



**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>4</u>	Amended	<u>5</u>	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>4</u>	Amended	<u>21</u>	Repealed	0
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>4</u>	Amended	<u>21</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

## **ATTACHMENT A**

### **List of SMS Rule Changes from Proposed to Adopted Rule:**

#### **Part I - WAC 173-204-100 through 130:**

To ensure clarity and consistency, the following revisions were made:

- Rule citations were changed to appropriately correspond to definition changes.
- The underlying authorities for Part V were revised to reflect Ecology's decision to adopt Part V, Sediment Cleanup Standards, under RCW 70.105D, the Model Toxics Control Act.

#### **Part II – WAC 173-204-200 & -505**

The proposed amendments were originally made to the existing section -200. Adopted amendments to the definitions that only apply to Part V have been moved to a new section -505 to clearly indicate that they apply to Part V only.

Therefore, to ensure clarity and consistency, the following revisions were made:

- The following definitions were moved from -200 to Part V -505: active cleanup action, applicable laws, beneficial reuse, biologically active zone, cleanup action, cleanup screening level, contaminant, enhanced natural recovery, include, monitored natural recovery, natural background, natural recovery, point of compliance, practical quantitation limit, regional background, sediment cleanup level, sediment cleanup objective, sediment cleanup standard, sediment recovery zone, sediment cleanup unit, and technically possible.
- The original definitions in -200 for the following terms were restored: acute, beneficial use, bioassay, person, and surface sediment(s)/sediment(s).

In response to comments received, the following revisions to the definitions were made:

- “Active cleanup action” was revised to clarify types of cleanup actions.
- “Anthropogenic” was deleted because the term is not used in Part V, which is the focus of the rule revisions.
- “Applicable laws” was revised to include relevant and appropriate requirements of local and tribal laws.
- “Beneficial reuse” was revised to clarify the definition for levels of contamination and types of reuse.

- “Best management practices” was revised by deleting the requirement for department approval.
- “Cleanup action” was revised to clarify contaminants and when a remedial action is considered a final cleanup action or an interim action.
- “Contaminant” was revised to be consistent with MTCA.
- “Contaminated sediment” was revised to restore “surface” to the term sediment.
- “Control sediment sample” was revised to clarify that it applies to benthic criteria.
- “Enhanced natural recovery” was revised to change “remedy” to “cleanup action.”
- “Minor adverse effects” was revised to reflect comparison to control for freshwater criteria.
- “Monitored natural recovery” was revised to include benthic infauna.
- “Natural recovery” was revised to clarify the example in the definition.
- “No adverse effects” was revised to reflect comparison to control for freshwater criteria.
- “Nonanthropogenically affected” was deleted because the term is not used in Part V, which is the focus of the rule revisions.
- A new definition of “practicable” was added to Part V to clarify the term as it applies to -570 and -590.
- “Regional background” was revised to eliminate duplicative phrasing in -560.
- “Sediment cleanup level” was revised to clarify that it can be established between the Sediment Cleanup Objective (SCO) and the Cleanup Screening Level (CSL).
- “Sediment cleanup standard” was revised to clarify its relationship to relevant terms.
- “Sediment cleanup unit” was revised to include regional background as a consideration in defining a unit.
- “Sediment quality standard” was removed because the term does not apply to Part V.
- “Sediment recovery zone” was revised consistent with revisions to -500, -570, and -590.
- “Surface sediment or sediment” was revised for Part V to clarify the definition.

### **Part III – WAC 173-204-300 through -350**

- The references to definition numbers in -200 have been revised to accurately reflect the revisions to that section.

### **Part IV – WAC 173-204-400 through -420**

- The references to definition numbers in -200 have been revised to accurately reflect the revisions to that section.

## **Part V:**

### **WAC 173-204-500**

To meet the intent of RCW 70.105D, the following revision was made:

- The authorizing statute and how Part V provisions will be used were clarified in -500(1).

To ensure clarity and consistency, and in response to comments received, the following revisions were made:

- The relationship between the restoration time frame and cleanup actions and Ecology's expectations and preference regarding the type of cleanup actions for specific types of sites were clarified in -500(4)(c).
- Ecology's expectations regarding discharge monitoring were revised in -500(4)(d).
- The terminology regarding protection of human health at "no significant health threat" in -500(5) was made consistent with Part I.
- The relationships between sediment cleanup standards, sediment cleanup levels, sediment cleanup objectives, cleanup screening levels, and points of compliance were clarified in -500(5)(a).
- The use of passive cleanup actions was clarified in -500(5)(b).
- Compliance with applicable laws was included in the presumption of protectiveness provision in -500(5)(c).

### **WAC 173-204-510**

To ensure clarity and consistency, and in response to comments received, the following revisions were made:

- Language was clarified in -510(2)(a) through (d) regarding when a station cluster of concern is identified based on benthic, human health, or background criteria.
- Language was clarified in -510(2)(c)(i) so that the reference to background is regional background.
- The term "contaminant" was replaced with "chemical" to ensure consistent usage of the term and to clarify the intent of separating evaluations based on chemical and biological criteria.

- Language was revised in -510(3) to state that notification is dependent on the results of the hazard assessment and evaluation process in -520.

### **WAC 173-204-520**

To ensure clarity and consistency, the following revisions were made:

- WAC 173-204-520(2)(a)(vi) was revised for consistency with other subsections.
- Clarification was added to WAC 173-204-520(3)(a) on how background concentrations are incorporated into site identification.
- WAC 173-204-520(3)(d) was re-worded to clarify how human health, background, other deleterious substances, and nonanthropogenically affected criteria are used to identify cleanup sites or areas for potential further investigation.
- The term “contaminant” was replaced with “chemical” to ensure consistent usage of the term and clarify the intent of separating evaluations based on chemical and biological criteria.

### **WAC 173-204-530**

The rule language in WAC 173-204-530(6)(a)(i) was revised to reflect the intent of the original rule regarding delisting a site based on meeting cleanup requirements.

### **WAC 173-204-540**

To ensure clarity and consistency, the following revisions were made:

- The language was revised in -550(1) to better explain the intent of this section.
- The language was revised in -550(2) to clarify the authority under MTCA as it applies to a release or threatened release.
- The language was revised in -550(3) to clarify terms (remedial action), Part V under MTCA authority, and the role of CERCLA.

### **WAC 173-204-550**

In response to comments received, the following revisions were made:

- Section -550(4) Remedial Investigation Work Plan, addition of:

- Data gaps analysis.
- Receptors and exposure pathways to the conceptual site model requirements.
- Analytical methods requirements.
- Section -550(5): Public participation plan requirements for early coordination and consistency with MTCA were added.
- Section -550(6) Remedial Investigation Report:
  - Requirements were more clearly specified regarding what must be included in a remedial investigation report for a site or sediment cleanup unit.
  - Consideration of land use classification was added.
  - Impact on ecological receptors was included with reference to natural resources and habitat.
  - Contaminant sources were clarified to be confirmed and suspected sources.
  - Human health risk assessment language was re-instated.
- Section -550(7) Feasibility Study Report:
  - Language was clarified regarding terminology for sites and sediment cleanup units and contaminants, as well as requirements that must be included in a report for a site or sediment cleanup unit.
  - Some language in -550(7)(i) regarding sediment recovery zone requirements was moved to -590.
- -550(8) Sampling access was reinstated.

### **WAC 173-204-560**

In response to comments received, the following revisions were made:

- Clarified the process of adjusting the sediment cleanup standard upward from the SCO in -560(2)(a).
- Clarified that the criterion for higher trophic level species is the no adverse effects level in -560(3)(a) and -560(4)(a).
- Added provisions for regional background in areas where regional background has not been established in -560(5).
- Clarified the definition of point of compliance in -560(6).
- Added provisions for compliance monitoring that included area-averaging approaches in -560(7).

To meet the intent of the authorizing statute, the applicability of Part V in determining cleanup standards was clarified in -560(1).

### **WAC 173-204-561**

In response to comments received, the following revisions were made:

- The proposed rule language has been revised to clarify when other factors may be considered when establishing the default reasonable maximum exposure scenario in -561(2)(b)(i).
- The “size of the site relative to the fish and shellfish home range” factor has been clarified in -561(2)(b)(i)(D) to better reflect its original intent.

### **WAC 173-204-562**

The following revisions between the proposed and adopted rule amendments were made to clarify and remove inconsistencies between the text and tables in the rule in response to public comment:

- The titles and legends of Tables IV, V, and VI were clarified and corrected.
- Table numbers IV, V and VI were changed to III, IV, and V respectively.
- The benthic abundance criteria were removed from the text in -562(3)(b) and added to Table IV to be consistent with the other biological criteria that are in tabular format.
- The benthic abundance performance standards were added to the legend of Table IV to be consistent with -563.
- A performance standard for the larval tests was added to Table IV.
- The equations for the biological criteria in Table IV were updated to commonly used terminology.

The following revisions between the proposed and adopted rule amendments were made based on internal review to clarify and remove inconsistencies between the text and tables in the rule or to be consistent with -563 provisions:

- To reflect current policy and be consistent with -563, the confirmatory designation provision was clarified in -562(3)(c)(i) to state that any person may perform biological testing to confirm toxicity.
- The “other toxic, radioactive, biological, and deleterious substances” provision in -562(4) was revised to clarify how to assess toxicity and to include chemicals not in Table V to clarify the intent, reflect current policy, and be consistent with -563.

### **WAC 173-204-563**

The following revisions were made in response to comments received to clarify and remove inconsistencies between the text and tables:

- Dry weight normalization was clarified in the text in -563(2)(g) and Table VI.
- The benzofluoranthenes criterion was clarified in -563(2)(i).
- The explanation of “>” (greater than) values in -563(2)(n) was revised to clarify that the CSL is not known but concentrations above the SCO are at the minor adverse effects level.
- Language was revised in -563(2)(o) to better define what types of freshwater environments may require alternate technical methods to be used and what types of alternate methods shall be used.
- The CSL criterion for endrin ketone was changed from 0 to >8.5 to differentiate this level from the SCO and for consistency with the technical report. The proposed rule language had a typographical error.
- The titles and legends of Tables VI, VII, and VIII were clarified and corrected.
- The equations for the biological criteria in Table VIII were updated to commonly used terminology.

The following revisions were made for clarity and consistency based on internal review:

- Table numbers VII, VIII, and IX have been renumbered to VI, VII, and VIII, respectively.
- The confirmatory designation provision was clarified to state that any person may perform biological testing to confirm toxicity to reflect current policy and be consistent with -562.

The “other toxic, radioactive, biological and deleterious substances” provision was revised to clarify how to assess toxicity and include chemicals not listed in Table VI to clarify the intent, reflect current policy, and be consistent with -562.

### **WAC 173-204-564**

The following revision was made to clarify and meet the intent of the rule language:

- The rule language was revised to clarify that sediment cleanup levels must be established at the “no adverse effects” level in -564(2) to be consistent with the intent of the proposed rule language.

The following revisions were made in response to public comment:

- The language that specified what “no adverse effects” meant for endangered or protected species was removed.
- Language was added regarding coordination with state and federal agencies as appropriate in -564(2)(d) to acknowledge the role of other agencies in the cleanup process such as consultation with appropriate agencies for endangered or protected species.

### **WAC 173-204-570**

In response to comments received, the following revisions were made:

- Section -570(3) Minimum requirement for sediment cleanup actions:
  - Shortened language stating a preference for alternatives with a shorter restoration time frame.
  - Clarified language regarding discharges and source control.
  - Changed language on passive cleanup actions from “not rely primarily” to “not rely exclusively” on monitored natural recovery and institutional controls and monitoring.
  - Added consideration of land use classifications.
  - Added language to clarify public participation requirements.
  - Clarified periodic review requirements.
- Section -570(4) Using permanent solutions to the maximum extent practicable:
  - Clarified the requirements for assessing whether a cleanup action is permanent to the maximum extent practicable, consistent with MTCA requirements.
  - Specified the requirements and preferred cleanup technologies for assessing long-term effectiveness.
- Section -570(5) Providing a reasonable restoration time frame:
  - Added a presumption that a reasonable restoration time frame is met if cleanup standards are met within 10 years of completion of construction of the active components of a cleanup action. This was changed from the “start” of construction.
  - Clarified when a sediment recovery zone is required to be issued by the department.
  - Added that preference shall be given to alternatives that achieve sediment cleanup standards at the site or sediment cleanup unit more quickly.
  - Added consideration of land use classifications.
  - Added source control effectiveness.

### **WAC 173-204-575**

To ensure clarity and consistency the following revisions were made:

- The MTCA law was specified as the administrative authority.
- Terminology was changed from “cleanup action” to “remedial action” and from “chapter” to “part.”
- Ecology’s expectations were clarified for when other authorities are used to conduct cleanup.
- The section number -580 was changed to section number -575.

### **WAC 173-204-590**

In response to comments received, and to ensure clarity and consistency based on internal review, the following revisions were made:

- Clarified when an Sediment Recovery Zone (SRZ) is required to be issued by Ecology.
- Additions to -590(2) General requirements:
  - Indicated where the SRZ requirements are described.
  - Stated when and how adjustments or extensions can be made to the SRZ.
- Additions to -590(3) Criteria:
  - Added human health effects as factors to consider.
  - Added future uses and land use classifications as factors to consider.
- Additions to -590(4), Duration:
  - Clarified that the potentially liable person must submit an application for an extension.
  - Added automatic enforceability when an SRZ is expiring.
- Added clarification of types of monitoring.
- Included affected tribes in public involvement.