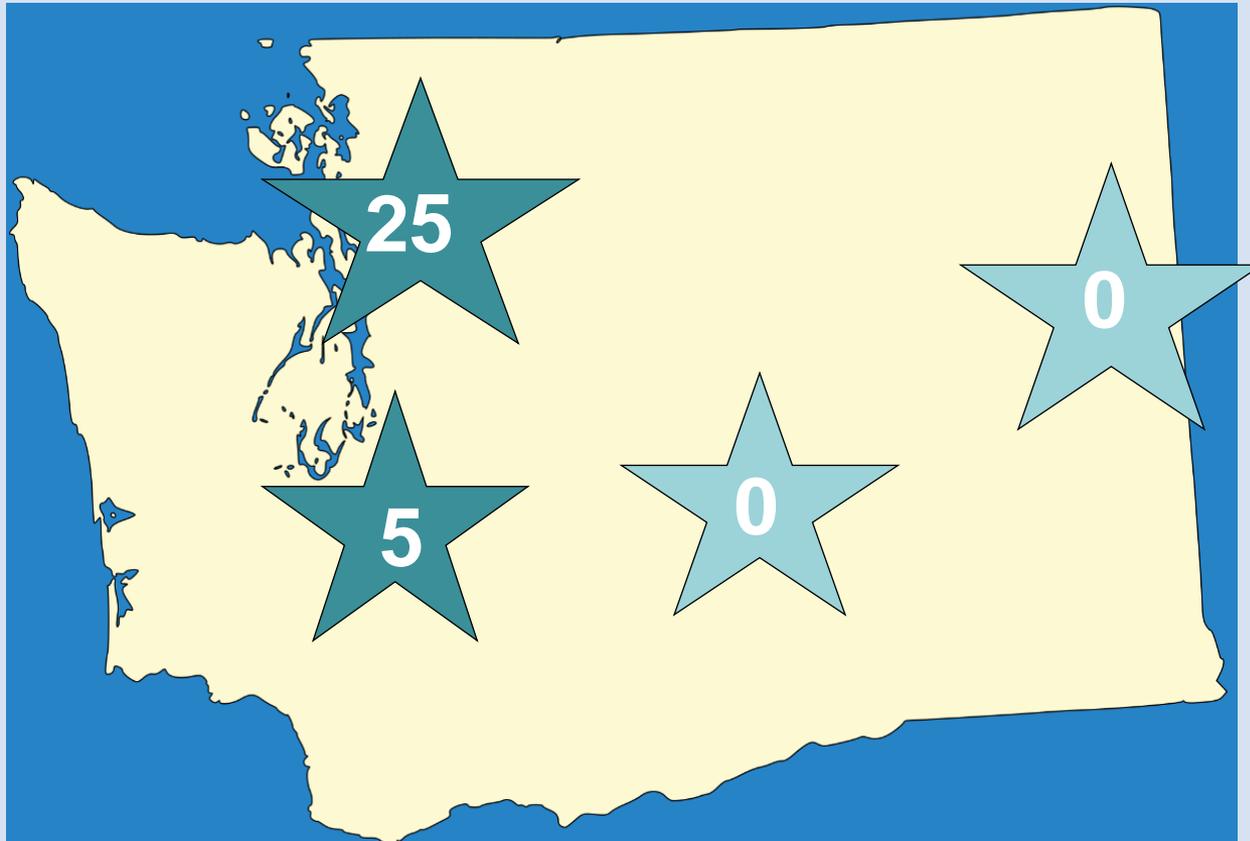


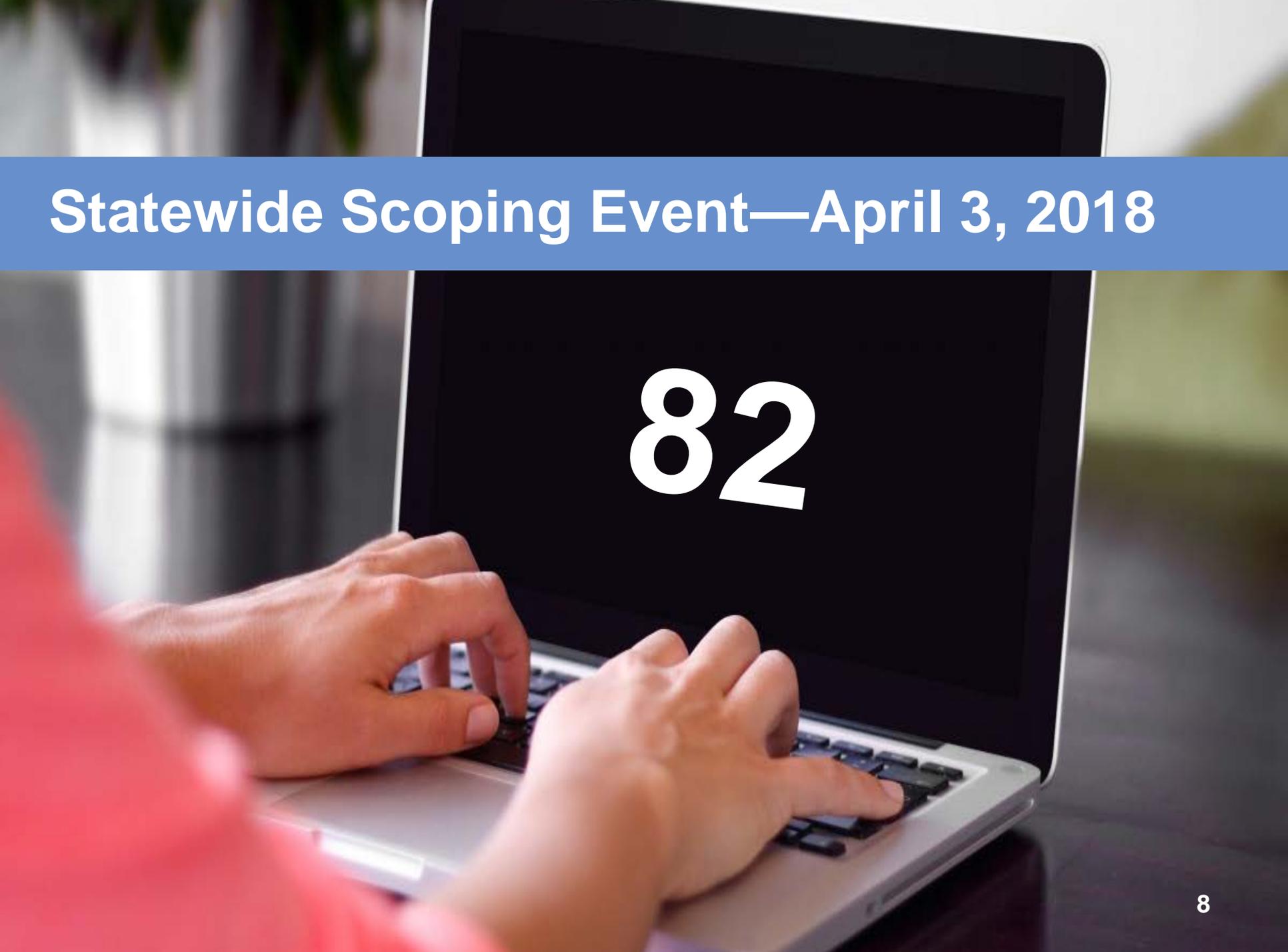
# Exploratory Rulemaking

February – April, 2018

- New, less-formal public process that lets Ecology discuss rulemaking ideas with stakeholders and tribes.
- Seeking public comment on our overall rulemaking strategy, and on any part of the Cleanup Rule.
- Public webpage in February, with e-mail notices and Listserv notifications
- 176 comments from 70 persons and organizations

# Statewide Scoping Event—April 3, 2018

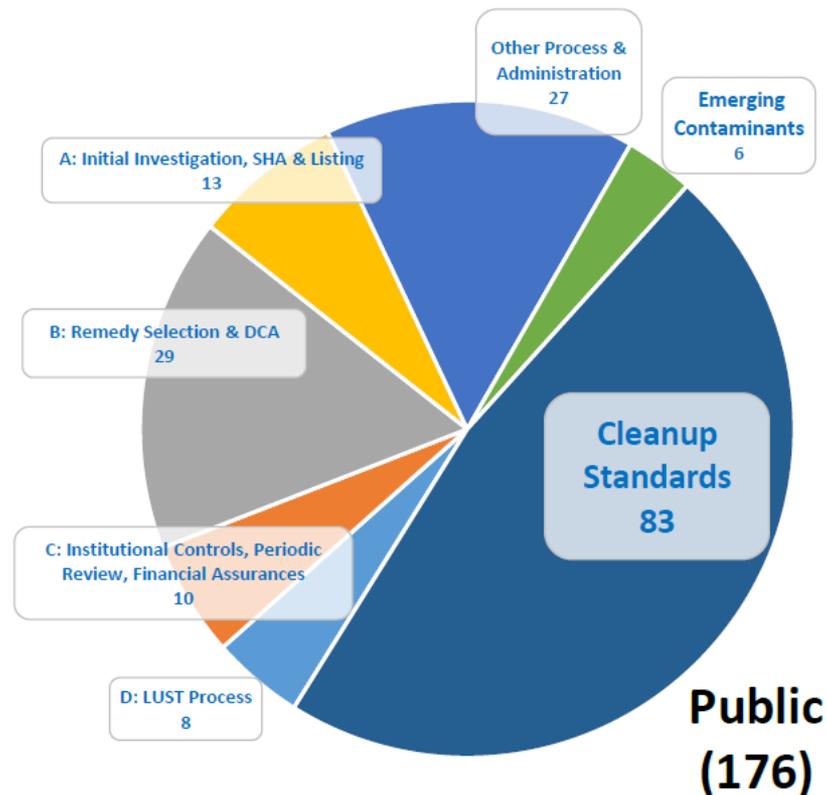
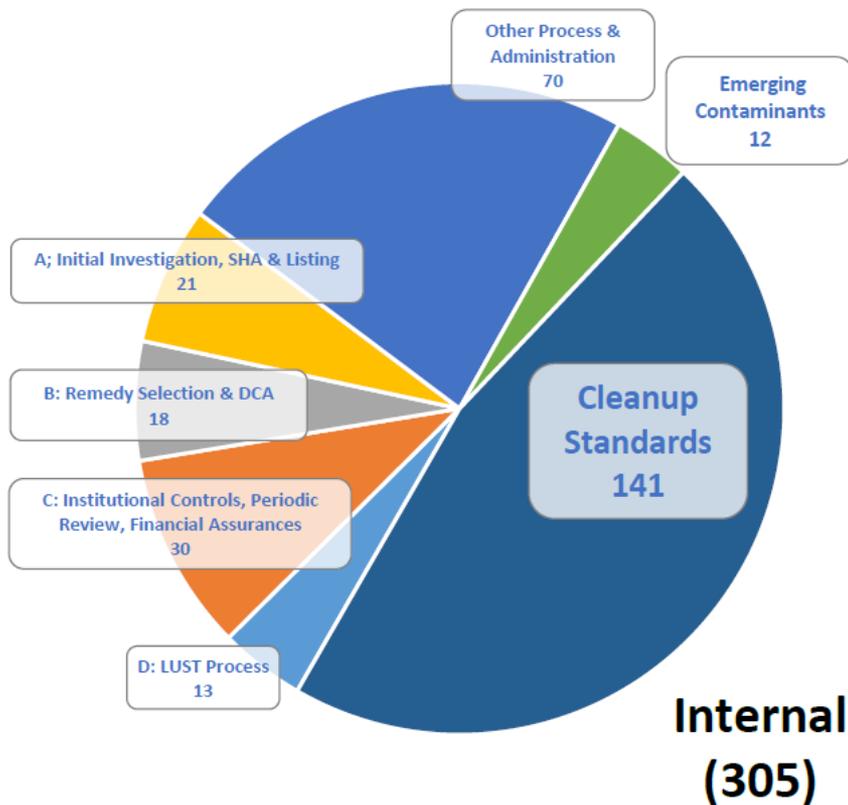


A close-up photograph of a person's hands typing on a silver laptop keyboard. The laptop screen is black and displays the number '82' in large white font. A blue banner is overlaid at the top of the image, containing the text 'Statewide Scoping Event—April 3, 2018' in white. The background is blurred, showing what appears to be an indoor setting with a window and some greenery.

# Statewide Scoping Event—April 3, 2018

82

# Exploratory Rulemaking Internal and Public Scoping



Number of suggested rule changes by topic through April 30, 2018



# Exploratory Rulemaking: Four takeaways

1. Similar to our internal scoping, but more public concern about DCA and Remedy Selection.
2. Public concern about workload prioritization and environmental justice are expressed in comments on hazardous site ranking system.
3. Strong interest in both administrative topics and the Cleanup Standards.
4. Public expects stakeholder involvement, early and throughout.

# Choosing a rulemaking topic

	<b>Criterion</b>	<b>-</b>	<b>0</b>	<b>+</b>
1	<b>Rulemaking Difficulty</b>	Complex	Uncertain	Simple
2	<b>Effect on Cleanup Completion Rate</b>	Negative or Indeterminate	Long-Term Positive	Near-Term Positive
3	<b>Stakeholder Concern</b>	Polarized	Indifferent	Consensus
4	<b>Demand on Staff Capacity</b>	High	Moderate or Unknown	Low
5	<b>Alternatives to Rulemaking</b>	Good	Acceptable	Poor
6	<b>Urgency</b>	Low	Medium	High
7	<b>Environmental Justice Benefit</b>	Little	Moderate	Potentially Large

# Summary of Recommendations

	Investigation, Ranking & Listing	Remedy Selection & DCA	LUST Process
First Rulemaking	Focal topic	Clarifications and narrow changes	Clarifications and narrow changes
Later Rulemaking(s)	None anticipated	If needed	Based on LUST Strategic Plan
Policy or Guidance	Replace WARM: develop policies, procedures and guidance	Address most issues through guidance	Expand and update LUST Strategic Plan



# Why ranking and listing?

- MTCRA requires a “**hazard ranking system for hazardous waste sites**”
- Cleanup Rule now requires the Washington Ranking Method (WARM) exactly as defined in 1992.
- An updated ranking and listing process could be a key method for managing site cleanups:
  - Prioritization
  - Progress tracking
  - Public communication

# Plans for first rulemaking

## **First Rulemaking** – 2018-2020

- Corrections and clarifications to all sections of the rule
- Substantive changes to Policy and Administration sections
- Special focus on site Initial Investigation, Ranking, and Listing

## **Notice of rulemaking (CR-101)** fall 2018

- Ecology web page
- Notices to rule Listserv subscribers

## **Rule development** – winter and spring 2019

## **Stakeholders Advisory Group** – begins during summer 2019

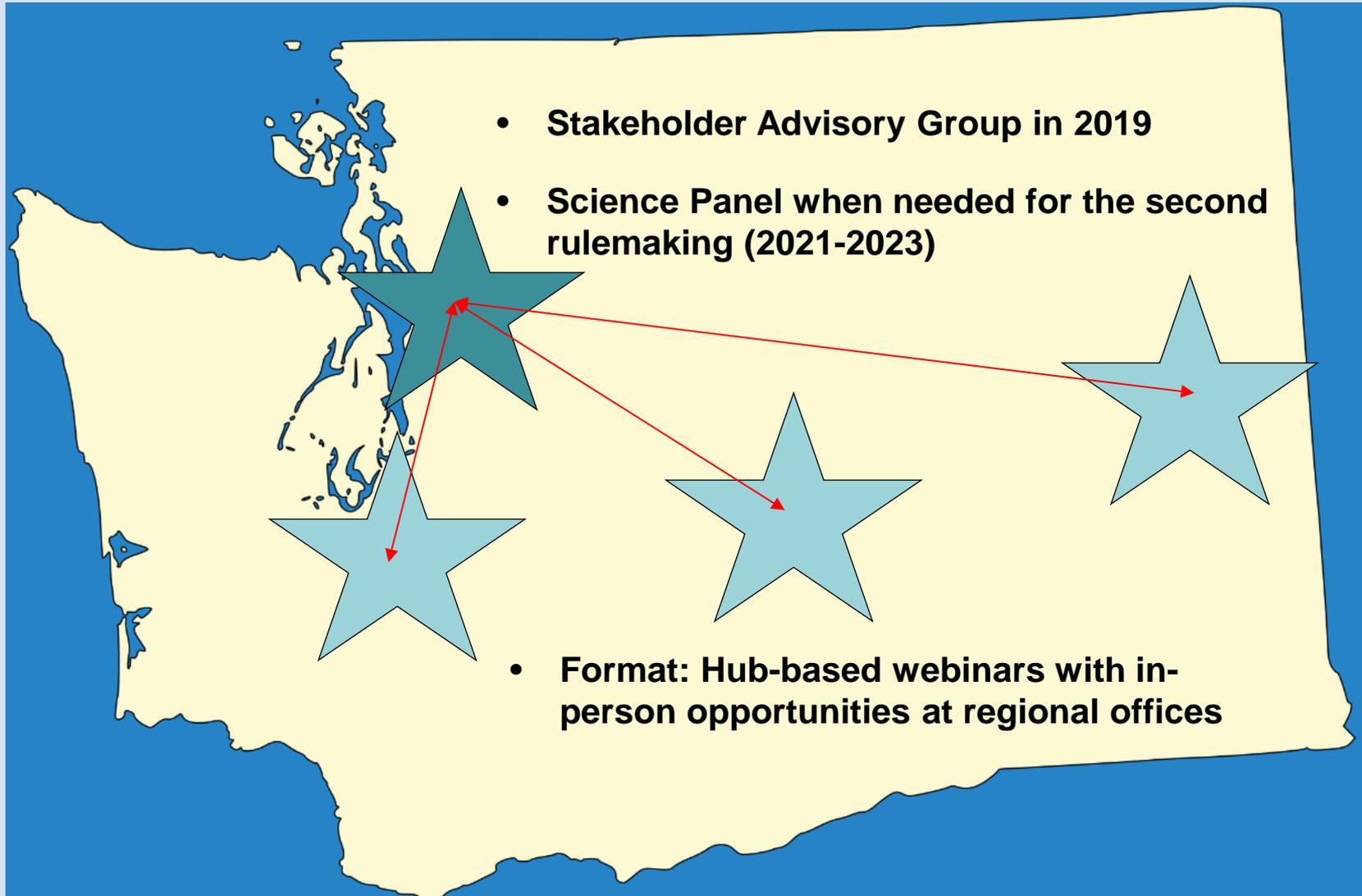
## **Economist review** – April, 2020

## **Rule Proposal** – June, 2020

- Public Comment
- Formal Hearing

## **Rule adoption** – end of 2020.

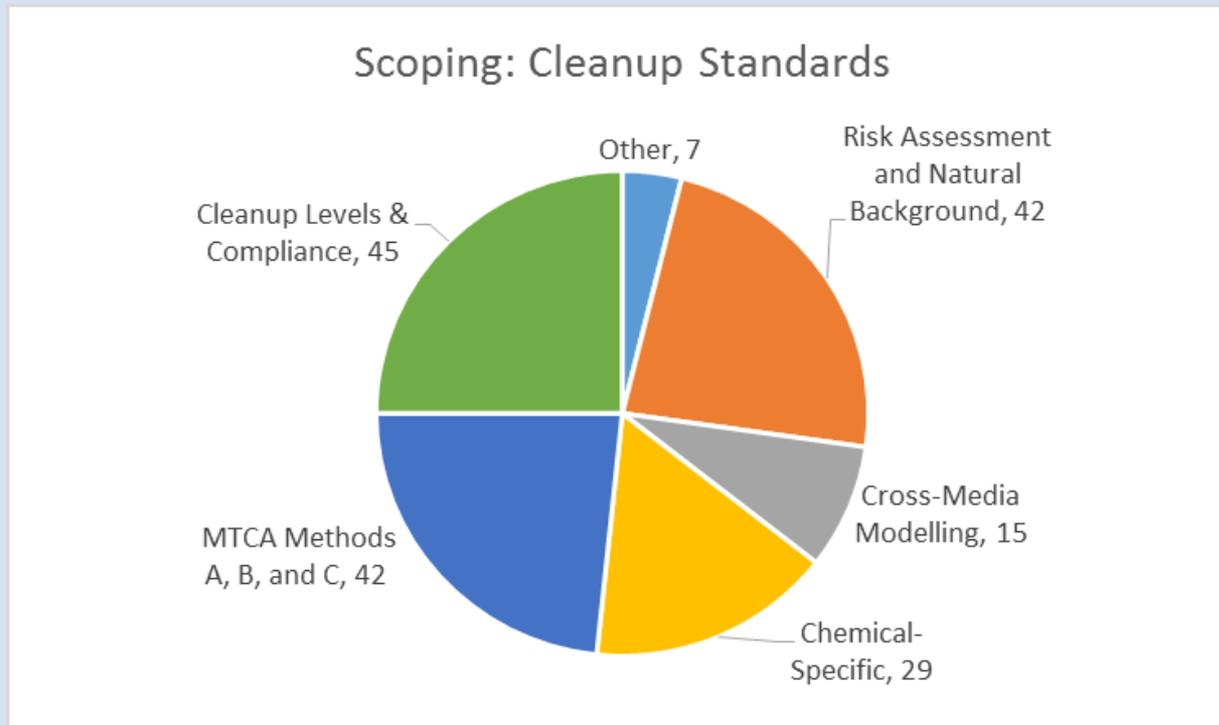
# Stakeholder Involvement



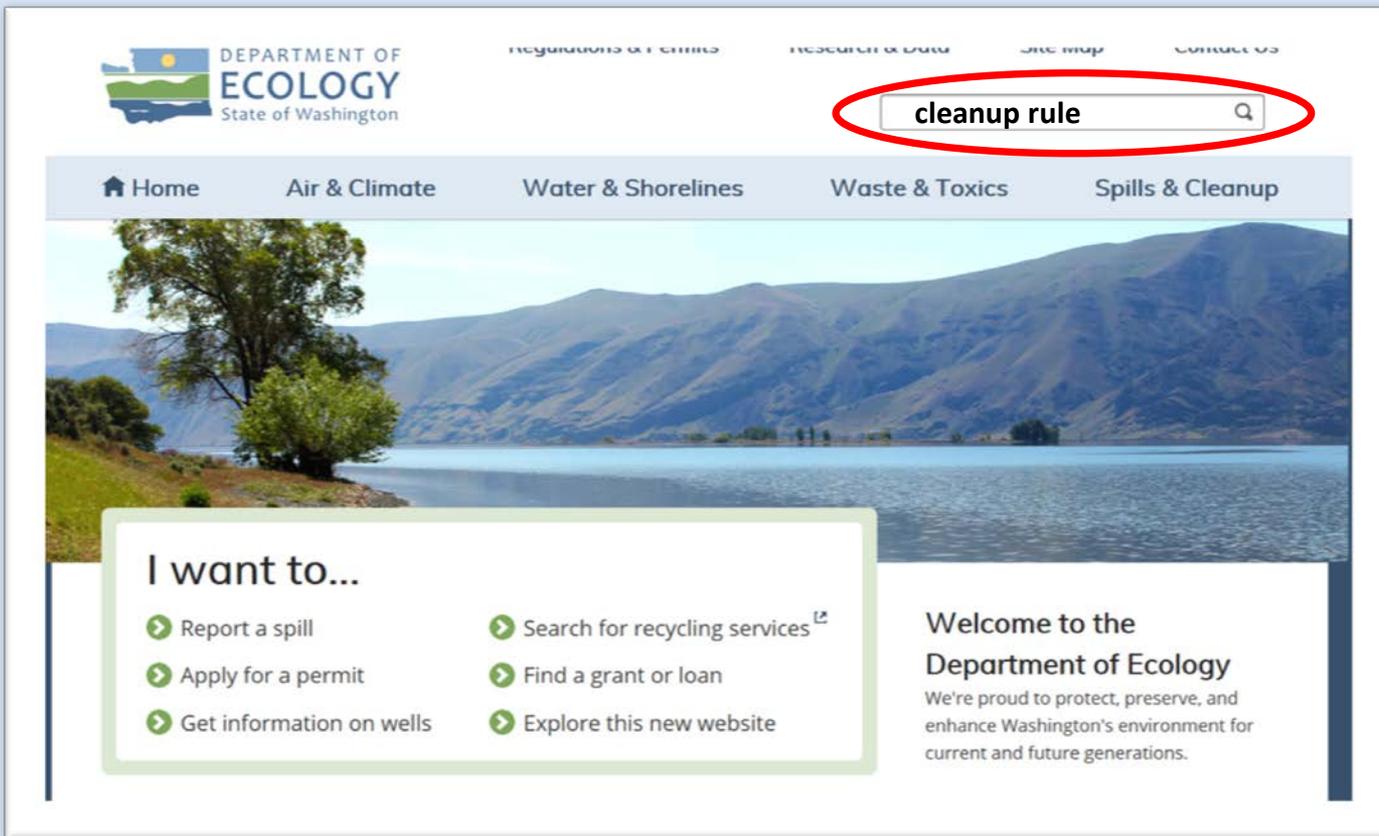
# Cleanup Standards

- **Review of the Cleanup Standards**

- Begins next year
- A close look at Sections 700 and 900 of the Cleanup Rule
- Staff and stakeholder consultation to identify focal topics for next rulemaking
- Consult with outside experts (Science Panel) when/as needed
- Here's what we heard during the Exploratory Rulemaking:



# Ecology's webpage has latest updates



The screenshot shows the homepage of the Washington Department of Ecology. At the top left is the logo with the text "DEPARTMENT OF ECOLOGY State of Washington". To the right are navigation links: "regulations & permits", "research & data", "site map", and "contact us". A search bar in the top right contains the text "cleanup rule" and is circled in red. Below the navigation is a horizontal menu with "Home", "Air & Climate", "Water & Shorelines", "Waste & Toxics", and "Spills & Cleanup". The main content area features a large landscape image of a lake and mountains. A white box on the left titled "I want to..." contains six green arrow icons pointing to links: "Report a spill", "Apply for a permit", "Get information on wells", "Search for recycling services", "Find a grant or loan", and "Explore this new website". On the right, a "Welcome to the Department of Ecology" section includes a paragraph: "We're proud to protect, preserve, and enhance Washington's environment for current and future generations."

# Ecology's webpage has latest updates

[Home](#) [Air & Climate](#) [Water & Shorelines](#) [Waste & Toxics](#) [Spills & Cleanup](#)

## Search results

Note: For most PDF documents and forms, go to our [Publications & Forms database](#)

cleanup rule

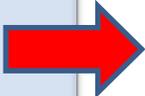
35 results

### Cleanup Rule exploratory rulemaking

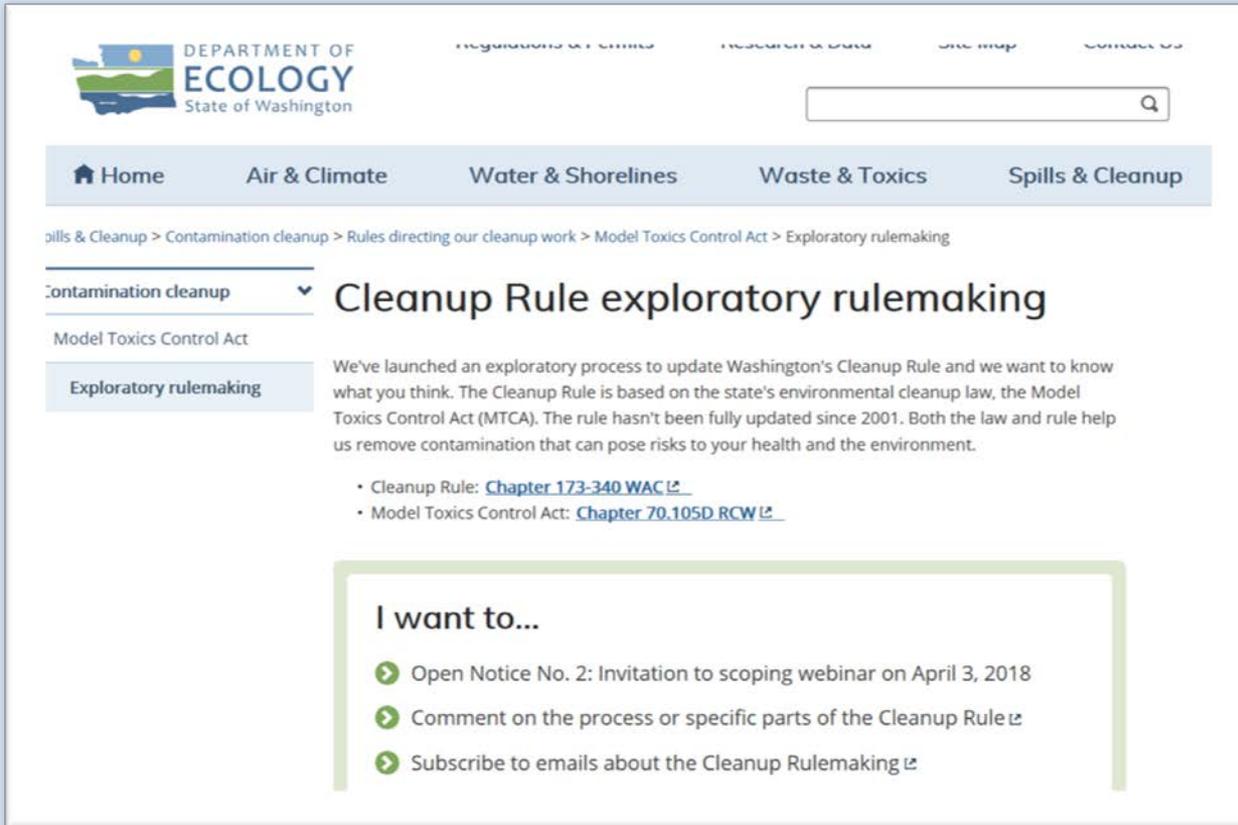
We're exploring several updates to Washington's Cleanup Rule and we want to know what you think.

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

### Empirical demonstrations under MTCA



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The screenshot shows the Washington Department of Ecology website. The header includes the department logo, navigation links for 'regulations & permits', 'research & data', 'site map', and 'contact us', and a search bar. A secondary navigation bar contains links for 'Home', 'Air & Climate', 'Water & Shorelines', 'Waste & Toxics', and 'Spills & Cleanup'. The breadcrumb trail reads: 'Spills & Cleanup > Contamination cleanup > Rules directing our cleanup work > Model Toxics Control Act > Exploratory rulemaking'. The main content area features a left sidebar with a dropdown menu for 'Contamination cleanup' and a sub-menu for 'Exploratory rulemaking'. The main heading is 'Cleanup Rule exploratory rulemaking'. The text explains the process to update the Cleanup Rule and the Model Toxics Control Act (MTCA). A list of links includes 'Cleanup Rule: [Chapter 173-340 WAC](#)' and 'Model Toxics Control Act: [Chapter 70.105D RCW](#)'. A green-bordered box titled 'I want to...' contains three items: 'Open Notice No. 2: Invitation to scoping webinar on April 3, 2018', 'Comment on the process or specific parts of the Cleanup Rule', and 'Subscribe to emails about the Cleanup Rulemaking'.

DEPARTMENT OF  
**ECOLOGY**  
State of Washington

regulations & permits research & data site map contact us

Home Air & Climate Water & Shorelines Waste & Toxics Spills & Cleanup

Spills & Cleanup > Contamination cleanup > Rules directing our cleanup work > Model Toxics Control Act > Exploratory rulemaking

Contamination cleanup ▾

Model Toxics Control Act

**Exploratory rulemaking**

## Cleanup Rule exploratory rulemaking

We've launched an exploratory process to update Washington's Cleanup Rule and we want to know what you think. The Cleanup Rule is based on the state's environmental cleanup law, the Model Toxics Control Act (MTCA). The rule hasn't been fully updated since 2001. Both the law and rule help us remove contamination that can pose risks to your health and the environment.

- Cleanup Rule: [Chapter 173-340 WAC](#)
- Model Toxics Control Act: [Chapter 70.105D RCW](#)

**I want to...**

- Open Notice No. 2: Invitation to scoping webinar on April 3, 2018
- Comment on the process or specific parts of the Cleanup Rule
- Subscribe to emails about the Cleanup Rulemaking



# Legislative and Budget Updates

## **Ecology 2019-2021 Budget Requests include:**

### **Operating Budget:**

- Restoration of one-time MTCA \$5.0 million agency wide cut (6 staff)
- Request an additional 5 staff to focus on the Voluntary Cleanup Program
- Request an additional 6 staff to focus on formal sites

### **Capital Budget:**

- \$85 million for Remedial Action Grants, including \$1.0 million for Integrated Planning Grants
- \$250K for Cleanup Rule support
- \$240K for establishing freshwater natural background

## **Ecology Request Legislation for 2019 includes:**

- Authorize Ecology to establish an expedited review process in the Voluntary Cleanup Program

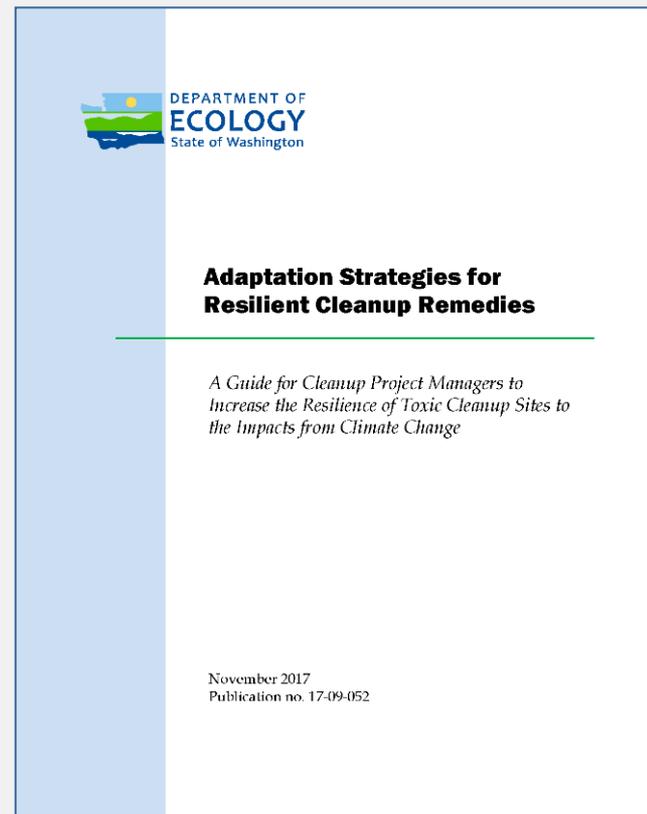


# Cleanups and Affordable Housing in the 2018 Supplemental Budget

1. Provided \$6.2 million in funding to support Mount Baker Housing Association's cleanup of land for the development of the Maddux
2. Provided Ecology with Integrated Planning Grant funds for local governments to investigate and plan cleanup for potential affordable housing development, and
3. Instructed Ecology and Commerce to develop a program to carry out more of these cleanups and report on the results.

# Policy Updates

- Establishing Regional Background for Lake Washington and South Puget Sound.
- Guidance on Climate Change and Cleanup
- Evolution of the Dredged Materials Management Program (DMMP)



# Thank you!

**Questions about the Cleanup Rule? Please contact us:**

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Toxics Cleanup Program

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or

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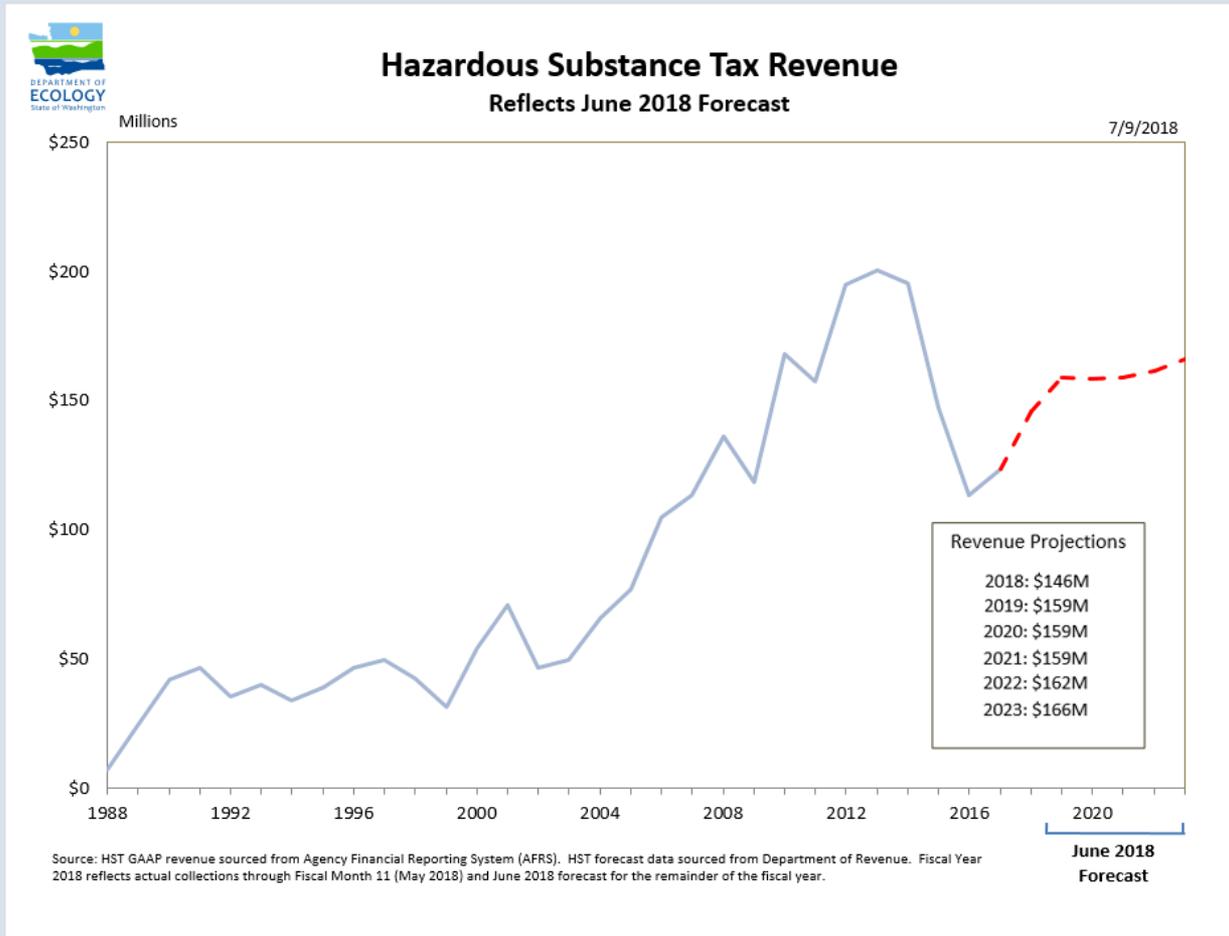
Toxics Cleanup Program

360-407-7193

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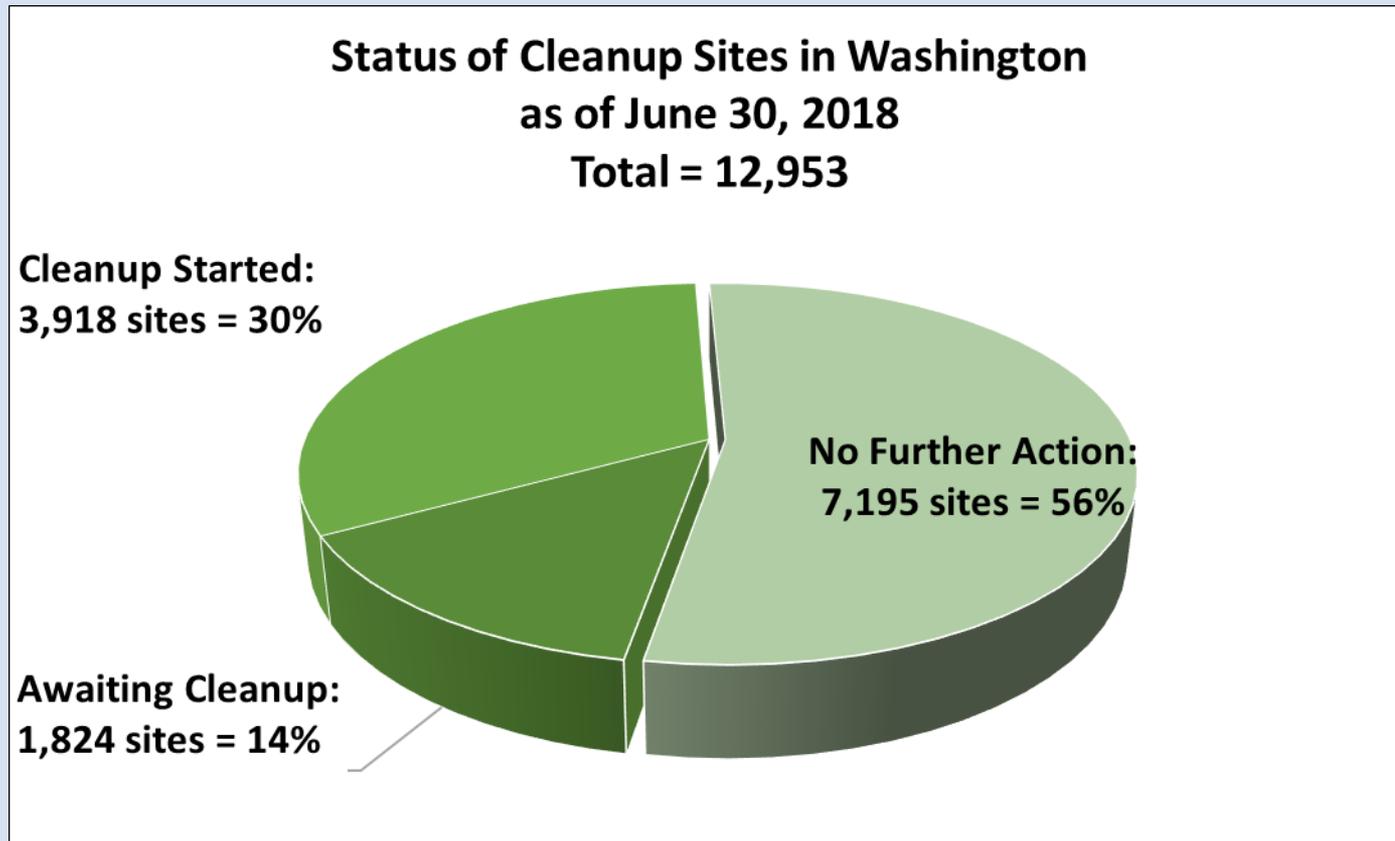


# Hazardous Substance Tax Revenue Projection



Source: Draft 10-Year Financing Report 2018

# Status of Cleanup Sites in Washington



Source: Draft 10-Year Financing Report 2018