

**CERCLA AND MTCA 101
MSWMAC & KING COUNTY
JULY 13, 2012**

Agenda

- Ground Rules
- MTCA & CERCLA Background
- Liability Provisions
- Cleanup Process
- Allocation Process

Ground Rules

- Who is this guy?
- Counsel to none; Educator to all
- No Legal Advice
- Independent Information

CERCLA Background

- Passed in 1980, SARA Amendments in 1986
- AKA "Superfund"
- EPA implements in partnership with states
- Detailed, extensive regulation: National Contingency Plan (40 CFR 300)

MTCA Background

- Passed as Initiative by voters in 1988
- Used CERCLA as guide, very similar but some key differences
- Dept. of Ecology implements
- Funded by Hazardous Substance Tax
- STCA, LTCA
- Detailed, Extensive Regulation (WAC 173-340)

Liability Provisions

- MTCA and CERCLA liability provisions are similar
- Past/Present Owners, Operators, Arrangers, Generators and Transporters Liable
- CERCLA liability is *usually* Joint and Several
- Several liability where there is "reasonable basis to apportion"
- MTCA liability is *always* Joint and Several
- Liability tied to a "Site"

The Cleanup Process: Step 1

- Site Discovery
- The PLP/PRP Letter & Designation Process
- Selecting a Team
- To Cooperate or Not to Cooperate

The Cleanup Process: Step 2

- Negotiation with Regulatory Agency
- Administrative Order
- Remedial Investigation (RI)
- What is the environmental problem?
- "Nature & Extent of Contamination"
- What is the "site"?
- Dispute Resolution

The Cleanup Process: Step 3

- The "Feasibility Study" or "FS"
- Often combined in same Administrative Order as RI
- "RI/FS"
- Based on information obtained in RI, evaluation of cleanup alternatives
- Proposes cleanup standards

The Cleanup Process: Step 4

- Based on RI/FS, Regulator will select cleanup remedy
- Negotiated Process
- CERCLA Final Remedy: Record of Decision
- MTCA Final Remedy: Cleanup Action Plan

The Cleanup Process: Step 5

- ROD or CAP implemented via Consent Decree
- Consent Decree is settlement of liability between PRP/PLP and regulator
- Covenant Not to Sue for "matters addressed"
- Contribution Protection
- Filed in State or Federal Court, approved by a judge who retains control and supervision over the Decree

The Cleanup Process: Step 6

- Implementation of the Remedy
- Confirmational/Long-Term Monitoring
- Land use restrictions
- 5-year review
- When am I *done* already?
- A Note for Local Governments: MTCA grants
- The Alternate Processes: Independent Cleanup and Voluntary Cleanup

Private Allocation: The Parallel Process

- Both MTCA and CERCLA were amended to provide liable parties rights of contribution
- Purely private process; Regulator not involved
- Process is completely flexible; allocation may begin at any point in the cleanup process

Private Allocation: Key Concepts

- Private parties control the process
- While liability to the Regulator is almost always Joint and Several and not based on "fault," allocation among liable parties is based on a variety of equitable factors, including fault-like concepts
- Litigation, negotiation, mediation and/or arbitration
- Costs or cleanup work or both may be allocated

Private Allocation Process

- "Gore" Factors
- Is "your" contribution distinguishable? What is the amount of waste involved? What is the degree of toxicity of the waste? How involved were you in generating or transporting or disposing of the waste? What degree of care did you use in handling the waste or substance? What is your level of cooperation with the Regulator?
- Plus any other factor a party may advance
- Private Agreement