

PERFORMANCE AUDIT

Office of the Washington State Auditor Pat McCarthy

Community Engagement During Contaminated Site Cleanups

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Executive Summary

State Auditor's Conclusions (page 37)

The sheer number of contaminated sites in our beautiful state is concerning. Of the more than 14,000 documented sites, about 6,300 have yet to see cleanup activities completed. It is very likely that most of these sites will need to be cleaned up to protect the health of Washington residents.

The sites vary widely, from long-closed gas stations in rural areas to former industrial plants near urban areas. More than half of the 6,300 contaminated sites are managed by third parties, like private property owners. Another 1,600 of them lack plans for when, how or who will clean them up. Like many members of the public, we expected that the state was responsible for oversight of this issue. Part of that oversight is ensuring local communities are engaged before and during the cleanup process.

As this report details, however, most sites are not actively overseen by the state, and therefore not subject to community engagement requirements.

We determined that the state Department of Ecology currently manages just 493 of active contaminated sites. We found that Ecology, when it does manage a project, for the most part effectively engages surrounding communities and affected Native American tribal governments in the cleanup process. Nonetheless, people we interviewed who had experience working with the agency noted areas where it could improve its efforts. This audit includes recommendations to help it do so.

In my view, the more pressing concerns are projects overseen by third parties. It is appropriate that those responsible for the contamination of the land should be responsible for its cleanup. However, unlike Ecology, third parties face no requirement to engage with the local community.

Washington's approach to environmental justice directs agencies, including the Department of Ecology, to ensure they facilitate the equitable participation of marginalized people, such as those who work and live near places affected by contamination. Therefore, I believe Ecology should consider how an equitable approach to engagement can become the norm for higher risk site cleanup efforts, such as the 212 sites we identified, not just the comparatively small share under the state's direct supervision.

Background (page 8)

Toxic substances in the environment endanger human health until someone cleans them up. Diesel fuel and home heating oil, heavy metals like mercury and lead, chemicals like PCBs and dioxins: these and other pollutants can contaminate entire ecosystems including soil, water, sediment and air. If left untreated, such problems damage the environment further by entering the water supply, emitting toxic gases that intrude into buildings, and degrading the soil so it becomes unsafe to live upon. The adverse consequences for our health if such contaminants are left untreated are well documented. They include increased risk of damage to the central nervous system, impaired responses in the immune systems, cancer and premature death. Washington state agencies have documented more than 14,000 known or suspected contaminated sites in our state; about 7,900 have been addressed or do not need cleanup actions at present. The state's current roster lists 6,378 sites in need of cleanup; some are in the process of remediation or cleanup, others are being monitored to determine if further work is needed. These risks to human health are not uniformly distributed across the state's population, however, and vulnerable populations are disproportionately exposed to the problems of contaminated sites.

Federal and state laws govern how the Department of Ecology should clean up contaminated sites. But beyond the physical act of remediating the problem, these laws also define the nature and scope of community and tribal engagement Ecology must perform during the cleanup process. Three laws in particular underpin Ecology's responsibilities:

- The federal Resource Conservation and Recovery Act of 1976
- The state Model Toxics Control Act of 1989
- The state Healthy Environment for All Act of 2021

The community engagement prescribed by these laws is intended to create and sustain trusting relationships by facilitating two-way communication around local perspectives. Contaminated sites are primarily concentrated in communities with vulnerable populations and can lead to worse health outcomes for the people living there. For these reasons, this audit aimed to determine if there is inequity in how Ecology engages with communities near cleanup sites.

This audit examined how Ecology collects and incorporates feedback from the communities and Native American tribes living in proximity to contaminated sites in Washington. The audit also considered the role of the Department of Health with respect to Ecology's cleanup efforts.

Ecology manages only 8% of Washington's contaminated sites, leaving the majority of sites without any requirements for community

engagement (page 16)

During our audit work, we found an underlying issue we did not expect: that Ecology is currently responsible for delivering community and/or tribal engagement activities on only a small fraction of the 6,378 active cleanup sites listed on the agency's website.

Ecology currently manages 8% of active contaminated sites, where it provides required community engagement. These are sites where Ecology either conducts the cleanup or supervises the cleanup by another party under a legal agreement. The majority of sites – 57% – are managed by third parties, without Ecology's participation in or oversight of community engagement that would otherwise have been required by the work under the Model Toxics Control Act. This means the communities affected by the 212 higher risk sites managed by third parties may not receive such activities, nor will Ecology know what community engagement the third parties might have conducted, because the agency is not required by law to perform such oversight. In addition, we found information about independently managed sites was difficult to obtain on Ecology's website. Another 1,600 contaminated sites lack plans for when, how or who will clean them up. Furthermore, our analysis found that 125 of these planless sites have been ranked as either high risk or moderate-high risk.

Terms used in this report

"Ecology managed." Refers to sites where Ecology either conducts or supervises the cleanup effort.

"Third parties." Refers to any company, organization or person cleaning up a site that is not Ecology or another regulatory body such as the Environmental Protection Agency (EPA).

"Community engagement." Refers to all types of required outreach to people affected by a cleanup site. While the term encompasses communication with all people affected by site cleanups, the third chapter of Audit Results is expressly concerned with Ecology's engagement with Native American tribes.

Improved coordination between Ecology and Health, as well as local health departments, could help keep local communities safe. We found agency collaborative efforts appeared to be informal, while staff guidance and training also appeared minimal. Poor coordination between Ecology and local health departments can contribute to health hazards for community members.

Although Ecology followed many required and leading practices, local community experiences varied widely (page 23)

Ecology met most legal requirements and leading practices at six cleanup sites we evaluated for community engagement activities, with two exceptions. At the start of a cleanup project, Ecology could improve its community research; at the end of the project, it could more consistently evaluate its community engagement activities.

Our community interviews revealed some dissatisfaction about Ecology's engagement with people affected by cleanups. Interviewees sought tailored engagement efforts that more directly addressed their needs. Ecology's lack of a uniform approach in handling other aspects of community outreach likely contributed to their concerns.

While some tribes said Ecology's level of engagement met their needs, others said they needed more and earlier in the cleanup process (page 30)

Multiple laws impose unique requirements regarding Ecology's engagement with tribes. The audit solicited the views of tribal representatives concerning their experiences with Ecology and its engagement requirements under these laws. Most participants said the agency's engagement met their tribe's needs, while responses varied on whether those engagement activities felt equitable. Ecology's early engagement efforts met most participants' needs. Finally, tribal representatives had ideas for how the agency could improve its engagement efforts. Ecology staff said they are already making changes to address new legal requirements.

Recommendations (page 38)

We made a series of recommendations to the Department of Ecology to address a lack of community engagement activities at independently managed contaminated sites, and to further improve community and tribal engagement at site cleanups conducted or supervised by Ecology. We recommended the agency ensure community engagement occurs at high risk and moderate-high risk sites managed by third parties, and establish a proactive plan for evaluating the highest risk sites that do not yet have a cleanup plan. We also made recommendations to address inconsistent coordination between the departments of Ecology and Health.

Next steps

Our performance audits of state programs and services are reviewed by the Joint Legislative Audit and Review Committee (JLARC) and/or by other legislative committees whose members wish to consider findings and recommendations on specific topics. Representatives of the Office of the State Auditor will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website (leg.wa.gov/about-the-legislature/committees/joint/jlarc-i-900-subcommittee/) for the exact date, time and location. The Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion. See Appendix A, which addresses the I-900 areas covered in the audit. Appendix B contains information about our methodology. See the Bibliography for a list of references and resources used to develop our understanding of topic area.

Background

Toxic substances in the environment endanger human health until someone cleans them up

Diesel fuel and home heating oil, heavy metals like mercury and lead, chemicals like PCBs and dioxins: these and other pollutants can contaminate entire ecosystems including soil, water, sediment and air. Examples are everywhere: gas stations with leaking underground storage tanks, airports that have deployed fire-fighting foam containing per- and polyfluoroalkyl substances (PFAS), farms with historical uses of DDT or pyrethroids, and rivers in urban areas polluted by a century of heavy industry on their banks. If left untreated, such problems can further damage the environment by entering the water supply, emitting toxic gases that intrude into buildings, and degrading the soil so it becomes unsafe to live upon. The adverse consequences for human health and the environment if such contaminants are left untreated are well documented. They include increased risk of damage to the central nervous system, impaired responses in the immune systems, cancer and premature death.

The Washington State Department of Ecology has documented more than 14,000 known or suspected contaminated sites in our state; about 7,900 have been addressed or do not need cleanup actions at present. The state's current roster lists 6,378 sites in need of cleanup; some are in the process of remediation or cleanup, others are being monitored to determine if further work is needed. Some of these sites pose less risk to human health than others, and the state evaluates them based on the severity of the damage and likelihood people could be exposed to the dangerous substance. A high-risk site is a crude oil spill which must be cleaned up immediately. The risk is considered lower for an old manufacturing plant that disposed of scrap metal carelessly but is several miles from the nearest homes with less likelihood of exposure.

These risks to human health are not uniformly distributed across the state's population, however, and vulnerable populations are disproportionately exposed to the problems of contaminated sites. Research has found that the harm done by exposure to contaminated sites is compounded by factors such as racism, poverty and high stress. In Washington, the Legislature has taken steps to address the risks posed by toxic materials at contaminated sites that contribute to poorer health outcomes for all residents, especially those who are less able to avoid them.

Those tasked with addressing such contaminated sites must ensure they involve local people in the process

Whether a government agency or some other responsible party undertakes the clean up of a contaminated site, they should always respect and engage with the people who are immediately affected by the problem. A September 2022 report from the U.S. Environmental Protection Agency (EPA), *Building Trust and Relationships in Cleanup Community Engagement, from Theory to Practice*, highlights the benefits of community engagement and the positive effect this can have on the people who live there. When done well, engagement creates an opportunity for the agency to educate the public, in turn obtaining buy-in and support; it can reduce conflicts and increase public confidence in decisions being made about the cleanup process. People affected by the cleanup are better informed, so they can effectively provide input into decisions by sharing their concerns and knowledge with the agency. This lessens resistance and increases support for the project. Community engagement is also associated with more innovative solutions, and improved health and environmental outcomes for communities living around the site.

The importance of community engagement is further highlighted by research concluding that people of color, people of lower socioeconomic status, and tribal nations have long been disproportionately exposed to environmental hazards. Working collaboratively with communities to repair those past harms is an important element of environmental justice as the state strives to address unequal treatment. For example, in April 2020, Gov. Inslee established the Office of Equity to promote access to equitable opportunities and resources that reduce disparities, and to improve outcomes statewide across all branches of state government.

Two Washington state agencies work together to address contaminated sites: Ecology and Health

The **Department of Ecology** was founded more than 50 years ago in 1970, and preceded the EPA. Ecology was the first agency in the United States dedicated to protecting the environment and, by extension, the health and well-being of the state's people and wildlife. In 1988, Washington voters passed Initiative 97, which gave Ecology the authority to manage the cleanup of polluted or contaminated sites, along with the power to oversee cleanups conducted by the business or individual Ecology believes is responsible for the site. The agency's cleanup efforts confront diverse challenges such as air pollution, contaminated drinking wells and leaking underground storage tanks.

Until recently, the agency used a ranking system, the Washington Ranking Method also known as WARM, that evaluated site contamination relative to other contaminated sites and the risk the site posed to human health to prioritize sites for cleanup activities. This performance audit evaluated sites with rankings developed using the agency's WARM tool. In January 2024, Ecology introduced a new ranking tool that calculates a score summarizing the risk of exposure to contamination and its severity in the soil, groundwater, surface water, sediment and indoor air. Ecology's website describes the new tool as the Site Hazard Assessment and Ranking Process (SHARP).

The **Department of Health** also plays an important role in the state's efforts to address contaminated sites. First, it serves as a consultant agency to help Ecology conduct community engagement and public education efforts when Ecology has identified an immediate health risk from a contaminated site. Health can also support and facilitate Ecology's work with local public health departments, especially when people near site cleanups have concerns or questions concerning the site's effects on their health. Second, Health has a responsibility to inform Ecology when it identifies a community health risk at a contaminated site. Once the health risk is identified, both agencies can coordinate on community engagement and education. Health also works with third parties to notify Ecology when they have identified contamination with a potential human health risk.

State and federal laws require Ecology to engage with all communities affected by its site cleanup activities

Federal and state laws govern how Ecology should clean up contaminated sites. But beyond the physical act of remediating the problem, these laws also define the nature and scope of community and tribal engagement Ecology must perform during the cleanup process. Three laws in particular underpin Ecology's responsibilities:

- The federal Resource Conservation and Recovery Act of 1976
- The state Model Toxics Control Act of 1989
- The state Healthy Environment for All Act of 2021

The Resource Conservation and Recovery Act applies to some sites in Washington

This federal law authorized the EPA to implement a cleanup program for sites that produce, transport and dispose of hazardous waste. It includes many provisions that require the EPA to engage with Native American tribes and the public through, for example, public comment periods and meetings. Because each state has needs unique to its landscape, history and residents, the EPA partners with state agencies to conduct cleanups of hazardous waste sites on its behalf. Ecology is the EPA's partner in Washington.

The Model Toxics Control Act is the primary law governing contaminated site cleanups in Washington

This state law (RCW 70A.305) governs the management of cleanups that do not fall under federal jurisdiction and is the state's primary environmental cleanup law. It states that:

"Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor."

Under this section of the law, the polluter pays for the remedial action and Ecology is not responsible for paying for cleanup costs. The Legislature provides funding for the specific sites where Ecology conducts the cleanup.

This law and its associated regulations (WAC 173-340) guide the cleanup process and ensure Ecology meets a minimum level of community engagement. The law's regulations specify how the agency should carry out cleanups and work with communities affected by the site. They outline:

- How Ecology must engage communities and tribes
- How and when to notify communities and tribes about cleanup
- How and when Ecology must provide the public with the opportunity to comment on site cleanup

Appendix C contains excerpts from Ecology's regulations that apply to community engagement, and recognizes that updates to the regulations occurred during the audit period and went into effect on January 1, 2024.

The Model Toxics Control Act also allows for third parties other than Ecology to clean up contaminated sites

State law recognizes that it is in the state's best interests to identify the appropriate party to take on cleaning up a contaminated site. To facilitate the agency's ability to assign cleanup work to other individuals, organizations or businesses, the Model Toxics Control Act describes three categories of cleanups: those conducted by Ecology; those Ecology supervises; and independent sites, which Ecology does not manage, nor does it usually support financially or with expertise. Voluntary cleanup program sites are independent sites that do receive some technical help from Ecology. Ecology staff follow an evaluation process to determine if Ecology will supervise a cleanup or if cleanup will be conducted independently; among the most important considerations in their decision is whether the state can identify someone who is legally responsible for cleaning up the property.

Ecology conducted or supervised sites. Ecology either conducts the cleanup by using a contractor or supervises the work being conducted by the site's owner or other liable person under a legal agreement. If necessary, Ecology can issue a legal

order to compel the owner of the site to clean it up. Ecology conducts the cleanup when the owner of the site or other potentially liable person is unable to pay for the work or cannot be identified. Both Ecology-conducted and -supervised cleanups must meet Model Toxics Control Act standards, including ensuring the cleanup offers opportunities for community and tribal engagement.

Independent sites. These cleanups are conducted by the site owner without either technical assistance or supervision provided by Ecology. State regulations do not require independent sites to conduct community or tribal engagement.

• Voluntary Cleanup Program sites. These are a subset of independent sites. Under this Ecology program, owners of contaminated sites who conduct independent cleanups can receive technical assistance and written opinions on the sufficiency of the site cleanup from Ecology for a fee. Even though these site owners receive technical help from Ecology, the agency has no oversight authority regarding community or tribal engagement for these sites.

Healthy Environment for All Act addresses issues of environmental justice

The Healthy Environment for All Act (RCW 70A.02, also called the HEAL Act and the Environmental Justice Act) was designed to reduce environmental and health disparities among all state residents. The law defines environmental justice as:

"...the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm."

This principle is important in the work around environmental cleanups. In 2020, the Environmental Justice Task Force report to the governor and Legislature cited research that concluded contaminated sites were concentrated in neighborhoods where vulnerable and disadvantaged populations live and work. These Washingtonians are thus already at a higher risk for poor health outcomes. Furthermore, equitable community engagement as promoted in this act also urges agencies to remove barriers to engagement such as language and transportation, and to use plain talk when communicating with the public.

This act applies to the cleanup of contaminated sites in several respects. First, it directs Ecology to develop an agency plan to facilitate equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities. Second, it directs the agency to develop a consultation framework, in coordination with federally recognized tribal governments, that includes best practices, protocols for communication and collaboration in its work with tribal nations.

These laws establish community engagement requirements and activities Ecology must follow

Regulations in the Model Toxics Control Act in particular require Ecology to notify the public about *all* contaminated sites, including Ecology-conducted, Ecologysupervised and independent sites, so people can learn about possible problems in their neighborhoods. To make such information readily available, Ecology posts site-specific information on its public website in two main places:

- The Cleanup and Tank Search page. This tool allows users to easily find individual site pages that include information about the site and contacts at Ecology.
- The Contaminated Site Register and its associated newsletter

However, additional community engagement requirements apply to only those cleanups that Ecology conducts or supervises itself. Among its required tasks, the agency must develop a public participation plan that "is intended to encourage a coordinated and effective public involvement tailored to the public's needs at a site."

Every public participation plan must clearly identify the potentially affected vicinity, and describe when and how people will be notified about the cleanup. It must describe the opportunities offered for public comment during certain stages of the cleanup process, and the length of comment periods. It must include methods of identifying and addressing the concerns raised by community members and conveying information to them.

Ecology staff make use of the two website tools to facilitate communication with local communities. The individual site pages posted on the agency's website include information about public meetings, how to provide comments on the cleanup, and documentation such as the public participation plan. In addition, the Contaminated Site Register newsletter provides biweekly information from the agency about "new sites, cleanup activities, public meetings, public comment periods, and policy and rule changes."

Tribal communication rules under the Model Toxics Control Act also direct Ecology to provide tribes with timely information, effective communication and continuous opportunities for collaboration. The agency must develop a sitespecific tribal engagement plan that identifies which tribes may be affected by the site, opportunities for government-to-government collaboration, and how to best communicate with each tribe as necessary. Tribal engagement must be in addition to, and independent of, any public engagement by Ecology.

It is important to remember that site owners conducting independent cleanups are not required to develop a plan or to engage the communities surrounding the site.

Following legal requirements for community engagement can produce a cleanup plan that is more equitable to all affected people

The community engagement prescribed by these laws is intended to create and sustain trusting relationships by facilitating two-way communication around local perspectives. It should be flexible and tailored to the community's needs. And it must be timely, equitable and useful, to both Ecology and the people affected by cleanup work. The idealized scenario below illustrates how an agency's engagement with people living near a site scheduled for cleanup can directly affect the outcome of the work. (Note that it presents real-world activities but is not an actual cleanup conducted or supervised by Ecology or a third party.)

Hazomat Pond lies at the bottom of an overgrown ravine between a growing town and a portion of reserved tribal lands. The agency proposes to remove the hazardous trash people have pushed into the ravine for decades and clean up the pond. The agency publishes its plan, showing which of the two roads out of the ravine its trucks will take to haul out contaminants. Agency staff publicize the plan and attend meetings in the tribal community center and the town hall.

During these meetings, staff learn the proposed route passes the town's school, which holds periodic sports events on the field adjoining the road. Community groups ask the agency to revise the plan to avoid bringing contaminated material past the school. Staff review this feedback and decide they can amend the plan to use the alternative road on event days.

Equitable treatment for tribal communities is a required element of agency planning. If staff do not engage just as thoroughly with the affected tribe, they risk imposing a cleanup plan that treats the tribe's members less fairly. In this scenario, insufficient early engagement with the tribe might mean staff choose the alternative road for all heavy traffic without realizing the second road passes the tribal school's new playing fields. Doing so would place tribal students at higher risk of harm from contaminants than the students at the town's school.

This audit examined how Ecology conducts community engagement

This audit examined how Ecology collects and incorporates feedback from the communities and Native American tribes living in proximity to contaminated sites in Washington. The audit also considered the role of Health with respect to Ecology's cleanup efforts. Contaminated sites are primarily concentrated in communities with vulnerable populations and can lead to worse health outcomes for the people living there. For these reasons, this audit aimed to determine if there is inequity in how Ecology engages with communities near cleanup sites.

The audit answered the following questions:

- 1. What engagement approaches does Ecology use when working with communities affected by contaminated site cleanup efforts?
- 2. Does Ecology tailor its approach to meet the specific needs of each community?
- 3. Does Ecology consistently and equitably gather, consider and integrate feedback from affected communities into its cleanup efforts?

The answers to these questions will be found primarily in the second and third chapters of Audit Results. However, during our audit work, we found an underlying issue we did not expect: that Ecology is currently responsible for delivering community and/or tribal engagement activities on only a small fraction of the 6,378 active cleanup sites listed on the agency's website. The majority – 57% – are cleaned up independently by other parties, who are not required by state law or regulations to conduct community or tribal engagement. That percentage includes 212 sites Ecology has ranked as high or moderate-high risk – sites where community engagement might be particularly warranted. For this reason, Chapter 1 addresses this significant finding first.

Audit Results

Ecology manages only 8% of Washington's contaminated sites, leaving the majority of sites without any requirements for community engagement

Results in brief

The Department of Ecology currently manages 8% of active contaminated sites, where it provides required community engagement. However, more than half the contaminated sites in Washington, managed by third parties, do not require

community engagement activities. This means the communities affected by the 212 higher risk sites managed by third parties may not receive such activities, nor will Ecology know what community engagement the third parties might have conducted, because the agency is not required by law to perform such oversight. We found information about independently managed sites was difficult to obtain on Ecology's website. In addition, another 1,600 contaminated sites lack plans for when, how or who will clean them up.

Improved coordination between Ecology and the Department of Health, as well as local health departments, could help keep local communities safe. We found agency collaborative efforts appeared to be informal, while staff guidance and training also appeared minimal. Poor coordination between Ecology and local health departments can contribute to health hazards for community members.

Terms used in this report

"Ecology managed." Refers to sites where Ecology either conducts or supervises the cleanup effort.

"Third parties." Refers to any company, organization or person cleaning up a site that is not Ecology or another regulatory body such as the Environmental Protection Agency (EPA).

"Community engagement." Refers to all types of required outreach to people affected by a cleanup site. While the term encompasses communication with all people affected by site cleanups, the third chapter of Audit Results is expressly concerned with Ecology's engagement with Native American tribes.

Ecology currently manages 8% of active contaminated sites, where it provides required community engagement

Our review of Ecology's list of 6,378 active contaminated sites in August 2024 found that only 493 (8%) of them were conducted or supervised by Ecology, as **Exhibit 1** shows. Most remaining active sites were going through the cleanup process under another entity's management; almost all were being managed by independent third parties, while 636 were managed by the EPA or another regulatory body. (We did not evaluate community engagement activities for these 636 sites during this audit; Appendix B contains some information about those regulatory bodies.) The remaining 1,600 sites were awaiting cleanup because the agency had not yet evaluated the site to decide how best to proceed with the cleanup.

Ecology typically conducts remedial action when it cannot identify a potentially liable person or when that person or business is technically or financially unable to conduct remedial actions. The agency prioritizes the sites it will work **Exhibit 1** – Of the 6,378 active contaminated sites on Ecology's public lists, the agency conducts or supervises cleanups for 493 (8%) of them *Data as of August 2024*



Source: Auditor analyses of contaminated site data provided by Ecology.

on according to risk that the contamination will affect human health or the environment. Staff also consider the funding available to perform cleanup work. Ecology managers said that in awarding planning and cleanup grants, they take into account environmental justice and community resources in deciding which projects to fund; they said scoring criteria are weighted to favor overburdened communities and vulnerable populations. For example, a senior agency manager said that when a local government has received a grant to clean up a site, the agency will be under some pressure to negotiate and proceed with cleanup contracts on that site sooner than others, regardless of earlier prioritization or ranking. Staff will also take into account concerns from local communities, elected officials and tribes in deciding to address some sites more urgently. Such considerations come into play in making decisions about agency work, beyond the technical process of evaluating the extent of a problem or the risks it poses.

Only those people affected by the 493 contaminated sites currently managed by Ecology will receive the community engagement and feedback opportunities set out in the regulations for the Model Toxics Control Act.

More than half the contaminated sites in Washington, managed by third parties, do not require community engagement activities

Ecology's rules under the Model Toxics Control Act allow third parties to perform cleanups. Our analyses of Ecology's data showed that the vast majority – 3,651 or 57% – of site cleanups as of August 2024 were managed by independent third

parties, as shown in Exhibit 2.

Independent site cleanups are not subject to the community engagement requirements that apply to Ecologyconducted or -supervised cleanups. Nor is Ecology required to provide feedback on or make sure that these third parties are engaging with local communities. Because Ecology does not oversee community engagement activities conducted for sites managed by third parties, it lacks any information about community engagement efforts for 57% of contaminated sites, including those that may be close to vulnerable populations. Notwithstanding this gap in agency knowledge, Ecology managers said the agency lacks the resources to perform such oversight, even if it were made responsible for doing so.

Exhibit 2 – Of the 6,378 active contaminated sites on Ecology's public lists, 3,651 (57%) are managed by an independent third party *Data as of August 2024*



Source: Auditor analyses of contaminated site data provided by Ecology.

Community engagement is thus not required at 212 higher risk sites managed by third parties

The potential problems present at third-party-managed sites due to a lack of oversight around community engagement are likely exacerbated at those sites Ecology ranked as high or moderate-high risk. When such hazardous sites are located near marginalized communities, the risk of inequity increases because their voices are even less likely to be heard and their views be considered. With no requirements to do so, third parties do not have an incentive to provide adequate community engagement. Also, third parties can benefit from not allocating time and spending money on engaging communities throughout the cleanup process. Finally, people with fewer resources may find it challenging to hold third parties legally responsible if contamination causes illness or other harm. As shown in Exhibit 3, our data analysis found that of the 3,651 third-partymanaged sites, 212 (about 6%) were ranked by Ecology as high risk or moderatehigh risk sites, yet the agency has not performed or overseen community engagement activities at any of them. In our analysis, we did not evaluate which of these high and moderatehigh risk sites were located near vulnerable populations. **Exhibit 3 –** Of the 3,651 sites managed by third parties, 212 are ranked high risk or moderate-high risk sites *Data as of August 2024*

	Number of	sites ranked as:	
Program for third-party management:	High risk	Moderate-high risk	Total such sites third-party managed
Independent	69	99	168
Voluntary Cleanup Program	18	26	44
Grand totals	87	125	212

Source: Auditor analyses of contaminated site data provided by Ecology.

For example, the agency ranked as moderate-high risk an early 20th-century strawberry canning plant adjacent to Strawberry Park on Bainbridge Island. Studies found arsenic, lead and mercury had contaminated both soil and groundwater. The site is listed on Ecology's website as being cleaned up by an independent third party, which means Ecology will not supervise any public outreach or community engagement. Ecology managers will thus have no record of whether the third party worked with local health departments to identify health risks or how to advise local people about them. Similarly, Ecology will lack records of the third party's outreach efforts, and whether it produced community feedback that affected the cleanup process. This is because third parties conducting independent cleanups are not required to notify Ecology of any outreach efforts or feedback that might affect the cleanup process.

Information about independently managed sites was difficult to obtain on Ecology's website

Independently managed sites are not in themselves problematic: state law encourages Ecology to find responsible parties to undertake cleanup work. However, if members of the public cannot readily identify independent sites, they will have unclear expectations about the role Ecology will play in site cleanup. At present, publicly available data in Ecology's Cleanup and Tank Search tool shows that the agency is responsible for about 92% of active contaminated sites. This high figure, however, is misleading, as it suggests Ecology directly conducts or supervises cleanups at far more sites than it does.

When we set out to conduct the analysis shown in exhibits 1 and 2, we requested data from Ecology, and specifically asked for an additional data field – the "Cleanup Unit Process Type." This field identifies who is responsible for overseeing the cleanup at the site or indicates if no one has yet been identified. With this additional data, we were able to determine that Ecology conducts or supervises 8% of active sites listed on the agency's website. The "Cleanup Unit Process Type" is not currently available to the public as a searchable data field.

This means that anyone searching Ecology's website data cannot readily identify whether sites are managed by Ecology and therefore whether Ecology will engage communities during site cleanup. The only way for a member of the public to be sure is to click a link to open the detailed site report, and even then, a person would need to know what specific information to look for. As a consequence, unless they contact Ecology directly, local people are unlikely to know who is responsible for answering questions and addressing their concerns at independently managed sites, and whether the responsible entity will engage their communities.

Ecology managers said they had not considered providing searchable information about the entity responsible for cleanup on the public website. They offered several reasons why not:

- No one had requested the feature
- Ecology staff do not produce data reports that include which entities are responsible for managing contaminated sites
- The current data system would produce duplicate entries for sites where there is more than one responsible party. An example of shared responsibility at one site could involve Ecology managing one area and the EPA managing another.

Another 1,600 contaminated sites lack plans for when, how or who will clean them up

Of the 6,378 active sites listed on Ecology's website as of August 2024, 1,598 were not currently managed by anyone, accounting for about a quarter of all sites. In addition, our analysis found that 125 planless sites have been ranked as either high risk or moderate-high risk, as shown in **Exhibit 4**.

Ecology has yet to develop plans for when, how or who will clean up these sites. Managers said the agency lacks the capacity to evaluate all the sites listed on the website, in order to identify responsible third parties or determine if the agency should undertake the work itself. They added that they have been working on speeding up the evaluation process by hiring new staff, and have introduced the SHARP ranking tool to determine the level of risk a site poses. Exhibit 4 – Of the 1,598 active contaminated sites lacking a cleanup plan, 125 are ranked high or moderate high risk

Data as of August 2024



Ecology managers said they think the new ranking system will allow the agency to evaluate sites more efficiently and prioritize those that must be cleaned up more urgently. Doing so will then help staff determine how risky a site is and whether it should be cleaned up by Ecology or a different entity.

Until it completes these steps, Ecology cannot devise a plan describing how to move forward with cleaning up the site. And until Ecology managers have decided the site's cleanup process, some nearby communities will continue to lack useful information about how nearby contamination will be addressed. As a consequence, people may be exposed to unknown contaminants for an unknown period of time. Not knowing how Ecology plans to address a contaminated site is especially hard on communities with fewer resources. For example, should a situation occur in which groundwater has been contaminated with harmful chemicals, local people might initially choose to buy bottled water until Ecology or another organization provides safe drinking water. Doing so would likely place a significant cost burden on people with modest incomes and less disposable money.

Improved coordination between Ecology and Health, as well as local health departments, could help keep local communities safe

State law (RCW 43.70.310) states that, whenever feasible, Health should cooperate with Ecology to the fullest extent possible... [where] ... the preservation of life and health ... and the protection of the environment are concerned.

Indeed, Health has access to multiple channels that can help Ecology inform community members about human health risks at cleanup sites, especially its relationships with local health departments. Poor communication between Ecology and Health could lead to the latter agency not knowing its help is needed. Poor collaboration could mean that important information about health hazards is incorrect or does not reach the desired audiences. However, while such collaborative efforts are beneficial, we found the agencies do not do so consistently.

We interviewed agency managers at both Ecology and Health to learn about how the agencies collaborate, and whether they issued staff guidance or provided staff training regarding interagency collaboration.

Agency collaborative efforts appeared to be informal. Both agencies said Health does get involved to help with community engagement when there are known health risks, but Health's involvement depends entirely on whether an Ecology site manager knows to contact its staff. Ecology managers said site managers use professional judgment to determine when to work with state or local health

departments, and reminders to contact Health specifically were not built into Ecology processes. They agreed that it would be better to have a process in place to ensure managers and staff know when and how interagency collaboration should take place.

Staff guidance and training also appeared minimal. At present, Ecology lacks clear policies or guidance that specifically address when staff must or should collaborate with Health or local health departments. Nor does the agency require training for site managers and staff concerning interagency collaboration.

Ecology managers said the agency has experienced considerable staff turnover. Turnover leads to a loss of institutional knowledge to help site managers know when and how to collaborate with state and local health departments.

Poor coordination between Ecology and local health departments can contribute to health hazards for community members

Regulations (WAC 173-340-130(7)(a)) also state that Ecology will ensure public agencies are kept informed and, where appropriate, involved in the development and implementation of the remedial actions. Once a health risk is identified, all agencies can coordinate on community engagement and education. Doing so can help ensure these departments are able to accurately explain contamination health risks to their communities, to ensure everyone is properly informed their effects as well as about site activities. If Ecology staff do not reach out appropriately to local health departments during cleanup preparations, it is possible some communities will have access to public health information during site cleanups while others do not.

Equity issues can arise from the inadequacy of interagency collaboration if some communities gain access to public health information during site cleanup and others do not. Furthermore, a lack of communication about health risks for these communities can continue to perpetuate harm to vulnerable populations.

Although Ecology followed many required and leading practices, local community experiences varied widely

Results in brief

Ecology met most legal requirements and leading practices at six cleanup sites we evaluated for community engagement activities, with two exceptions. At the start of a cleanup project, Ecology could improve its community research; at the end of the project, it could more consistently evaluate its community engagement activities.

Our community interviews revealed some dissatisfaction about Ecology's engagement with people affected by cleanups. Interviewees sought tailored engagement efforts that more directly addressed their needs. Ecology's lack of a uniform approach in handling other aspects of community outreach likely contributed to their concerns.

Ecology met most legal requirements and leading practices evaluated for community engagement activities with two exceptions

To succeed in any form of government-to-public communication, the government agency must know who it needs to address, what those people want to know, and how best to reach them with the message. When it comes to communicating about contaminated sites proposed for remediation and cleanup activities, project leaders in Washington can access a host of leading practices recommended by federal and state agencies as well as government research organizations. In addition, the regulations in the Model Toxics Control Act set out specific practices Ecology is required to follow. After reviewing relevant materials, we identified five requirements and five leading practices to evaluate for a selection of cleanup sites.

Requirements in federal and state regulations

- 1. *Research communities surrounding the site* to identify how best to engage with them, which can include meeting with community groups, public agencies and local organizations
- 2. Notify the public about the site through mailings and local or regional newspaper advertisements
- 3. *Translate materials into other languages spoken in the affected communities,* when appropriate

- 4. *Establish a public participation plan when required* for all sites Ecology conducts or supervises
- 5. *Consider feedback from the community in the cleanup process and incorporate* when appropriate

Leading practices

- 6. *Use social media to help inform the public* about a potential cleanup site
- 7. *Offer multiple ways for people to provide comments*, for example by accepting both verbal and written comments
- 8. *Provide a virtual option for public meetings or comment sessions* when community members would otherwise not be able to participate
- 9. *Use local and accessible meeting times and locations that are convenient for the community*, such as participating in meetings that are already planned in the community
- 10. *Conduct a "lessons learned" evaluation to identify improvements* for future community engagements

See **Appendix C** for more information about the laws and regulations that apply to practices 1 through 5.

Ecology met most legal requirements and leading practices at six evaluated cleanup sites

To evaluate whether the agency met the five requirements and used the five leading practices, we judgmentally selected six contaminated sites that were conducted or supervised by Ecology. We chose sites based on their proximity to communities with the greatest or the least number of people with the demographic characteristics for low incomes and people who have limited English speaking abilities. (See Appendix B for more information about our site selection criteria.) We used this approach to evaluate whether Ecology was consistently and equitably engaged with different communities affected by contaminated sites, and to identify any differences in its practices. As **Exhibit 5** (on the following page) shows, Ecology met most legal requirements and followed leading practices at these six sites.

Exhibit 5 – Ecology's use of required or leading practices in 6 evaluated sites

• = Fully used. • = Partially used. • = Did not use. N/A = Not applicable at this site.

	Evaluated site numbers					
Required practices in federal and state regulations	1	2	3	4	5	6
1. Researched communities surrounding the site						
2. Notified the public about the site through mailings and local or regional newspaper advertisements						
3. Translated materials into other languages spoken in the affected communities when appropriate	N/A			N/A		
4. Established public participation plan when required						
5. Considered community feedback in the cleanup process and incorporated it when appropriate				N/A		0
Leading practices	1	2	3	4	5	6
6. Used social media to help inform the public				0		
7. Offered multiple ways for people to provide comments						
8. Provided a virtual option for public meetings or comment sessions				N/A		N/A
9. Used local and accessible meeting times and locations that are convenient for the community	0			N/A	N/A	
10. Conducted a "lessons learned" evaluation to identify improvements	0	0	0			0

Source: Auditor analyses of contaminated site documentation provided by Ecology.

For example, Ecology developed public participation plans for all required sites we examined, offered the public multiple ways to provide feedback, and translated materials into languages spoken by the public when it was required for the agency to do so. However, in one instance, staff could not produce documentation to show they had placed newspaper advertisements to notify the public about that site.

For each site examined that received public comments, the online webpage also contained a summary of public comments that included both the original comment and Ecology's response on the action it took as a result of the comment. However, in one case the summary had not yet been published at the time of our review; in another instance, staff could not produce documentation to show they had assembled the summary. The number of comments submitted varied by site: some received a significant number of comments while others had a few or none at all. Although we were able to evaluate whether Ecology consistently considered and integrated community feedback into its cleanup process, we did not have a wide enough sample to determine whether Ecology was equitable when considering and integrating comments from the community.

Nonetheless, we identified some opportunities for improvement, discussed below.

In two areas – at the start and the conclusion of a cleanup project – Ecology could improve its efforts

At the start of a cleanup project, Ecology was inconsistent in its methods for engaging with local community organizations and agencies. Then, when wrapping up its project, the agency was not systematic about its efforts to document lessons learned about community engagement.

Required practice #1: *Conducting community research*. This practice had two components to help Ecology decide how best to engage with surrounding communities: researching community demographics and contacting local organizations and agencies. Ecology demonstrated that it researched demographic characteristics for the populations living in the communities at all six sites we evaluated. However, in two cases, the staff did not contact local organizations or agencies; in one case, staff could not produce documentation to show that they had done so. We scored these three as "practice partially used." We also scored as "partially" a fourth site because staff were preparing to conduct outreach to local organizations in the coming year as project planning progressed but had not yet done so. Ecology can continue to make improvements in staff engagement with the local organizations to learn more about the specific needs of the community.

Leading practice #10: *Evaluating community engagement activities*. Ecology conducted evaluations of the community engagement activities it used at only two of the six sites examined. Furthermore, the agency lacks a systematic process to evaluate the effectiveness of its outreach activities. Because Ecology did not have a system for evaluating engagement in place, the agency could not know if its outreach and engagement efforts are reliably effective.

As an example, the EPA's leading practices advise establishing a systematic process to evaluate the effectiveness of community engagement efforts that incorporates feedback from the community to discover which communication channels worked and which did not. Doing so allows the agency to partner with the community and identify what methods of engagement were effective for the community and feasible for the agency. In another example, the Agency for Toxic Substances and Disease Registry suggests cleanup programs should consider evaluating how community input has been solicited and responded to, and responses to and satisfaction with community engagement activities.

Community interviews revealed some dissatisfaction about Ecology's engagement with people affected by cleanups

To understand how Ecology's engagement methods are viewed by affected communities, we assembled a total of two focus groups with eight people from five community organizations. Each organization had applied for grants from Ecology to conduct community outreach around a contaminated site cleanup; some received grants while others did not. This mix of participants allowed us to understand a range of perspectives.

Interviewees sought tailored engagement efforts that more directly addressed their needs

Both focus groups discussed similar issues, with examples unique to their experiences with Ecology's site cleanup work. Participants acknowledged what they thought worked well; they also identified three areas they thought the agency could improve upon.

1. Slow to engage

One participant said Ecology did not engage some members of the local community early enough in the process. Early engagement can inform people of the risk posed by the contaminated site so that they can take precautions. It also allows community members to comment on the proposed cleanup actions well before the agency's plans have solidified. For example, at one site with contamination that presented serious risks of harm to human health, community members said they did not feel that Ecology was sufficiently responsive to their concerns, even though the agency had responded to another recognized site nearby.

2. Limited access to information in preferred languages

Language access for Spanish language speakers is another concern shared by community members we met with. One participant who works with Ecology regarding contaminated sites in a Spanish-speaking community said the grant program did not have any staff that speak Spanish, nor had they encountered any at Ecology more broadly.

Another participant observed that Ecology does translate fact sheets into Spanish, and had become better about providing these documents over the years. Although Ecology meets its requirements to translate things like fact sheets or public notices if the non-English speaking population reaches a certain threshold (5% or 1,000 people, whichever is less), the agency does not currently translate technical documents. These documents contain detailed information about the contaminants and the cleanup plan. The lack of understandable technical information poses

a barrier for non-English-speaking communities that could prevent them from participating meaningfully and commenting on all elements of the cleanup process. Ecology managers said they would translate such documents if someone requested them. Staff do not translate all documents because of the volume of material that would require translation and the associated costs.

3. 'Generic' rather than tailored engagement

One advocate for communities affected by contaminated sites said that Ecology does not always appear to do the work necessary to encourage participation. This person said it felt like Ecology was "just checking a box," rather than "being more in tune" with meeting the community where it gathers. For example, the agency placed its outreach advertisements in a newspaper with declining readership in the local community instead of finding out which media community members read and listen to – whether it was an online blog, a radio station or a local paper. Even posting signs in places where people typically gather would reach certain groups more reliably. This participant further said that engagement with the community is limited when there is not a community organization that Ecology can work with.

Ecology's lack of a uniform approach in handling other aspects of community outreach likely contributed to these concerns

Although Ecology has developed and documented community engagement guidance for its cleanup programs, managers and staff said they are not required to follow all its advice. The guidance includes material to help employees learn how to conduct research into affected communities, and advises them to consider which communities might need information in languages other than English. But because following community engagement guidance to the letter is not required, staff may use their professional judgment to incorporate as much or as little of the agency's recommended activities into the community engagement plan as they deem necessary for the site they are managing. It is quite possible managers and staff may pursue different ideas about how community engagement should be conducted.

On one hand, independent decision-making on the part of staff could produce the kind of highly tailored outreach interviewed community members said they wanted and needed. On the other hand, lacking a baseline of expectations for which elements of the agency's guidance *all* engagement plans should consider or incorporate can lead to variations in the way different communities are treated. In just one example, an Ecology staff member said they had passed out a survey after a public meeting to evaluate outreach efforts, but Ecology programs did not do so for the other five sites we evaluated. This meant only some community members could give direct feedback about outreach efforts, while those working with someone else at Ecology did not have the opportunity. The consequent variations in engagement plan design might produce equitable results for all communities, but given the remarks focus group participants offered about their differing engagement experiences, this does not seem to be always the case. To fulfill the goal in state law of providing an equitable experience for all communities it serves, Ecology could reconsider its approach to its guidance materials, and train staff to meet the baseline expectations set out in that guidance.

While some tribes said Ecology's level of engagement met their needs, others said they needed more and earlier in the cleanup process

Results in brief

Multiple laws impose unique requirements regarding Ecology's engagement with tribes. The audit solicited the views of tribal representatives concerning their experiences with Ecology and its engagement requirements under these laws. Most participants said the agency's engagement met their tribe's needs, while responses varied on whether those engagement activities felt equitable. Ecology's early engagement efforts met most participants' needs. Finally, tribal representatives had ideas for how the agency could improve its engagement efforts. Ecology staff said they are already making changes to address new legal requirements.

Multiple laws impose unique requirements regarding Ecology's engagement with tribes

Various state laws and regulations impose unique requirements regarding Ecology's engagement with tribal nations compared to its responsibilities to the general public. These activities are separate from and in addition to its public engagement activities. Below we summarize some of the key elements established by the 1989 State/Tribal Centennial Accord, the 2012 State/Tribal Relations Act, the Model Toxics Control Act, and the Healthy Environment for All Act.

The **1989 State/Tribal Centennial Accord** was established to provide a framework for government-to-government relationships between the state of Washington and federally recognized Indian tribes, so they may "better achieve mutual goals." The **2012 State/Tribal Relations Act** (RCW 43.376.020) also sets out requirements for state agencies specifically to collaborate with tribes as governmental peers. They both require Ecology to:

- Maintain a government-to-government relationship with each tribe it engages with, as appropriate
- Collaborate with tribes as it develops "policies, agreements and program implementation that directly affect" them, as the agency fulfills its mission to protect and manage shared natural resources including cleaning up contaminated sites.

In addition, the 2012 State/Tribal Relations Act also requires state agencies to:

- Designate an agency tribal liaison who reports to the agency's most senior executive
- Ensure the tribal liaison takes required training

The **2021 Healthy Environment for All Act** addresses issues of environmental justice to reduce environmental and health disparities for the state's residents, including the reduction of exposure to environmental hazards within Indian country due to off-reservation activities within the state. Among other things, it directs the state and its agencies to reduce inequities, and requires covered agencies – including Ecology – to create a consultation framework in coordination with tribal governments.

The **1989 Model Toxics Control Act** is the state's primary law governing contaminated site cleanups. A new regulation addressing tribal engagement (WAC 173-340-620) became effective on January 1, 2024. It specifically requires Ecology to:

- Engage tribes separately and in addition to public engagement
- Start engaging with tribes before initiating a remedial investigation or interim action at the site
- Develop a tribal engagement plan for each site
- Provide tribes with timely information and effective communication
- Maintain meaningful engagement with tribes throughout the cleanup process
- Offer continuous opportunities for collaboration
- Participate in government-to-government consultation, as appropriate

The audit solicited the views of tribal representatives concerning their experiences with Ecology and its engagement requirements under these laws

To learn about the experiences members of different tribes had with Ecology and whether legal requirements were being met, we invited 29 federally recognized tribes in Washington, and four from bordering states with interests in natural, cultural and archaeological resources, to share their experiences with Ecology at cleanup sites. We did this through a focus group or online survey. We invited a limited number of tribes to participate in the focus group based on their proximity to contaminated sites; the remaining tribes were invited to participate in the online survey. Participating tribes are listed in the sidebar.

Focus group participants

- Confederated Tribes and Bands of the Yakama Nation
- Puyallup Tribe
- Tulalip Tribes

Online survey participants

- Nisqually Indian Tribe
- Port Gamble S'Klallam Tribe
- Quileute Tribe
- Samish Indian Nation
- Shoalwater Bay Indian Tribe

We did not receive responses from every tribe we contacted, and two tribes declined to participate in the survey. However, we did receive feedback from eight tribes. Six people from three tribes participated in a focus group and five tribes responded to the survey for a total of 11 responses. It is important to remember that the views expressed here do not reflect the views of all tribes, as they are each individual nations.

During the focus group, auditors and tribal representatives discussed a range of topics, including the number of contaminated sites they had worked on with Ecology, how the agency communicated with them and when, and whether this engagement felt equitable. The survey contained similar questions. We then combined the responses to the questions from the focus group and the online survey so that we could present the overall results from both in this chapter. We use the frame "participants said" to capture both verbal and written feedback.

Most participants said Ecology's engagement met their tribe's needs

Tribal participants described varied experiences with Ecology's tribal engagement efforts and whether it was adequate to meet their tribe's needs. Engagement differed depending on individual staff and which regional office was supervising a site. Four participants thought Ecology's engagement was sufficient for their needs; one specified that their tribe had only a few cleanup sites in their area, but Ecology's engagement had always been adequate for their needs. Two participants said Ecology's engagement did not always meet their needs, saying it was inconsistent. One participant said that their tribe sometimes felt like they were an afterthought to site managers. Exhibit 6 shows a breakdown of participant responses to this issue.

Participants said that, at one time, they felt they had more personal connections with Ecology staff, but that has decreased with changes in staffing. For example, two participants said site managers used to call them but they do not receive the same phone calls any longer. Two other participants said now they have a difficult time finding the right contact at Ecology. One person suggested that, given staff turnover, Ecology should update its contact list annually. Another person said that they would like Ecology to more proactively reach out to them with information.

One participant mentioned how variable the interaction with Ecology could be, saying sometimes the agency is quick to act and other times it is not – it varies by the site. Another observed that simple sites often produce good relationships and engagement, but difficulties can arise on controversial sites when the tribe is working with Ecology staff who do not engage with them very often.

Exhibit 6 – Participant responses: "Does Ecology's current level of engagement meet your tribe's needs?" *From a total of 8 tribal responses*



Source: Auditor analyses of survey and focus group responses.

Another participant said Ecology's engagement with their tribe felt too similar to its general public engagement rather than specifically tribal engagement. We followed up with an Ecology manager about this issue, who said the agency does not view tribes as members of the public but understands the unique government-to-government relationship. One cleanup program manager said that tribes were some of their best allies for protecting the environment.

Responses varied on whether Ecology's engagement activities felt equitable

State agencies, including Ecology, have a responsibility to create policies and processes for inclusive decision-making, respectful communication and resolving mutual areas of concern. The Washington State Office of Equity's website sets out the state's goal of ensuring "every American Indian/Alaska Native person has equitable access to the opportunities, power, and resources they need to succeed and are welcomed, supported, and feel a sense of belonging when working in or seeking assistance from state agencies."

For this portion of the survey and discussions, we described "equity" as the term is defined by the Office of Equity. Tribal representatives were then asked if they felt Ecology's engagement efforts had been equitable. Three participants said Ecology's engagement felt equitable; they did not elaborate with any examples to include in this report. Two said they did not know, and three said it did not. See Exhibit 7 for a breakdown of these results.

One focus group participant also felt the agency should strive to ensure tribes can participate equitably to each other. This person pointed out that their tribe had the technical expertise to participate in the cleanup process, but the level of resources available varies across tribes. Limited resources in turn limit tribes' ability to participate meaningfully. This participant felt that funding should be offered so that tribes can be responsive when Ecology reaches out to them. If the tribes do not all have the same opportunities and resources to participate meaningfully in the cleanup, the result can be inequitable engagement from one tribe to another.

While the Office of Equity's tribal relations page says all covered agencies, including Ecology, should endeavor to ensure it is welcoming, one participant described a very different experience with the agency. This person said that Ecology staff persistently tried to redirect their calls, saying the tribal representative needed to speak with someone else, that solving the problem was someone else's responsibility. This tribal member eventually approached the EPA, stating they were not being listened to by Ecology: the EPA resolved the situation. The same participant said it is better to give tribes full access to information about the cleanup plan, treat them like partners, and have direct discussions.

Exhibit 7 – Participant responses: "Have Ecology's engagement efforts been equitable?" From a total of 8 tribal responses



Source: Auditor analyses of survey and focus group responses.

Ecology's early engagement efforts met most participants' needs

As noted on page 31, a new regulation requires Ecology to begin engaging tribes at the point when Ecology begins its assessments of a potential cleanup site (either before initiating a remedial investigation or an interim action at a site). The purpose for this rule is not simply to ensure the voices of tribal nations are heard. Some tribal members, particularly those who regularly fish and hunt in the area, are intimately connected to the land and can offer important insights if brought into the cleanup process early.

Four participants said Ecology does inform them early enough to participate in the cleanup process. One described working extensively with Ecology on two projects, while another had partnered with Ecology on one cleanup site. However, another person said that despite this requirement, Ecology did not engage the tribe before the remedial investigation phase of the cleanup. The tribe had technical expertise to add to the cleanup effort, and wanted to use that skill to improve the cleanup: "The tribe would like to be seen as a partner by Ecology." Another participant also said that Ecology does not always bring them into the cleanup process early enough to incorporate their feedback in a meaningful way. **Exhibit 8** shows the responses to this topic.

Additionally, if Ecology involves tribes too late in the process, the tribes may offer new perspectives that can lead to changes in the cleanup plan. One participant said that when tribes offer such perspectives, they feel that Ecology views their input as inconvenient. But without their important input, the cleanup may be incomplete, which puts tribal members at continued health risk. An incomplete cleanup could also contribute to loss of ecological resources for tribal communities.

In another participant's experience, Ecology's site managers lacked a consistent understanding of when and how to engage tribes. This person suggested Ecology should implement required guidance for staff that explains the difference between engaging tribes and engaging the public, and when to first bring in the tribes.

Auditors further examined how early Ecology engaged with tribes during our evaluation of six contaminated sites that are overseen by Ecology. For four of the six sites, Ecology could not provide evidence that staff had engaged with the tribes early in the process.

Exhibit 8 – Participant responses: "Does Ecology contact your tribe early enough in the process?" *From a total of 7 tribal responses**



* One survey response left this field blank.

Source: Auditor analyses of survey and focus group responses.

Tribal representatives had ideas for how Ecology could improve its engagement efforts

Both focus group and survey participants had ideas about ways Ecology could improve its tribal engagement activities on cleanup sites. As **Exhibit 9** shows, five said yes, two said no, and one was uncertain about opportunities for improvements. Two areas in particular attracted comments.

Ensure all staff understand how to identify affected tribes. One participant said Ecology may not always know how to identify affected tribes, and offered several examples of the agency's misunderstandings. In one case, this participant's tribe had been asked to participate in cleanup sites that were in a region far away. In another instance, Ecology informed this tribe that it was not the primary tribe affected by a certain site and so would not require engagement activities; the participant called the experience "unsettling." The participant thought this may have happened because Ecology selects tribes to engage with based on current reservation locations – not the tribe's traditional lands that expanded beyond those borders – but acknowledged there are many tribes in the state and it might be difficult for Ecology to identify those particularly interested in a site.

Ensure all staff understand how to tailor the engagement plan. One participant said Ecology should treat every tribe as unique, and tailor its approach for each tribe. This person suggested the agency develop a training to this effect for Ecology employees, and went on to say they would like to be involved in any trainings Ecology creates on the topic.

Ecology's Tribal Liaison told us the agency currently lacks required trainings for Ecology cleanup staff on how to engage with tribes. The agency's community engagement guidance has a section on how to engage with tribes, but as we found with its general community outreach (discussed on pages 28-29), staff were not required to follow all of its advice. Ecology is currently working on implementing a tribal engagement plan template that will make it clear what staff are legally required to do during tribal engagement.

Exhibit 9 – Participant responses: "Do you see opportunities for improvement regarding Ecology's engagement efforts?" *From a total of 8 tribal responses*



Source: Auditor analyses of survey and focus group responses.

Ecology is already making changes to address new legal requirements

As we concluded audit work, Ecology staff described recent months as "a transitional time" due to staff turnover and new legal requirements around tribal engagement. With the addition of WAC 173-340-620 (3), the agency will now be expected to establish a tribal engagement plan for each site that identifies tribes that may be adversely affected by a site and protocols for communication with them.

In addition, the new regulation directs the agency to seek meaningful engagement with affected tribes before the agency initiates a remedial investigation or interim action at a site and throughout the cleanup process. Ecology staff were developing the tribal engagement plan and associated guidance at the time of this audit. As Ecology fulfills these new requirements, it can establish clear expectations for site managers and staff.

State Auditor's Conclusions

The sheer number of contaminated sites in our beautiful state is concerning. Of the more than 14,000 documented sites, about 6,300 have yet to see cleanup activities completed. It is very likely that most of these sites will need to be cleaned up to protect the health of Washington residents.

The sites vary widely, from long-closed gas stations in rural areas to former industrial plants near urban areas. More than half of the 6,300 contaminated sites are managed by third parties, like private property owners. Another 1,600 of them lack plans for when, how or who will clean them up. Like many members of the public, we expected that the state was responsible for oversight of this issue. Part of that oversight is ensuring local communities are engaged before and during the cleanup process.

As this report details, however, most sites are not actively overseen by the state, and therefore not subject to community engagement requirements.

We determined that the state Department of Ecology currently manages just 493 of active contaminated sites. We found that Ecology, when it does manage a project, for the most part effectively engages surrounding communities and affected Native American tribal governments in the cleanup process. Nonetheless, people we interviewed who had experience working with the agency noted areas where it could improve its efforts. This audit includes recommendations to help it do so.

In my view, the more pressing concern are projects overseen by third parties. It is appropriate that those responsible for the contamination of the land should be responsible for its cleanup. However, unlike Ecology, third parties face no requirement to engage with the local community.

Washington's approach to environmental justice directs agencies, including the Department of Ecology, to ensure they facilitate the equitable participation of marginalized people, such as those who work and live near places affected by contamination. Therefore, I believe Ecology should consider how an equitable approach to engagement can become the norm for higher risk site cleanup efforts, such as the 212 sites we identified, not just the comparatively small share under the state's direct supervision.

Recommendations

For the Department of Ecology

To expand the scope of Ecology's oversight of community engagement activities discussed throughout this report, and to implement recommendations 2-16 below, we recommend the agency:

1. Determine the resources it would need to increase its oversight of high risk and moderate-high risk sites

To address a lack of community engagement activities at third party managed sites, as described on pages 18-19, we recommend the agency:

- 2. Ensure community engagement occurs at high risk and moderate-high risk independent and voluntary cleanup program sites. Such engagement should take into account the specific needs of vulnerable populations.
- 3. If such third parties assume responsibility for community engagement, establish guidelines for how they should engage with affected communities
- 4. Develop internal guidelines setting out Ecology's role in oversight for these activities

To address sites that currently lack a cleanup plan, as described on pages 20-21, we recommend the agency:

- 5. Develop a proactive plan describing how the agency will address the highest risk sites in a timely manner
- 6. Evaluate high risk or moderate-high risk sites that are close to vulnerable populations to determine which the agency should manage itself

To address the areas where Ecology did not meet the requirements and leading practices for community engagement, as described on pages 23-26, we recommend the agency:

- 7. Research the communities surrounding a contaminated site by conferring with community organizations, tribes and government agencies to identify which methods of engagement best fit the community
- 8. Conduct evaluations to assess whether improvements are needed to the community engagement process

To address Ecology's lack of community engagement requirements for site managers and staff, as described on pages 27-29, we recommend the agency:

9. Develop procedures for how and when managers and staff should conduct community engagement activities

- 10. Require cleanup site managers and staff to follow community engagement procedures
- 11. Develop a system for managers to oversee community engagement activities

To address the difficulty of obtaining information about independently managed sites on Ecology's website, as described on pages 19-20, we recommend the agency:

12. Update its website and data repository to make the scope of the agency's work clearer. Such updates should include providing an indicator in the agency's Cleanup and Tank Search to identify whether a site is an independent site or managed by Ecology.

To address inconsistent coordination between the departments of Ecology and Health, as described on pages 21-22, we recommend the agency:

- 13. Develop procedures for how and when site managers and staff should collaborate with Health
- 14. Require site managers and staff at Ecology to follow procedures for when and how to collaborate with Health
- 15. Require site managers and staff to document their collaboration efforts consistently
- 16. Develop a system for Ecology managers to oversee their site managers' collaboration activities with Health

To address Ecology staff's inconsistency in providing translation services, as described on pages 27-28, we recommend the agency:

17. Develop and implement a plan to expand the agency's capacity for translation services

To help ensure Ecology's consistency with tribal engagement, as described on page 36, we recommend the agency:

- 18. Prioritize completing the Tribal Engagement Plan, ensuring it is clear to staff what actions are legally required versus activities simply recommended in the agency's guidance
- 19. Clarify the required timing of engagement with tribes and give staff consistent guidance on how to identify tribes affected by cleanup and provide training

To ensure tribal nations, as well as the general public, have access to current Ecology staff contact information, as described on page 32, we recommend the agency:

20. Ensure contact information for staff working on contaminated site cleanups is available and up-to-date on Ecology's public facing website

For the departments of Ecology and Health

To address inconsistent coordination between the two departments, as described on pages 21-22, we recommend they:

- 21. Work together to develop a required training concerning collaboration between the two agencies during cleanup for a site. Development steps should address:
 - a. Identifying staff and managers who work on site cleanup
 - b. Ensuring these people are required to take the training

Agency Response



STATE OF WASHINGTON

March 7, 2025

Honorable Pat McCarthy Washington State Auditor P.O. Box 40021 Olympia, WA 98504-0021

Dear Auditor McCarthy:

Thank you for the opportunity to review and respond to the State Auditor's Office performance audit report, *Community Engagement During Contaminated Site Cleanups*. The departments of Ecology and Health appreciate the State Auditor Office's work on this performance audit and the collaborative approach taken on the project. We recognize your efforts to better understand the responsibilities of community engagement for contaminated site cleanups in your analysis and development of the recommendations.

Ecology's mission is to protect, preserve, and enhance Washington's environment for current and future generations. Ecology works with private citizens, landowners, businesses, and local jurisdictions to restore contaminated land and aquatic environments. Over 14,400 contaminated sites have been identified in Washington, with a few hundred new sites being discovered every year. Almost 8,000 of those contaminated sites have been successfully cleaned up, with many more in the cleanup process right now. High-risk and high-profile sites are typically cleaned up under Ecology oversight that includes a significant community engagement effort.

We generally agree with the findings and recommendations in the report. Some of them reflect work at Ecology that is already in process or has recently been completed. It is encouraging to see that your recommendations align with these ongoing efforts.

However, many of the recommendations will require additional funding or staff resources to implement. Others could result in current or planned work being slowed or delayed. As it is critical to understand the additional resources Ecology would need to fully implement all the recommendations, we also appreciate the inclusion of Recommendation 1 at our request.

Ecology remains committed to providing effective community engagement as part of contaminated site cleanup. We will apply the State Auditor's Office's recommendations as resources allow and as part of existing continual improvement processes.

The Department of Health looks forward to expanding its collaboration with Ecology for community engagement at contaminated sites. Inclusive, two-way engagement increases community awareness of potential health impacts and is a crucial service for Washingtonians making informed health-related choices and providing input on site decisions.

Sincerely,

K.D. Chapman-S**&** Director Office of Financial Management

Casey Stakiller Director Department of Ecology

poneat

Jessica Todorovich Acting Secretary Department of Health



 cc: Shane Esquibel, Chief Operations Officer, Office of the Governor Franklin Plaistowe, Deputy Chief Operations Officer, Office of the Governor Sahar Fathi, Policy Director, Office of the Governor Jesse Jones, Director, Results Washington, Office of the Governor Tammy Firkins, Performance Audit Liaison, Results Washington, Office of the Governor Scott Frank, Director of Performance Audit, Office of the Washington State Auditor

OFFICIAL RESPONSE TO PERFORMANCE AUDIT ON COMMUNITY ENGAGEMENT DURING CONTAMINATED SITE CLEANUPS – MARCH 7, 2025

The Department of Ecology (Ecology), the Department of Health (DOH), and the Office of Financial Management (OFM) provide this management response to the State Auditor's Office (SAO) performance audit report received on January 27, 2025.

SAO PERFORMANCE AUDIT OBJECTIVES

The SAO's performance audit addressed these questions:

- 1. What engagement approaches does Ecology use when working with communities affected by contaminated site cleanup efforts?
- 2. Does Ecology tailor its approach to meet the specific needs of each community?
- 3. Does Ecology consistently and equitably gather, consider, and integrate feedback from affected communities into its cleanup efforts.

Recommendations 1–20 to the Dept. of Ecology in brief:

SAO Recommendation 1: To expand Ecology's oversight of community engagement and implement recommendations 2–21 below:

1. Determine the resources it would need to increase its oversight of high risk and moderate-high risk sites.

STATE RESPONSE:

Ecology agrees with Recommendation 1. It's important for Ecology to have an up-to-date understanding of existing cleanup site conditions and be able to assess new cleanup sites as they are discovered.

Ecology is currently implementing its new Site Hazard Assessment and Ranking Process (SHARP) that assesses and scores the risk and severity of exposure to contamination at contaminated sites. SHARP also looks at local demographic data from DOH's Environmental Health Disparities Map to identify whether potentially exposed populations include a likely vulnerable population or overburdened community. Ecology will use information about contaminated sites still needing remedial action to determine which pose the highest risk to communities and vulnerable populations. Ecology is also working on a SHARP application to help staff assess sites more efficiently and show results of assessments on its public-facing website.

Ecology currently has about 6,200 sites that need SHARP assessments. Three dedicated SHARP specialist staff, as well as existing initial investigators and site managers, are currently working to assess each of these outstanding sites. After three new specialists were hired and trained, we were able to assess approximately 400 sites in 2024. We anticipate having the capacity to assess more sites in 2025, 2026, and beyond, assuming current levels of staffing.

Action Steps and Time Frame

Continue to evaluate contaminated sites with SHARP to identify overall risk and severity of sites. This initiative is already in Ecology's 2025–2030 Strategic Plan. As sites are assessed, higher-risk sites will be identified, including those that may affect vulnerable populations and/or overburdened



community areas. As noted above, this work is ongoing. We estimate Ecology could have most sites assessed by December 31, 2029.

- Identify any higher-risk sites that are not already managed by Ecology where the agency should oversee community engagement. We propose identifying these sites every year as new SHARP rankings become available, with the first group identified by June 30, 2026.
- At the same time as the previous action item, determine what additional resources Ecology needs to perform community engagement activities for the first group of higher-risk sites by June 30, 2026.
- Continue to identify additional groups of sites annually until all have been assessed. We further propose to begin working on higher-risk sites that impact vulnerable populations in overburdened communities first, other higher-risk sites second, and remaining sites after that.

SAO Recommendations 2–4: To address a lack of community engagement activities at sites managed by third parties, as described on pages 18–19:

- Ensure community engagement occurs at high risk and moderate-high risk independent and voluntary cleanup program sites. Such engagement should take into account the specific needs of vulnerable populations.
- 3. If such third parties assume responsibility for community engagement, establish guidelines for how they should engage with affected communities.
- 4. Develop internal guidelines setting out Ecology's role in oversight for these activities.

STATE RESPONSE:

Ecology agrees with Recommendations 2–4. These recommendations will require additional staff and funding appropriated by the Legislature to implement fully. Ecology will determine the additional staff and funding needed in the plan developed in response to Recommendation 5.

The Action Steps and Time Frame below reflect the scenario of securing additional staff and funding resources.

Action Steps and Time Frame Estimates

- Identify independent sites, including those in the voluntary cleanup program, that are higher risk. As sites are assessed using SHARP, Ecology should be able to identify higher-risk sites where the agency's oversight of community engagement is needed. Engagement will consider the specific needs of nearby communities. As noted in the response to Recommendation 1, we propose identifying a group of sites every year through 2029, with the first group identified by June 30, 2026.
- Ecology can estimate and request additional resources in phases as information becomes available to more effectively plan, determine workload, gain or reprioritize resources, and implement recommendations.
- Develop guidelines for how third parties should engage with affected communities if they take responsibility for community engagement. Ecology will need to reprioritize some of its existing policy and guidance work to develop these guidelines. Estimated completion would be by December 31, 2027.
- Develop internal guidelines for Ecology's role in overseeing these activities. Ecology will need to reprioritize some of its existing policy and guidance work to develop these guidelines. Estimated completion would be by December 31, 2027.

SAO Recommendations 5–6: To address sites that currently lack a cleanup plan, as addressed on pages 20–21:

- 5. Develop a proactive plan describing how the agency will address the highest-risk sites in a timely manner.
- 6. Evaluate high risk or moderate-high risk sites that are close to vulnerable populations to determine which the agency should manage itself.

STATE RESPONSE:

Ecology agrees with Recommendations 5–6. Ecology believes it would be best for the agency to manage higher-risk sites, prioritizing sites impacting vulnerable populations in or near overburdened communities. However, this will likely take additional staff and funding appropriated by the Legislature, or existing cleanup work will need to be reprioritized.

The Actions Steps and Time Frame below reflect the scenario of securing additional staff and funding resources.

Action Steps and Time Frame

- Develop a plan describing how the agency will address the highest-risk sites in a timely manner, which will first require assessing and identifying such sites using SHARP (see response to Recommendation 1). As SHARP assessments continue, the list of highest-risk sites and Ecology's plan for addressing them will be continually updated. Ecology will likely have assessed enough sites to start developing a plan by June 30, 2026. At that time, Ecology will also identify the additional staff and financial resources necessary to start addressing these higher-risk sites. This funding would need to be appropriated by the Legislature.
- Identify higher-risk sites impacting vulnerable populations in or near overburdened communities not already managed by Ecology. These sites will be identified and prioritized on a rolling basis, with a continually updated list of highest-risk sites and Ecology's plan for addressing them. The first group of sites should be available for review by June 30, 2026. At that time, Ecology will also identify the additional staff and financial resources necessary (including community engagement costs). This funding would need to be appropriated by the Legislature.
- Once resources are secured to manage additional sites, the process of entering those sites into legal agreements and the cleanup process itself can begin. If additional resources become available, this work could begin on July 1, 2027.

SAO Recommendations 7–8: To address the areas where Ecology did not meet the requirements and leading practices for community engagement, as described on pages 23–26:

- 7. Research the communities surrounding a contaminated site by conferring with community organizations, tribes and government agencies to identify which methods of engagement best fit the community.
- 8. Conduct evaluations to assess whether improvements are needed to the community engagement process.

STATE RESPONSE:

Ecology agrees with Recommendations 7–8. Fully implementing these recommendations may require additional staff and financial resources or reprioritizing existing work.

Ecology staff already meet regularly to improve our community engagement process and explore new ways to better understand community needs. The Community Engagement Plan required by the Healthy Environment for All (HEAL) Act (Chapter 70A.02 RCW) was created and adopted by Ecology. It describes how we will engage with overburdened communities and vulnerable populations as we evaluate new and existing activities and programs. The plan includes best practices for outreach, processes to support the inclusion of members of communities affected by agency decision-making, and some directives related to HEAL Act-covered activities.

Ecology staff draw from the Community Engagement Plan — specifically for assessing best practices and identifying overburdened communities and vulnerable populations — to inform the development of their activities.

Ecology staff will incorporate the SAO recommendations into this work to better understand which methods best fit differing communities and conduct evaluations to make improvements in the community engagement process.

In August 2023, we adopted amendments to the MTCA Cleanup Regulations, Chapter 173-340 WAC, requiring the development of site-specific Tribal engagement plans for all site cleanups conducted or supervised by Ecology. We propose to use the information from the Tribal engagement process to better understand and continually improve how to meaningfully engage Tribes (see State Response to Recommendations 18–19).

Action Steps and Time Frame

Provide direction and SAO recommendations to existing community engagement staff for their existing continual improvement process by June 30, 2025, to be addressed on an ongoing basis.

SAO Recommendations 9–11: To address Ecology's lack of community engagement requirements for site managers and staff, as described on pages 27–29:

- 9. Develop procedures for how and when managers and staff should conduct community engagement activities.
- 10. Require cleanup site managers and staff to follow community engagement procedures
- 11. Develop a system for managers to oversee community engagement activities.

STATE RESPONSE:

Ecology agrees with Recommendations 9–11. Ecology may be able to combine its work on Recommendations 9 through 11 with its work on Recommendations 13, 14, 15, 16, and 21. The same workgroup could plan, draft procedures, develop training, and produce guidance related to each of these related recommendations. However, unless additional resources are obtained, existing Ecology staff will be shifted away from cleanup site work or other rule, policy, procedure, or guidance development work. Such other work will be delayed or reduced significantly to start on the new priorities.

The Actions Steps and Time Frame below reflect the scenario of securing additional staff and funding resources or reprioritizing existing resources.

Action Steps and Time Frame

Establish Ecology staff workgroup to develop guidance, procedures, and training. The workgroup will be established by June 30, 2025, and complete these tasks by June 30, 2026.

- Provide training so Ecology staff and managers understand how to properly apply and implement new guidance and procedures. Begin training and require site managers and outreach staff to follow community engagement procedures on sites with ongoing engagement activities by July 1, 2026.
- Develop a system for managers to track and oversee community engagement activities being conducted by staff. Begin development by July 1, 2026.

SAO Recommendation 12: To address the difficulty of obtaining information about independently managed sites on Ecology's website, as described on pages 19–20:

12. Update its website and data repository to make the scope of the agency's work clearer. Such updates should include providing an indicator in the agency's Cleanup and Tank Search to identify whether a site is an independent site or managed by Ecology.

STATE RESPONSE:

Ecology generally agrees with Recommendation 12. Ecology recognizes that providing publicly available information about who is responsible for cleanup at individual sites can support effective community engagement efforts. Ecology can provide data about which sites are managed by the agency and may be able to provide information about some independent sites. Information may also be available on sites that do not yet have a plan for cleanup. However, specified information has not always been tracked, so as databases have been updated, information for those fields is not always available. Implementing this recommendation can likely be done with existing resources by reprioritizing existing work.

Action Steps and Time Frame

Update the Cleanup and Tank Search application to display the "Cleanup Unit Process Type" and whether a cleanup site is independent or managed by Ecology, to be completed by June 30, 2026.

SAO Recommendations 13–16: To address inconsistent coordination between the departments of Ecology and Health, as described on pages 21–22:

- 13. Develop procedures for how and when site managers and staff should collaborate with Health.
- 14. Require site managers and staff at Ecology to follow procedures for when and how to collaborate with Health.
- 15. Require site managers and staff to document their collaboration efforts consistently.
- 16. Develop a system for Ecology managers to oversee their site managers' collaboration activities with Health.

STATE RESPONSE:

Ecology agrees with Recommendations 13–16. This work could be combined with the work on Recommendations 9–11 above. To fully implement these recommendations, Ecology and DOH will need to either obtain additional staff and funding resources or reprioritize existing staff and work. Without additional resources, Ecology and DOH staff will need to be shifted away from site cleanup work or other rule, policy, procedure, or guidance development work, which will be significantly delayed or reduced to start on these new priorities. Ecology will need DOH to provide two staff to assist with this entire effort from start to finish.

The Actions Steps and Time Frame below reflect the scenario of securing additional staff and funding resources or reprioritizing existing resources.

Action Steps and Time Frame

- Establish collaborative Ecology/DOH workgroup to develop guidance, procedures, and training. The workgroup will be established by June 30, 2025, and complete these tasks by June 30, 2026.
- Provide training to staff and managers on how to properly apply and implement guidance and procedures by December 31, 2026.
- Develop a tracking system and require site managers and staff to document their collaboration efforts consistently by December 31, 2026.
- Develop a tracking system for Ecology managers to oversee their site managers' collaboration activities with DOH by December 31, 2026.

SAO Recommendation 17: To address Ecology staff's inconsistency in providing translation services, as described on pages 27–28:

17. Develop and implement a plan to expand the agency's capacity for translation services.

STATE RESPONSE:

Ecology agrees with Recommendation 17. In 2024, Ecology strengthened its translation services by providing a language access plan to provide effective and accurate communications with the public. This plan is designed as a living document to be reviewed at regular intervals and updated as needed. Ecology also works with external service vendors for languages not served by the existing Ecology Multilingual Interpretation and Translation Teams (MITT). Ecology staff involved with community engagement regularly meet with staff from MITT to discuss community translation needs and potential process improvements.

Action Steps and Time Frame

- Continue regular meetings between community engagement staff and Ecology's MITT services to understand community needs and how to improve language access for communities affected by contaminated sites.
- Continue to work with Ecology's language access coordinator to assess translation needs and services.
- If the actions the agency is already taking are adequate, no additional action is necessary. If that isn't the case, resources will be needed to develop a plan and begin implementation. Those activities could begin on July 1, 2025, and the planning could be completed by June 30, 2026, with implementation beginning afterward.

SAO Recommendations 18–19: To help ensure Ecology's consistency with Tribal engagement, as described on page 36:

- 18. Prioritize completing the Tribal Engagement Plan, ensuring it is clear to staff what actions are legally required versus activities simply recommended in the agency's guidance.
- 19. Clarify the required timing of engagement with Tribes and give staff consistent guidance on how to identify tribes affected by cleanup and provide training.

STATE RESPONSE

Ecology agrees with Recommendations 18-19. Pursuant to WAC 173-340-620, Ecology has completed

the preliminary work associated with Recommendations 18–19. This includes developing an engagement plan template and guidance for staff to use on a site-specific basis. The objective of the engagement plan is to provide a consistent basis on which to build meaningful engagement with Tribes impacted by contaminated sites. Ecology staff have started to use those materials at new and ongoing cleanup sites. However, it will take time and resources to do so at (what could be) several hundred higher-risk sites. Ecology will collect feedback on the use of the engagement plan templates and associated guidance to determine if updates or improvements are needed.

Action Steps and Time Frame

- The Contaminated Site Tribal Engagement Plan template and guidance are completed and in use, having been implemented in January 2025.
- Continue collecting feedback on the Contaminated Site Tribal Engagement Plan template and guidance for potential updates and improvements, which began in January 2025.

SAO Recommendation 20: To ensure Tribal nations, as well as the general public, have access to current Ecology staff contact information, as described on page 32:

20. Ensure contact information for staff working on contaminated site cleanups is available and up to date on Ecology's public facing website.

STATE RESPONSE

Ecology agrees with Recommendation 20. Given the existing workload and number of cleanup site webpages, it is difficult to estimate the time needed to update all pages with current Ecology contact information. Additionally, Ecology will need to continue updating contact information as staff change or new sites are listed.

Action Steps and Time Frame

- Begin updating existing contact information by July 1, 2025.
- Continue updating contact information for existing sites and adding contact information for new sites.

Recommendation 21 to the Dept. of Ecology and Dept. of Health in brief:

SAO Recommendation 21: To address inconsistent coordination between the two departments, as described on pages 21–22:

- **21.** Work together to develop a required training concerning collaboration between the two agencies during cleanup for a site. Development steps should address:
 - a. Identifying staff and managers who work on site cleanup.
 - **b.** Ensuring these people are required to take the training.

STATE RESPONSE

Ecology and DOH agree with Recommendation 21. The agencies should create this training after they have developed the procedures and guidance for how and when to collaborate. See Recommendations 9–11 and 13–16. Ecology, in coordination with DOH, will likely be able to develop and implement this training recommendation with existing resources given adequate time.

Action Steps and Time Frame

- Establish collaborative Ecology/DOH workgroup to develop guidance, procedures, and training. Ecology will initiate the workgroup by June 30, 2025.
- > The workgroup will develop guidance, procedures, and training by June 30, 2026.
- Ecology: Implement training so staff and managers understand how to properly apply new guidance and procedures by July 1, 2026.
- Ecology: Train and require cleanup site managers and staff to follow DOH collaboration procedures on sites with ongoing community engagement activities by December 31, 2026.
- DOH: Advise and support Ecology/DOH workgroup to develop guidance, procedures, and training by June 30, 2026.

Appendix A: Initiative 900 and Auditing Standards

Initiative 900 requirements

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor's Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor's Office to "review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts." Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor's Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Results and Recommendations sections of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	No.
2. Identify services that can be reduced or eliminated	No.
3. Identify programs or services that can be transferred to the private sector	No.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	Yes. The audit examined which entities manage contaminated sites to see if there were any gaps or overlaps in community engagement efforts across communities. The audit also examined possible equity gaps in community engagement practices.
5. Assess feasibility of pooling information technology systems within the department	No.

Appendix A

I-900 element	Addressed in the audit
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	No.
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	Yes. The audit audit recommends Ecology consider regulatory changes to address how it manages independent sites to include those under the Voluntary Cleanup Program.
8. Analyze departmental performance data, performance measures and self-assessment systems	No.
9. Identify relevant best practices	Yes. The audit identified and recommended leading practices related to community engagement around contaminated site cleanups.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with generally accepted government auditing standards as published in *Government Auditing Standards* (July 2018 revision) issued by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The mission of the Office of the Washington State Auditor

To provide citizens with independent and transparent examinations of how state and local governments use public funds, and develop strategies that make government more efficient and effective. The results of our work are widely distributed through a variety of reports, which are available on our website and through our free, electronic <u>subscription service</u>. We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program. For more information about the State Auditor's Office, visit <u>www.sao.wa.gov</u>.

Appendix B: Objectives, Scope and Methodology

Objectives

The purpose of this performance audit was to answer the following objectives the following objectives:

- 1. What engagement approaches does the Department of Ecology use when working with communities affected by contaminated site cleanup efforts?
- 2. Does Ecology tailor its approach to meet the specific needs of each community?
- 3. Does Ecology consistently and equitably gather, consider and integrate feedback from affected communities into its cleanup efforts?

For reporting purposes, the audit results have been organized into key findings. The messages relate to the original objectives as follows:

- Ecology manages only 8% of Washington's contaminated sites, leaving the majority of sites without any requirements for community engagement (pages 16-22) This finding addresses objective 3.
- Although Ecology followed many required and leading practices, local community experiences varied widely (pages 23-29) This finding addresses objectives 1 and 2.
- While some tribes said Ecology's level of engagement met their needs, others said they needed more and earlier in the cleanup process (pages 30-36) This finding addresses objectives 1 and 2.

Scope

This performance audit examined how the Toxics Cleanup, Hazardous Waste and Toxics Reduction, and Solid Waste Management programs within Ecology collect and incorporate feedback from community members who are affected by contaminated sites in the state. For the site testing component, we examined active sites. This audit did not examine the nuclear waste program within Ecology. The audit period was from 2018 to 2024. The audit team briefly examined how the Department of Health is involved with community outreach when Ecology is cleaning up a site.

This audit included reviewing how Ecology collected feedback from communities during each phase of the cleanup and how that information was used to inform engagement efforts. It also examined whether input from the communities were incorporated into the agency's cleanup efforts. Additionally, the audit looked at Ecology's outreach activities at six contaminated sites around Washington.

Our work emphasized determining how equitable Ecology's community engagement practices were because contaminated sites are predominantly found in communities with vulnerable populations. These vulnerable populations also face obstacles that hinder them from providing feedback when contaminated sites are being cleaned up such as language and transportation to attend public meetings. If vulnerable populations that are near a contaminated site are not heard, the state may continue to marginalize these communities instead of treating them equitably.

Methodology

We obtained the evidence used to support the findings, conclusions and recommendations in this audit report during our fieldwork period (March through September 2024), with some additional follow-up work afterward. We have summarized the work we performed to address each of the audit objectives in the following sections. The methodology for Objectives 1 and 2 was combined.

Objective 1: What engagement approaches does Ecology use when working with communities affected by contaminated site cleanup?

Objective 2: Does Ecology tailor its approach to meet the specific needs of each community?

Interviews and documentation review

To learn more about Ecology's community engagement processes, we met with managers and staff from all three audited programs: the Toxics Cleanup Program, Hazardous Waste and Toxics Reduction Program, and Solid Waste Management Program. We also conducted interviews with Ecology's Executive Advisor for Tribal Affairs and the Program Manager for the Office of Equity & Environmental Justice.

We reviewed the Toxics Cleanup Program's Public Involvement Toolkit and a public engagement desk guide created by a former Solid Waste Management program employee to determine if the cleanup programs gave staff any guidance, checklists or procedures on:

- 1. How to research the community
- 2. How to determine the media and forums the agency should use for community engagement
- 3. When they should translate materials for affected communities
- 4. How to gather, consider and integrate feedback
- 5. Tribal engagement

Site testing

To determine if Ecology met community engagement legal requirements and leading practices for contaminated sites the agency oversees, we reviewed Ecology's practices for six contaminated sites. We originally planned to select sites based on their proximity to areas with the greatest or least number of people with the demographic characteristics for low incomes, people of color and people who have limited English speaking abilities. However, we were unable to identify sites with Ecology-managed engagement in all those categories, and so could not examine the extremes of all three factors that we had planned: income, race and language. We analyzed two of those demographic characteristics instead: income and language. We made our judgmental selection of sites based upon income levels and languages spoken – the greatest and least percentage of the population with low and high income levels and with limited-English-speaking households – within a one-mile radius of a site. We used this approach to see if we could determine whether there were differences in how Ecology engaged with communities affected by contaminated sites. However, the results of our site evaluations cannot be projected to all sites due to the limited number of sites we reviewed.

To determine which engagement approaches Ecology used when working with communities affected by a contaminated site cleanup, we reviewed documentation provided by Ecology staff and documents posted on Ecology's website. To identify whether Ecology considered and incorporated community feedback, we reviewed the document that summaries the comments they receive, and Ecology's responses to the comments that explain what they plan to do or cannot do. We reviewed the following practices required in federal and state regulations, listed in Figure 1.

We also evaluated whether Ecology followed five leading practices, listed in **Figure 2**.

Although we were able to evaluate whether Ecology consistently considered and integrated community feedback into its cleanup process, we did not have a wide enough sample to determine whether Ecology was equitable when considering and integrating comments from the community.

Figure 1 – Requirements in federal law and state regulations

Practice area

- 1. Research communities surrounding the site to identify how best to engage with them which can include meeting with community groups, public agencies and local organizations
- 2. Notify the public about the site through mailings and local or regional newspaper advertisements
- 3. Translated materials into other languages spoken in the affected communities when appropriate
- 4. Establish a public participation plan when required for all sites Ecology oversees
- 5. Considered community feedback in the cleanup process and incorporated it when appropriate

Figure 2 – Leading practices

Practice area

- 6. Employ social media to help inform the public about a potential cleanup site
- 7. Offer multiple ways for people to provide comments, for example by accepting both verbal and written comments
- 8. Provide a virtual option for public meetings or comment sessions when community members would otherwise not be able to participate
- 9. Use local and accessible meeting times and locations that are convenient for the community, such as participating in meetings that are already planned in the community
- 10. Conduct a "lessons learned" evaluation to identify improvements for future community engagements

Appendix B

For the portion of our work concerning Ecology's engagement with tribes around contaminated site cleanups, we evaluated whether Ecology engaged with the tribes early on in the cleanup process before engaging with the public by reviewing Ecology documentation.

Focus groups with Public Participation Grant applicants

We wanted to learn firsthand what organizations or people who were familiar with Ecology's community engagement efforts thought about the agency's activities. To do that, we needed to assemble a list of potential focus group participants.

The agency does not maintain a centralized list of people who have commented on site cleanups, or other easily accessible, comprehensive documentation we could use to identify people familiar with Ecology's community engagement efforts. We reviewed the agency's responsiveness summaries from cleanup site pages to try to identify potential participants, but information for individual community members was not present in the site pages we reviewed. However, Ecology staff were able to provide a list of community organizations that applied for the agency's Public Participation Grant.

We received Public Participation Grant applicant information from 2017 to the most recent biennium, 2023-25. We then selected people to invite to participate in two different focus groups: one for applicants who were rejected and one for recipients. Each focus group followed a prepared agenda protocol. We also conducted an individual interview for a Public Participation Grant applicant who was not able to attend the focus group.

The audit team met with the following organizations:

- Community Health Worker Coalition for Migrants and Refugees
- Friends of Rocky Top
- RE Sources
- Washington Conservation Action
- West Plains Water Coalition

Tribal focus group and survey

The audit team held a focus group and created a survey to hear the perspectives of tribal representatives concerning Ecology's community engagement and tribal engagement work. To do this, we:

- 1. Created a contact list for the federally recognized tribes with tribal lands in Washington
- 2. Sent a letter from Pat McCarthy, the State Auditor, to tribal leaders to tell them about the audit
- 3. Selected a limited number of tribes to participate in the focus group based on their proximity to contaminated sites. The remaining tribes were invited to participate in an online survey, conducted through SurveyMonkey.
- 4. Prepared an agenda protocol for the tribal focus group with questions similar to those sent out in the survey

The audit team met with or received survey responses from the following tribes:

- Confederated Tribes and Bands of the Yakama Nation
- Nisqually Indian Tribe
- Port Gamble S'Klallam Tribe
- Puyallup Tribe of Indians

- Quileute Tribe
- Samish Indian Nation
- Shoalwater Bay Indian Tribe
- Tulalip Tribes

The responses we received from these tribal representatives do not reflect the views of all tribes as they are each individual nations.

Objective 3: Does Ecology consistently and equitably gather, consider and integrate feedback from affected communities into its cleanup efforts?

To address this objective, we tested site data for data reliability, analyzed site data, and evaluated community engagement efforts for a selection of sites. Note that the data we reviewed included information about sites that have been conducted or supervised by the following:

- Ecology
- Independent third parties
- The Environmental Protection Agency (EPA)
- The Pollution Liability Insurance Agency

Because the audit focused on Ecology's role with, and oversight of, community engagement efforts, we did not review the community engagement efforts of the two other regulatory bodies: the EPA and the Pollution Liability Insurance Agency.

Reliability testing of Ecology's contaminated site data

We performed data reliability testing on Ecology's contaminated site data. A version of the data is available on Ecology's Cleanup and Tank Search tool on the agency's website. We specifically reviewed the data to see if there were mismatches in values, duplicate records and blank fields. We also compared the total number of sites received in the data set staff provided to the total number of sites listed on the Cleanup and Tank Search tool and to the total number of sites Ecology published in its 2021-2023 biennial report. Although site data had some limited inconsistencies, we determined it was sufficient for the audit's purposes.

Analysis of Ecology's contaminated site data

We analyzed Ecology's contaminated site data to better understand how different sites are managed. In some cases, the data set listed multiple cleanup organizations for the same site, which created duplicate entries for some sites. (Typically, this meant Ecology was listed as the site supervisor alongside a different manager from another organization.) In those cases, we used Ecology as the manager.

Doing so was favorable to the agency as it increased the number of sites it manages overall. After the duplicates were addressed, we used this site data to identify:

- Counts of sites, including the responsible entity
- Counts of all high risk and moderate-high risk managed by third parties
- Counts of sites that lack a process for how they will be cleaned up

Work on internal controls

We determined that internal controls were significant to our audit objectives related to how Ecology conducts community engagement. We evaluated whether the agency's policies and procedures had guidance to help employees know how to conduct community engagement activities and what the process requires them to do. We also reviewed six site cleanups to evaluate whether they met certain legal requirements and implemented some leading practices.

Appendix C: Laws and Regulations

Federal and state regulations, including those in the Washington Administrative Code (WAC), govern how Ecology should clean up contaminated sites, and define the nature and scope of community and tribal engagement Ecology must perform during the cleanup process. This appendix lists key regulations we considered when conducting this audit, including site evaluations. While certain regulatory changes did not go into effect until January 1, 2024, we nonetheless considered them in our site testing to determine whether the agency has already begun implementing the requirement.

The figures in this chapter compare changes in regulatory language before and after revisions took effect on January 1, 2024.

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Figure 3 – Ecology conducted or supervised sites

These rules define Ecology conducted and supervised sites. (Discussed in the Background on pages 11-12.)

In effect until December 31, 2023

• WAC 173-340-510 (2). Administrative options for remedial actions.

Any approval by the department or the state of remedial action shall occur by one of the means described...

- (2) Actions initiated by the potentially liable person. Potentially liable persons may initiate a remedial action, as follows:
- (a) A person may initiate negotiations for a consent decree by submitting a letter...
- (b) A person may request an agreed order by submitting a letter...
- (3) Action initiated by the department. The department may initiate remedial action by:
- (a) Issuing a letter inviting negotiations on a consent decree...; or
- (b) Requesting an agreed order...; or
- (c) Issuing an enforcement order...
- (4) **Department remedial action**. Nothing in this chapter shall preclude the department from taking appropriate remedial action on its own at any time. Except for emergency actions and initial investigations, reasonable effort will be made to notify potentially liable persons before the department takes remedial actions for which the recovery of public funds can be sought.

Effective as of January 1, 2024

• WAC 173-340-510 (3). Ecology-conducted remedial action.

Ecology may take appropriate remedial action to investigate or clean up a site at any time. Ecology typically conducts remedial action when a potentially liable person cannot be identified or when such persons are technically or financially unable to conduct remedial action. Ecology may seek to recover its remedial action costs from potentially liable persons.

• WAC 173-340-510 (2). Ecology-supervised remedial action.

Ecology may supervise the investigation or cleanup of a site by a potentially liable person or a prospective purchaser under an order or decree.

Figure 4 – Independent and voluntary cleanup program sites

These rules define independent and voluntary cleanup program sites. (Discussed in the Background on page 12.)

In effect until December 31, 2023

- WAC 173-340-515 (1) and (5), and WAC 173-340-550 (6)(a). Independent remedial actions. Independent remedial action is a remedial action conducted without department oversight or approval...
 - (c) **Technical consultations**. The department may provide informal advice and assistance...on the administrative and technical requirements of this chapter to persons conducting or otherwise interested in an independent remedial action. Such advice or assistance is advisory only and not binding on the department. This advice may include written opinions. These written opinions shall be limited to whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter...(6)(a) The department may collect, from persons requesting a site-specific technical consultation..., the costs incurred by the department in providing such advice and assistance.

Effective as of January 1, 2024

• WAC 173-340-510 (1) and (c). Independent remedial action.

A person may investigate or cleanup a site independently, without ecology supervision or approval...

(c) Technical assistance. Persons planning or conducting independent remedial action may request technical assistance from ecology, including advice on how to investigate and cleanup a site and written opinions on whether a planned or completed remedial action meets the substantive requirements of the state cleanup law. Ecology may charge a fee for providing requested technical assistance...

Appendix C

Figure 5 – Research communities surrounding the site and establish a public participation plan when required

These rules describe researching the communities surrounding the site and establishing a public participation plan. (Applied in our site testing, discussed in Chapter 2 on pages 23-26.)

In effect until December 31, 2023

• WAC 173-340-130 (4). Scope of public participation.

The department seeks to encourage public participation in all steps of the cleanup process. The department shall encourage a level of participation appropriate to the conditions at a facility and the level of the public's interest in the site.

- WAC 173-340-600 (9)(b). Public participation plans – Early Planning Encouraged. In order to develop an appropriate plan, the department ... should engage in an early planning process to assess the public participation needs at the facility. This process may include identifying and conferring with individuals, community groups, local governments, tribes, public agencies, or any other organizations that may have an interest in or knowledge of the facility.
- WAC 173-340-600 (9)(d). Plans required. As part of requiring or conducting a remedial action, except emergency actions, at any site that has been assigned a hazard ranking score, the department shall ensure that a public participation plan is developed and implemented. The department may also require the development of a public participation plan as part of an agreed order ... or consent decree ... for facilities that have not been assigned a hazard ranking score.

Effective as of January 1, 2024

- WAC 173-340-130 (5). Encouraging and facilitating public participation.
 For ecology-conducted and ecology-supervised remedial actions, ecology seeks to encourage public participation and facilitate equitable participation in all steps of the cleanup process under WAC 173-340-600. Ecology will encourage a level of participation appropriate to the threats posed by a site and the level of the public's interest in the site. When assessing public participation needs at a site, ecology will consider the interests of likely vulnerable populations and overburdened communities.
- WAC 173-340-600 (9)(b). Public participation plans – Early Planning Encouraged.
 In order to develop an appropriate plan, ecology or a potentially liable person or prospective purchaser (if submitting a plan to ecology) should engage in an early planning process to assess the public participation needs at the site, including the needs of likely vulnerable populations and overburdened communities. This process may include identifying and conferring with individuals, community groups, indigeneous peoples, local governments, public agencies, or any other organizations that may have an interest in or knowledge of the site.
- WAC 173-340-600 (9). Public participation plans. For ecology-conducted and ecologysupervised remedial actions, except emergency remedial actions, ecology will ensure that a public participation plan is developed and implemented.

Appendix C

Figure 6 – Notify the public about the site through mailings and newspaper advertisements

These rules say Ecology's goal is to notify the public through the mail and newspapers. (Applied in our site testing, discussed in Chapter 2 on pages 23-26.)

In effect until December 31, 2023

- WAC 173-340-600 (4)(b). Mail.
- Notice shall be mailed to persons who reside within the potentially affected vicinity of the proposed action. The potentially affected vicinity shall include all property within and contiguous to the site and any other area that the department determines to be directly affected by the proposed action.
- WAC 173-340-600 (4)(c). Newspaper publication. Notice of the proposed action shall be published in the newspaper of the largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad, legal notice, or any other appropriate format, as determined by the department.

Effective as of January 1, 2024

- WAC 173-340-600 (2)(a) (v). Persons residing within potentially affected vicinity. Written notice must be sent to persons residing within the potentially affected vicinity of the proposed action. The potentially affected vicinity includes all property within and contiguous to the site and any other area that ecology determines to be directly affected by the proposed action.
- WAC 173-340-600 (2)(a) (vii). Newspaper publication.

Written notice of the proposed action must be published in the newspaper of largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad; legal notice; or any other appropriate format, as determined by ecology.

Figure 7 – Consider and incorporate feedback from the community in the cleanup process

These rules require Ecology to consider and incorporate feedback from the community. (Applied in our site testing, discussed in Chapter 2 on pages 23-26.)

In effect until December 31, 2023

• WAC 173-340-600 (11)(c). Notice of agreed orders.

Public notice shall be provided by the department for any agreed order...(iv) Invite the public to comment on the proposed agreed order.

• WAC 173-340-600 (13)(a). Remedial investigation/feasibility study – Scoping. When the department elects to perform a remedial investigation/feasibility study, the department shall provide public notice and an opportunity to comment on the scope of the remedial investigation/feasibility study.

Effective as of January 1, 2024

- WAC 173-340-600 (11)(c). Agreed Orders Public notice of proposed order.
 Ecology will provide or require public notice of a proposed agreed order... The public notice may be consolidated with public notice of other documents under this chapter, such as a cleanup action plan, or notice required under other laws... (ii)(D) Invite the public to comment on the proposed agreed order.
- WAC 173-340-600 (13)(a). Remedial investigation/feasibility study Public notice of work plan.

For ecology-conducted remedial actions, ecology will provide public notice of a remedial investigation work plan... Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on the plan.

Figure 7, continued – Consider and incorporate feedback from the community in the cleanup process

- WAC 173-340-600 (13)(c). Report. The department shall provide or require public notice of remedial investigation/feasibility study reports... (iii) Invite public comment on the report...
- WAC 173-340-600 (13)(b). Public notice of report. Ecology will provide or require public notice of a remedial investigation and/or feasibility study report. (i)(D) Invite public to comment on the report.

The rules also set requirements concerning for public notice and comment requirements for consent decrees and enforcement orders. These rules had some changes after January 1, 2024.

In effect until December 31, 2023

- WAC 173-340-600 (10)(c) and (10)(c) (v). Concerns public notice and comment requirements for consent decrees.
- WAC 173-340-600 (12)(a) and (12)(a)(iv). Concerns public notice and comment requirements for enforcement orders.

Effective as of January 1, 2024

- WAC 173-340-600 (10)(c). Concerns public notice and comment requirements for consent decrees.
- WAC 173-340-600 (12)(b). Concerns public notice and comment requirements for enforcement orders.

The rules also set requirements concerning public notice and comment requirements for the draft cleanup plan, and for proposed routine cleanup and interim actions. These rules had some changes after January 1, 2024.

In effect until December 31, 2023

- WAC 173-340-600 (14)(b) and (14)(b)(iii). Concerns public notice and comment requirements for the draft cleanup plan.
- WAC 173-340-600 (16)(a) and (16)(b) (vi). Concerns public notice and comment requirements for proposed routine cleanup and interim actions.

Effective as of January 1, 2024

- WAC 173-340-600 (14)(a) and (14)(a) (ii). Concerns public notice and comment requirements for the draft cleanup plan.
- WAC 173-340-600 (16) and (16)(b). Concerns proposed interim actions.

Figure 8 – Translate materials into other languages when appropriate

Ecology follows these federal regulations when determining whether cleanup site materials should be translated into other languages. (Applied in our site testing, discussed in Chapter 2 on pages 23-26.)

Written language services. What documents should be translated?

... the translation of vital written materials into the language of each frequently-encountered LEP [Limited English Proficient] group ... likely to be affected by the recipient's program...Whether or not a document is vital may depend upon the importance of the ... information..., and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Into what languages should documents be translated? ... provides written translations of vital documents for each eligible LEP language group that constitutes five percent or includes 1,000 members, whichever is less, of the population of persons...likely to be affected... [Federal Register/Vol. 69, No. 122, VI. Selecting Language Assistance Services, B. Written Language

[Federal Register/Vol. 69, No. 122, VI. Selecting Language Assistance Services, B. Written Language Services (Translation), June 25, 2004]

Figure 9 – Engage with tribes early in the cleanup process

These rules state Ecology's goal is to engage with tribes early. (Applied in our site testing, discussed in Chapter 3 on page 34.)

In effect until December 31, 2023

• Not previously addressed in WAC.

Effective as of January 1, 2024

- WAC 173-340-620 (3). Tribal engagement plan.
 (a) Ecology will develop a site tribal engagement plan that identifies Indian tribes that may be adversely affected by the site, opportunities for government-to-government collaboration and consultation, and protocols for communication.
 (b) Ecology will seek to initiate meaningful engagement with affected Indian tribes before initiating a remedial investigation or an interim action at a site. Ecology will maintain meaningful engagement with Indian tribes throughout the cleanup process.
- WAC 173-340-620 (4). Relationship with public participation. Engagement of Indian tribes ... must be in addition to and independent of any public participation process...

Bibliography

Agency for Toxic Substances and Disease Registry. 2021. *ATSDR's Community Engagement Playbook*. <u>https://www.atsdr.cdc.gov/community-engagement-playbook/php/about/index.html</u>

City of Seattle, Racial and Social Justice Initiative.2012. *Inclusive Outreach and Public Engagement Guide*. <u>https://www.seattle.gov/documents/departments/rsji/gre/iopeguide01-11-12.pdf</u>

Federal Interagency Working Group on Environmental Justice and the National Environmental Policy Act Committee. 2019. *Community Guide to Environmental Justice and NEPA Methods*. https://www.energy.gov/sites/prod/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf

Georgetown Climate Center at the Georgetown University Law Center. "Community-Driven Engagement Processes." Equitable Adaptation Legal & Policy Toolkit. Last updated July 29, 2020. <u>https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/community-driven-engagement-processes.html</u>

Local and Regional Government Alliance on Race & Equity. 2016. *Racial Equity Toolkit: An Opportunity to Operationalize Equity*. <u>https://learn.racialequityalliance.org/products/racial-equity-toolkit-an-opportunity-to-operationalize-equity</u>

Multi-Agency Tribal Infrastructure Task Force, Waste Programs Sub-workgroup for Community Engagement. 2017. *Community Engagement Strategy: Issues to Consider When Planning and Designing Community Engagement Approaches for Tribal Integrated Waste Management Programs*. <u>https://www.epa.gov/sites/default/files/2017-03/documents/tribalswcommunityengagementstrategy508</u>. <u>pdf</u>

U.S. Environmental Protection Agency, Office of Research and Development. 2022. *Building Trust and Relationships in Cleanup Community Engagement, from Theory to Practice*. <u>https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=CESER&dirEntryId=355943</u>

Washington State Office of Equity. "Tribal Relations." https://equity.wa.gov/what-we-do/tribal-relations

Washington State Department of Health. n.d. *Community Engagement Guide*. <u>https://doh.wa.gov/sites/</u><u>default/files/legacy/Documents/1000/CommEngageGuide.pdf</u>

Washington State Environmental Justice Council. 2023. *Community Engagement Values and Guidance*. https://waportal.org/sites/default/files/2024-01/2023.08.25%20ADOPTED%20Community%20 Engagement%20Guidance.pdf

Washington State Environmental Justice Council. 2022. *Report to the Washington State Governor and Legislature, Environmental Justice Task Force Recommendations for Prioritizing EJ in Washington State Government*. <u>https://apps.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=EJTF%20</u> <u>Report FINAL 39bdb601-508e-4711-b1ca-6e8c730d57bf.pdf</u>

White House Environmental Justice Advisory Council. 2022. *Justice40 Initiative Implementation: Phase 1 Recommendations*. <u>https://nepis.epa.gov/Exe/ZyPDF.cgi/P1019OUH.PDF?Dockey=P1019OUH.PDF</u>



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