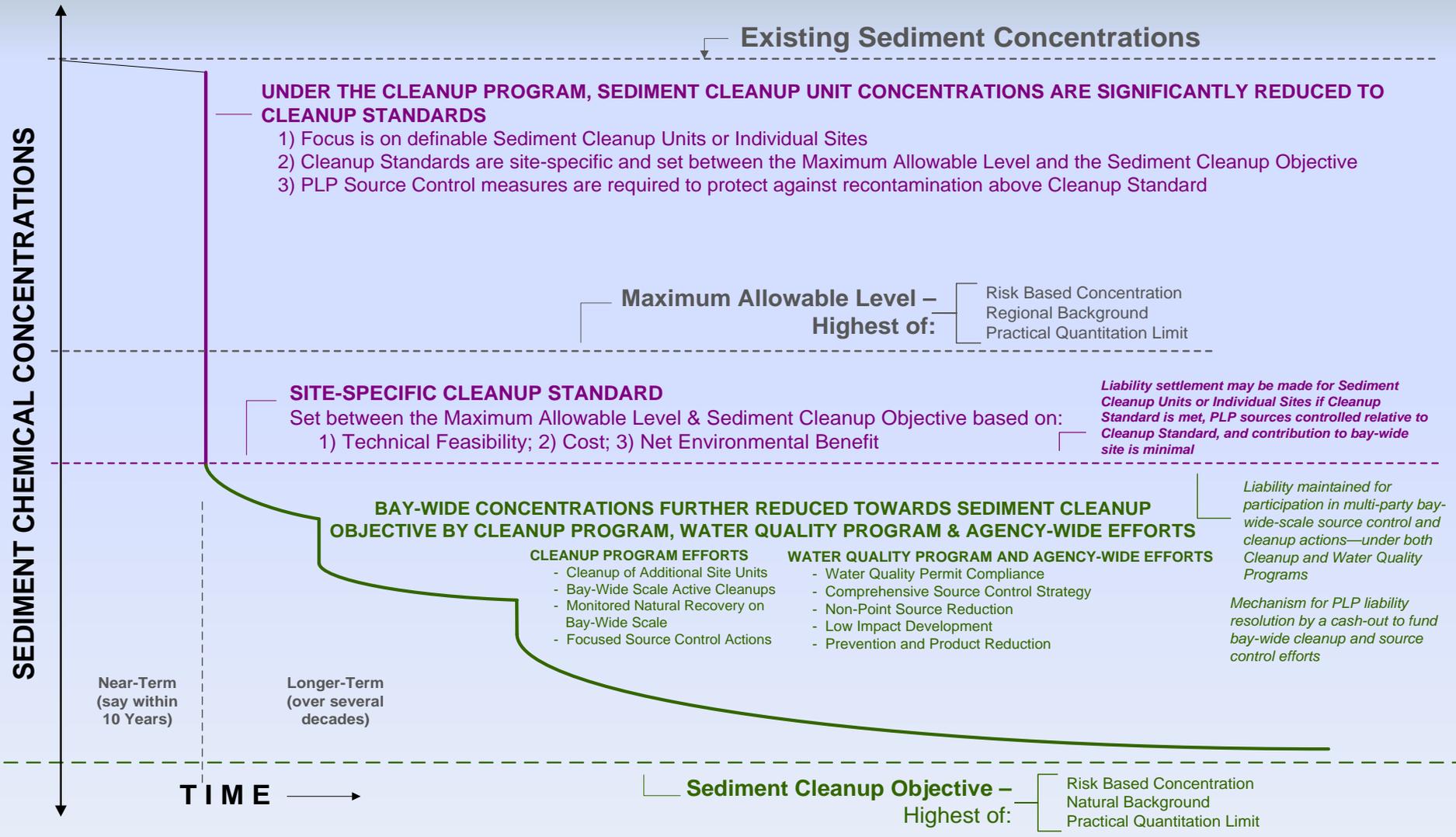


Liability Principles and PLP Involvement for Larger Site

Washington State Department of Ecology



Ecology Cleanup Program Proposal



Facilitating Site Unit Cleanups Supports Overall Objectives

- ▶ Nearshore contaminated sites and primary sources are cleaned up in near-term to aggressive but achievable levels

and

- ▶ All Ecology programs work together with PLP funding and participation to implement a full range of actions at the bay-wide scale to further reduce concentrations to levels as protective of human health and the environment as possible.

Liability Settlement for Units or Individual Sites Within Larger Bay-wide Site

- ▶ PLP can receive Consent Decree settlement for a sediment cleanup unit or individual site if :
 - ▶ cleanup is conducted to meet site-specific cleanup standards
 - ▶ and unit-specific source control is implemented
- ▶ PLP is not liable for recontamination from sources out of their control, unless PLP contributes to re-contamination to unit or individual site.
- ▶ This is a full settlement for the unit or individual site, but a partial settlement of overall PLP liability: Liability for other units and larger bay-wide site is maintained

Facilitating Larger Bay-Wide Site Cleanup and Source Control Supports Overall Objectives

- ▶ Baywide/watershed wide sediment concentrations reduced to conservative sediment cleanup objective over time.
- ▶ Coordinated source control actions better funded and coordinated to reduce contaminant loading.
- ▶ These actions will complement other actions such as Low Impact Development and Toxics Prevention to reduce contamination over time.

Larger Bay-Wide Site: Facilitating Cleanup and Source Control

- ▶ Baywide/watershed wide sediment concentrations further reduced to conservative sediment cleanup objective over time by:
 - ▶ Unit and Individual site cleanups and PLP related source control
 - ▶ Bay-wide and area-wide cleanup actions
 - ▶ Watershed-wide source control actions and toxics reduction
- ▶ PLP funding allows for:
 - ▶ Large and small scale source control efforts to further reduce sediment contamination.
 - ▶ Additional cleanup for orphan or abandoned sites.
 - ▶ Long term monitoring of baywide/watershed wide site.

PLP Funding and Participation for Bay-Wide and Watershed-Wide Actions

- ▶ PLPs maintain responsibility for participation in larger site efforts
- ▶ Can participate in one of two ways:
 - ▶ For PLPs with minimal contribution to bay-wide site, mechanism for cash-out to help fund source control, cleanup, and monitoring of larger site.
 - ▶ Or PLPs maintain participation in conducting and funding efforts to reduce bay-wide concentrations.

Larger Site Settlement Through Cash-Out: Options We're Considering

▶ Option 1:

- ▶ PLPs could settle liability through cash out settlement if PLP contributions to larger site are determined by Ecology to be minimal in amount and toxicity
- ▶ Public comment would allow for input from others re: appropriateness of settlement
- ▶ Payment via settlements would provide funds that would be dedicated to bay-wide source control, cleanup actions, and monitoring.

Larger Site Settlement Through Cash-Out: Options We're Considering

▶ Option 2:

- ▶ PLPs settle liability for a site unit: Includes contribution protection and covenant not to sue if scope of the settlement is commensurate with the cleanup action.
- ▶ PLP maintains liability for larger site and implements larger site action - subject to contribution actions from other PLPs.

▶ Option 3:

- ▶ PLPs could settle liability for an individual site within the larger site.
- ▶ PLP does not maintain liability for the larger site.

▶ Option 4:

- ▶ PLPs settle liability for a site unit: all the caveats in Option 2.
- ▶ Ecology settles willing PLPs liability for larger site as a group.

Who does what?

- ▶ Sufficient data gathered to define a baywide/watershed wide site -Ecology's baywide sediment characterization sufficient.
- ▶ Ecology identifies PLPs for baywide site and potential individual sites within larger site.
- ▶ PLP can propose a site unit or Ecology can determine site units.
- ▶ Ecology determines if PLP contribution is de minimus.
- ▶ Unit and individual site cleanups through RI/FS, CAP, CD.
- ▶ Ecology decides whether to settle with all PLPs for larger site.
- ▶ Background: PLP and/or Ecology sampling. Ecology determines background value, statistical metrics, approves sampling plan.

Settling liability for baywide site – issues and concerns we've heard

- ▶ How Ecology will define “de minimus” contaminant contribution to the larger site.
- ▶ Further criteria for “de minimus” will not be in rule.
- ▶ Major contaminant contributors involvement in the settlement process
- ▶ Avoiding “expediting settlements”
- ▶ PLPs: Ports/municipalities source control obligation
- ▶ What is accomplished with settlement funds:
 - ▶ Source control
 - ▶ Baywide monitoring
 - ▶ Additional cleanup

What criteria do we use to define “de minimus” contribution to the larger site?

- ▶ Still struggling with this, but here are some suggestions:
 - ▶ PLP contribution to contamination is insignificant in amount and toxicity.
 - ▶ If a historical or ongoing contaminant source.
 - ▶ When the legacy source ceased releasing to sediment.
 - ▶ Contaminant load to sediment relative to other legacy or ongoing sources.
 - ▶ Contaminant load to sediment relative to current sediment contamination.
 - ▶ Relative risk to rest of site.
- ▶ We would like to hear your suggestions.
 - ▶ What does insignificant in amount and toxicity mean to you?
 - ▶ When would you define Ecology as “expediting a settlement”?
 - ▶ Can you think of contamination scenarios to determine “de minimus”?