Report to the Legislature

STATE TOXICS CONTROL AND ENVIRONMENTAL LEGACY STEWARDSHIP ACCOUNTS BUDGETING

As required by Chapter 1, Laws of 2013, First Special Session

Budget Division
Office of Financial Management
October 1, 2013

EXECUTIVE SUMMARY

During the 2013 legislative sessions, legislation was considered that affected aspects of the Model Toxics Control Act (Hazardous Waste Cleanup – Model Toxics Control Act – Chapter 70.105D RCW) and Washington state's approach to budgeting for the cleanup of contaminated sites and programs for toxics prevention, cleanup and solid waste management. Second Engrossed Second Substitute Senate Bill 5296 (relating to the Model Toxics Control Act – Chapter 1, Laws of 2013, First Special Session) and House Bill 2079 (relating to the Environmental Legacy Stewardship Account – Chapter 28, Laws of 2013, Second Special Session) initiated key changes, including lidding tax revenues received by the existing State Toxics Control and Local Toxics Control Accounts, creating the Environmental Legacy Stewardship Account for operating and capital uses, revising and adding to allowed uses of these accounts and allowing higher appropriation levels for selected capital programs.

These statutory changes raised questions about future budgeting approaches for Model Toxics Control Act (MTCA)-funded activities and projects. As a result, a proviso in the enacted 2013–15 capital budget bill (ESSB 5035, Section 7009) directed the Office of Financial Management (OFM) to work with the Department of Ecology (Ecology) and legislative fiscal committee staff to develop budget-related processes, procedures and recommendations, and provide a report to the Legislature by Oct. 1, 2013. OFM convened a work group of representatives from these organizations during the summer of 2013.

This report responds to the legislative direction, providing procedural and statutory recommendations related to ensuring capacity of the State Toxics Control and Environmental Legacy Stewardship Accounts to maintain programs, as well as developing approaches for operating and capital budgeting.

Key recommendations include:

- » Providing inflationary or fiscal growth factor adjustments to the statutory lid for deposits into the State and Local Toxics Control accounts to maintain programs into the future.
- » For existing MTCA-related reports, include additional information, such as:
  - › Funding levels needed to maintain operating programs
  - › Historical underexpenditure rates for capital appropriations
- » Extending best practices and process improvements for streamlining to all types of capital programs funded from MTCA accounts.
- » Tracking and reporting basic metrics, such as turnaround time, for cleanup programs.
- » Continuing to fund coordinated prevention grants and remedial action grants from the Local Toxics Control Account.
- » Consideration by OFM management of budgeting MTCA-related capital projects based on assumed underexpenditure rates for the first biennium.
- » Requesting MTCA funding for future operating requests based on ongoing statutory uses of the accounts.

This report also provides descriptive information on administration of the hazardous substance tax (the primary revenue source for MTCA-related dedicated accounts) and Ecology's approach to cash management.

INTRODUCTION

Background

The Model Toxics Control Act was passed as a citizen initiative in 1988. The act governs cleanup of contaminated sites and provides funding for toxics prevention, cleanup and solid waste management through a tax on hazardous substances. Its primary purposes are to:

- Raise sufficient funds to clean up all hazardous waste sites in Washington.
- Prevent the creation of hazards resulting from improper disposal of toxic wastes into the state's land and waters.
- Clean up contaminated industrial properties and put them to productive reuse.

MTCA established the hazardous substance tax (HST), a 0.7 percent tax on the wholesale value of petroleum and other toxic products, as the primary fund source for programs and activities authorized under the act. Until fiscal year 2014, tax collections were deposited into two accounts, the State Toxics Control Account (STCA) and the Local Toxics Control Account (LTCA), both administered by Ecology. From fiscal years 2006 through 2013, tax revenue averaged $150 million annually. The Department of Revenue (DOR) collects the tax while Ecology acts as the fund administrator for STCA/LTCA.

HST revenue is historically volatile, moving up and down (though primarily up) with the volume and price of oil used in the state. From fiscal years 2006 through 2013, revenue changed as much as $50 million from year to year. On top of the revenue uncertainty, it is not unusual for large sums to be refunded to taxpayers as the result of DOR audits or taxpayer-initiated amendments to tax returns.

The MTCA accounts have been used to fund operating and capital programs in several state agencies. Key operating programs funded from MTCA accounts include toxic cleanup (staffing), hazardous- and solid-waste management, spill preparedness and response, water quality protection and monitoring, environmental health protection and monitoring, and air toxics prevention and management. The main focus of MTCA capital investments has been contaminated-site cleanup, solid-waste management, water-quality protection projects and stormwater projects.

Legislative Changes in 2013

During the 2013 legislative session, 2E2SSB 5296, related to the Model Toxics Control Act, (Chapter 1, Laws of 2013, First Special Session), was considered. It revises several aspects of MTCA. The most significant include:

- Lidding combined annual deposits to the STCA and LTCA at $140 million and depositing the remaining HST revenue stream to a newly created Environmental Legacy Stewardship Account (ELSA). ELSA can be appropriated for all uses authorized for STCA/LTCA, stormwater projects, and cleanup and disposal of hazardous materials from abandoned and derelict vessels.
- Changing the fund split for HST revenue deposited into STCA/LTCA from 47 percent/53 percent to 56 percent/44 percent, respectively.
- Allowing the State Treasurer to transfer funds periodically from STCA/LTCA into ELSA, based on forecasted revenues.
- In recognition of historically high capital re-appropriation rates, budgeting selected LTCA- and ELSA-funded capital projects on the basis of expected biennial spending, instead of assuming that all appropriated funds will be spent out during the first biennium.

A trailer bill, HB 2079, related to expenditures from the Environmental Legacy Stewardship Account (Chapter 38, Laws of 2013, Second Special Session), was subsequently enacted to clarify allowed uses of ELSA.

Need for Implementation Policies and Procedures

The significant changes in 2E2SSB 5296 and HB 2079 raised questions about budgeting approaches for MTCA-funded activities and projects. As a result, the 2013–15 capital budget bill (Section 7009 of Chapter 19, Laws of 2013, Second Special Session) requires OFM to work with legislative staff and Ecology to develop policies and procedures for budgeting STCA and ELSA. The full text of the report requirement is provided below:

NEW SECTION. Sec. 7009. FOR THE OFFICE OF FINANCIAL MANAGEMENT
State Toxic Control and Environmental Legacy Stewardship Accounts Budgeting

The office of financial management, working with the department of ecology and legislative fiscal committee staff, shall develop a process and procedures for the budgeting of the state toxics control account and the environmental legacy stewardship account to ensure adequate funding for the base operating programs as specified in RCW 70.105D.070(3) is maintained. This includes recommendations on how the base operating budget work will be assigned to the two accounts, and, if future shifts between the two accounts are necessary to maintain existing funding levels, procedures that describe when they are to be addressed through maintenance level or policy level decision packages. These procedures shall be submitted to the legislative fiscal and environmental committees by October 1, 2013.

In response to this direction, OFM established a work group composed of staff from OFM, Ecology, the Senate Ways & Means Committee, the House Appropriations Committee and the House Capital Budget Committee. State Treasurer and DOR staff were brought in as resources for discussions of hazardous substance tax administration. Legislative staff provided background and context, as needed, to discussions of implementation issues and possible MTCA process and procedural budgeting options. OFM convened five meetings over the course of July–September 2013.

Subjects covered during these meetings included:

- Organizational (meeting schedule, topics to be covered)
- HST administration (mechanics of revenue distribution, refunds, credits)
- Operating budget approach (assignment of activities to accounts for the base 2013–15 budget, approaches for future fund shifts between accounts)
- Capital budget approach (cash management plan, interpretation of language requiring reductions in completion time for local grants, assignment of major capital projects to accounts for future budget requests)
- Mechanics of State Treasurer's transfers
- Legislative report (content, recommendations)
- Forecasting revenue for the HST (overall approach, how refunds and credits are addressed)

Report Outline

The balance of this report covers the following topics:

- » Processes and procedures for budgeting operating and capital appropriations from MTCA accounts, including STCA and ELSA
- » Approaches to fund administration and hazardous substance tax collection
- » Summary of recommendations

PROCESS AND PROCEDURES FOR BUDGETING MTCA ACCOUNTS

Capacity of State and Local Toxics Accounts to Maintain Programs

Under 2E2SSB 5296, combined STCA/LTCA revenues are lidded at $140 million per year. In the future, the Legislature is likely to provide more operating funds for global costs such as compensation, employee benefits and central service agency charges. Given these factors, it is conceivable that the annual cost of programs funded by STCA/LTCA could grow beyond the $140 million level. This could result in reductions to base operating programs in order to stay within available revenues. Inflationary growth could be addressed permanently by adding an annual inflation or fiscal growth factor to the statute specifying the $140 million threshold.

Statutory Recommendation

Amend Section 9(1) of 2E2SSB 5296 by the next few legislative sessions to incrementally increase the $140 million cap on annual revenue to the STCA/LTCA by the fiscal growth factor as defined in RCW 43.135.025, a rate based upon growth in state personal income or by other inflationary measures.

Statutory or Procedural Recommendation

By statute or administrative direction, require Ecology to include information on the fiscal ability of MTCA accounts to support programs. Whether provided in the biennial report on the department's activities supported by the MTCA, as required by Section 6(6) of 2E2SSB 5296, or in agency budget submittals, the following information would aid budget writers in understanding the cost pressures on the accounts:

- » Specifying the necessary MTCA account funding needed to maintain programs;
- » Assessing the adequacy of account resources to provide this level of funding; and
- » Describing unavoidable cost increases experienced by these programs (such as compensation, employee benefits or central service agency charges).

Budgeting Operating Expenditures

During the 2013–15 biennium, the MTCA accounts funded more than $190 million of operating activities in 11 state agencies:

Department of Agriculture
Department of Corrections
Conservation Commission
Department of Ecology
Department of Fish and Wildlife
Department of Health
Department of Natural Resources
Puget Sound Partnership
Department of Revenue
State Patrol
University of Washington

The largest operating activities funded from the accounts in the 2013–15 biennium included toxic site cleanup (staffing), water quality financial assistance and shoreline management, all in Ecology. The table below summarizes agency operating funding from accounts receiving HST revenue.

Agency Operating Funding from Accounts Receiving Hazardous Substance Tax Revenue

2013–15 Biennium (Dollars in thousands)

Agency/Activities	State Toxics	Local Toxics	Env. Legacy
Department of Agriculture – ag hazardous waste mgt, pesticide monitoring	5,203	0	0
Conservation Commission - technical assistance, incentives	1,000	0	0
Department of Corrections - water quality compliance*	0	0	105
Department of Ecology - multiple	125,217	3,774	43,748
Department of Fish and Wildlife - science, hatchery, GMA/SMA	0	0	1,224
Department of Health - science	3,949	0	0
Department of Natural Resources - forest practices, aquatic lands clean-up*	80	0	3,948
Puget Sound Partnership - Puget Sound restoration	676	0	0
Department of Revenue - tax administration	93	0	0
Washington State Patrol - hazardous materials response training/assistance	516	0	0
University of Washington - ocean acidification	1,120	0	0
Total	**$137,854**	**$3,774**	**$49,025**

*One-time funding

2013–15 Base Activity Funding

In addition to specific line items funded from ELSA, the operating budget includes a $40.5 million shift in the funding of base activities at Ecology from STCA/LTCA to ELSA. The legislative budget did not provide a budget note or proviso guidance for which activities would shift. Given that ELSA can be used for all allowed uses of STCA/LTCA, Ecology has wide discretion concerning which activities to shift. The work group discussed whether certain eligible activities should be shifted from one account to another, but decided that the best approach would be to provide Ecology the greatest flexibility in shifting activities.

Procedural Recommendation

In the absence of specific legislative direction, Ecology will use 2013–15 base operating expenditure allotments that shift STCA to ELSA on a roughly proportionate basis for all programs except Nuclear Waste and shift all LTCA to ELSA for all programs except for the Waste 2 Resources Program. Appropriate amounts will also be shifted from STCA/LTCA to ELSA in the Administration Program to maintain equitable contributions from all dedicated accounts.

Future Biennium Operating Budgeting

Creation of the ELSA account provides another fund source that can be appropriated for a wide range of MTCA-related operating activities. Separately, the annual $140 million lid on taxes deposited into STCA/LTCA creates the potential for base operating and capital funding to exceed the annual lid. These changes to MTCA fund sources raise questions about the best approaches for budgeting future operating expenditures: Should agencies request funds based on which MTCA account appears to have sufficient uncommitted fund balance? Or should they request funds based on which MTCA fund source is commonly used for that activity?

Procedural Recommendation
Future operating budget requests should use MTCA accounts based on authorized statutory uses of the accounts.

The work group also discussed the best way to request funding to address possible MTCA account shortfalls. A shortfall could occur in STCA, for instance, if growth due to inflationary, programmatic or capital project changes pushed total STCA/LTCA demand beyond the $140 million lid. In addition, ELSA could experience a shortfall due to a reduction in HST revenue.

Procedural Recommendations

» Agency operating proposals to address MTCA account shortfalls generally should be made at the policy level, even if they involve funding adjustments for base programs.

» Agencies may also propose fund balance transfers among the three accounts to ensure sufficient capacity to cover base operating expenditures.

» Technical corrections to address identified unintended effects of 2E2SSB 5296 may be proposed as maintenance-level changes in the 2013–15 supplemental budget requests.

Budgeting Capital Programs

During the 2013–15 biennium, the MTCA accounts fund more than $525 million of capital appropriations and re-appropriations in six agencies:

Department of Commerce	Department of Natural Resources
Department of Enterprise Services	Recreation and Conservation Funding Board
Department of Ecology	University of Washington

The largest MTCA account appropriations in this period include stormwater grants, remedial action grants and Centennial Clean Water Program grants. The table below lists these 2013–15 capital budget appropriations.

2013–15 Capital Budget Enacted July 1, 2013

(Dollars in thousands)

Agency	State Toxics	Local Toxics	ELSA
Recreation and Conservation Funding Board	8,981	0	0
Department of Commerce	0	1,492	500
Department of Ecology	76,107	239,894	192,800
Department of Enterprise Services	181	0	0
Department of Natural Resources	0	0	4,500
University of Washington	1,200	0	0
Total	**$86,469**	**$241,386**	**$197,800**

Significant Reduction in Time to Complete Requirements
Section 1(2)(a) of HB 2079 states that funds in ELSA may be spent on "[g]rants or loans to local governments for performance and outcome-based projects, model remedies, demonstration projects, procedures, contracts, and project management and oversight that result in significant reductions in the time to complete compared to baseline averages." While HB 2079 was intended to clarify the language in Section 10(2) of 2E2SSB 5296 related to types of projects eligible under ELSA, Section (1)(2)(a) also raised questions about legislative expectations of the types of monitoring that Ecology would undertake, which capital projects should be monitored and how the agency would determine if a proposed project would likely result in a "significant reduction in the time to complete."

Procedural Recommendation
To the extent possible, Ecology should apply best practices and process improvements to streamline all types of capital programs funded from all three accounts, not just projects funded from ELSA. The agency will track basic metrics, such as turnaround time, for cleanup programs funded from MTCA accounts in the capital budget, and summarize the results in its MTCA-related reports to the Legislature.

Future Biennium Capital Budgeting
Like budgeting for operating expenditures, capital budgeting from MTCA accounts now has more flexibility with the creation of the ELSA account, which allows for any uses authorized under the STCA/LTCA. This means that agencies now have more choices about which accounts to specify when requesting capital project funding. As with the operating budget, some accounts may have greater capacity than others for new capital appropriations.

Procedural Recommendation
Priority should be given to using LTCA to fund coordinated prevention grants and remedial action grants, consistent with predominant practice. Agencies can request funds from any MTCA account for other capital projects. However, it is recommended that funding for a single capital project not be split among two or more MTCA accounts.

Section 6(3) of 2E2SSB 5296 directs Ecology to schedule cleanup and prevention activities at a pace that matches the estimated cash resources in the three MTCA accounts. This language codifies a practice that began with the enacted 2012 supplemental capital budget, which assumed underexpenditure of new capital appropriations based on historical spending rates. Since the 2011–13 biennium, selected new capital appropriation levels have been set higher by the Legislature, assuming that less than 100 percent of appropriated funds would be spent during the first biennium. (See below for a related discussion of Ecology's cash management plan.) Legislative fiscal staff has calculated underspending rates based on historical expenditure levels, then consulted with OFM and Ecology about their methodology. In contrast, past governor-request budgets have assumed no underexpenditures when setting capital appropriation levels. The work group discussed the merits of different approaches to documenting and choosing underappropriation rates.

Procedural Recommendations

» OFM capital budget staff will consult OFM executive management about its view of budgeting capital appropriation levels for MTCA-funded projects based on calculated underexpenditure rates and whether to pursue this approach when developing the governor's capital budget request.

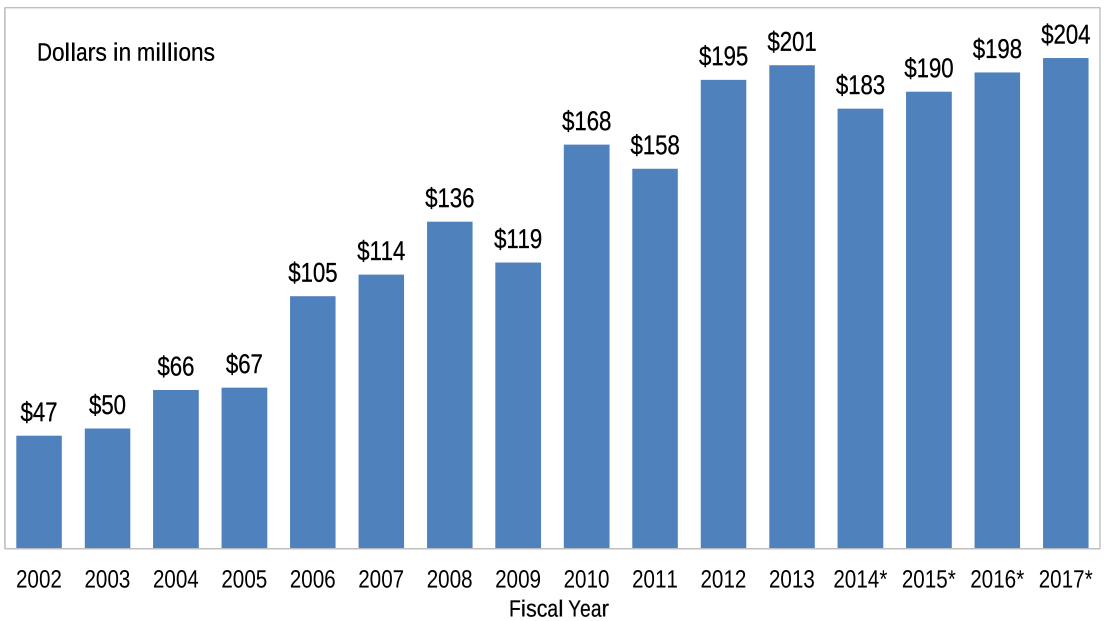
» Ecology will document underexpenditure rates for capital appropriations from MTCA accounts in the biennial report on MTCA expenditures required by Section 6 of 2E2SSB 5296. Ecology will also include assumed underexpenditure rates for the first biennium in each new capital project request.

FUND ADMINISTRATION AND HAZARDOUS SUBSTANCE TAX COLLECTION

Distribution of Hazardous Substance Tax Deposits

During the 2013–15 biennium, the HST is expected to generate $373 million in revenue, as displayed below with other years. With the creation of a third MTCA account, participants in 2E2SSB 5296 implementation discussions had questions about DOR administration of the HST, how refunds from the account would be handled and which cash management procedures would be followed to prevent cash deficiencies.

Hazardous Substance Tax Revenues Fiscal Years 2002–2017



*Estimate based on Department of Revenue September 2013 forecast

Following passage of 2E2SSB 5296, DOR's initial approach to distributing the HST was to follow the requirements of section 9(1). Under this section, DOR would distribute the hazardous substance tax deposits 56 percent to STCA and 44 percent to LTCA until the $140 million lid was reached, and then distribute 100% of deposits to ELSA for the remainder of the fiscal year. At the beginning of the next fiscal year, the 56 percent/44 percent split to STCA/LTCA would resume and the cycle would repeat.

Since significant operating and capital expenditures occur during the early part of the fiscal year, this approach could result in large cash deficits in ELSA each year, starting in fiscal year 2016. Such deficits are unlikely during the 2013–15 biennium because 2E2SSB 5296 and the enacted capital budget provided $66 million of one-time transfers from STCA/LTCA into the ELSA account, which would cover operating and capital expenditures for the early part of each fiscal year.

During work group discussions with DOR, it was suggested that the language in section 1(1) of HB 2079 (which mirrored that of Section 10 of 2E2SSB 5296), providing for periodic deposits from STCA/LTCA into ELSA by the State Treasurer based on forecasted revenue, be read together with section 9(1) of 2E2SSB 5296. This would allow ELSA revenue to coincide more closely with expenditures and prevent periodic deficits due to the timing of revenue availability.

During August and September 2013, DOR deliberated about the feasibility of this approach and consulted its attorneys about legal feasibility. The department determined it has legal authority and administrative capacity to distribute tax collections among the three accounts from the beginning of the fiscal year based upon the forecasted revenues.

DOR instituted new procedures in September 2013, adding a monthly reconciliation step on the last day of each fiscal month, as follows:

- If the net monthly deposits to STCA/LTCA exceed one-twelfth of $140 million ($11.67 million), then the remainder of the monthly collections is transferred to ELSA.
- If the net monthly deposits to STCA/ELSA total less than one-twelfth of $140 million, then funds are transferred from ELSA to STCA/LTCA to reach $11.67 million for that month.

In September 2013, DOR shifted $13.4 million of collections from STCA/LTCA to ELSA to correct the distribution of collections among the three accounts for July and August 2013.

“Net monthly deposits” in the discussion above include routine tax collections, refunds of prior overpayments and collection of prior underpayments. In effect, all refunds and credits affect total deposits to ELSA, as STCA/LTCA combined will always receive $140 million per year under these procedures.

Cash Management of MTCA Accounts

As mentioned above, Section 6(3) of 2E2SSB 5296 directs Ecology to schedule cleanup and prevention activities at a pace that matches the estimated cash resources in the three MTCA accounts, codifying a practice begun during the previous biennium. Because 2011–13 biennial appropriations exceeded projected biennial revenue in the accounts, extra steps were needed to ensure that the accounts did not experience cash deficiencies. Therefore, Ecology instituted a cash management plan for STCA/LTCA that included the following provisions:

- Establishing current biennium capital allotments that exclude future biennium expenditures for capital projects with assumed underexpenditures.
- Entering into contracts and grant agreements for the entire appropriated amount of each capital appropriation where project underexpenditure is assumed.
- Developing a cash monitoring plan that includes:
  - Monthly monitoring of expenditures and revenues;
  - Monitoring of project spending plans and reimbursement rates; and
  - Quarterly reporting to a cash management oversight team (described below) following each of DOR’s MTCA revenue forecast updates.
- Completing a Lean process review of the Toxic Cleanup Program in 2012.

Ecology also created a MTCA cash management oversight team composed of senior executives and fund managers to approve the cash management plan, receive regular reports and oversee the agency response to cash issues that might be identified.

In response to passage of 2E2SSB 5296 and the enacted 2013–15 capital budget, Ecology is revising the cash management plan, including addition of the ELSA account; reviewing and updating language for fiscally based termination clauses in capital project contracts; and reviewing its communication plans. In 2012, Ecology completed a Lean review of the cleanup process used for sites receiving remedial action grants. The Toxics Cleanup Program has implemented process improvements that emerged from this review. Ecology is working to reduce the time it takes to complete a MTCA cleanup, with a target of five to six years (down from an average of about 12 years).

SUMMARY OF RECOMMENDATIONS

2E2SSB 5296 introduced a number of changes to tax and fund administration for MTCA accounts. Below is a summary of the procedural and statutory recommendations generated by the work group. It is anticipated that procedural recommendations will be implemented during the current biennium, and that statutory recommendations may be proposed in Ecology-request legislation to be considered after the 2014 legislative session.

Capacity of State and Local Toxics Accounts to Maintain Programs

Statutory Recommendation
Amend Section 9(1) of 2E2SSB 5296 by the next few legislative sessions to incrementally increase the $140 million cap on annual revenue to STCA/LTCA by the fiscal growth factor as defined in RCW 43.135.025, a rate based upon growth in state personal income or by other inflationary measures.

Statutory or Procedural Recommendation
By statute or administrative direction, require Ecology to include information on the fiscal ability of MTCA accounts to support programs. Whether provided in the biennial report on the department's activities supported by the MTCA, as required by Section 6(6) of 2E2SSB 5296, or in agency budget submittals, the following information would aid budget writers in understanding the cost pressures on the accounts:

» Specifying the necessary MTCA account funding needed to maintain programs;
» Assessing the adequacy of account resources to provide this level of funding; and
» Describing unavoidable cost increases experienced by these programs (such as compensation, employee benefits or central service agency charges).

Operating Budgeting Approach

Procedural Recommendations

» In the absence of specific legislative direction, Ecology will use 2013–15 base operating expenditure allotments that shift STCA to ELSA on a roughly proportionate basis for all programs except Nuclear Waste, and shift all LTCA to ELSA for all programs except for the Waste 2 Resources Program. Appropriate amounts will also be shifted from STCA/LTCA to ELSA in the Administration Program to maintain equitable contributions from all dedicated accounts.
» Future operating budget requests should use MTCA accounts based on authorized statutory uses of the accounts.

- Agency operating proposals to address MTCA account shortfalls generally should be made at the policy level, even if they involve funding adjustments for base programs.
- Agencies may also propose fund balance transfers among the three accounts to ensure sufficient capacity to cover base operating expenditures.
- Technical corrections to address any identified unintended effects of 2E2SSB 5296 may be proposed as maintenance-level changes in the 2013–15 supplemental budget requests.

Capital Budgeting Approach

Procedural Recommendations

- To the extent possible, Ecology should apply best practices and process improvements to streamline all types of capital programs funded from all three accounts, not just projects funded from ELSA. The agency will track basic metrics, such as turnaround time, for cleanup programs funded from MTCA accounts in the capital budget, and summarize the results in its MTCA-related reports to the Legislature.
- Priority should be given to using LTCA to fund coordinated prevention grants and remedial action grants, consistent with practice. Agencies can request funds from any MTCA account for other capital projects. However, it is recommended that funding for a single capital project not be split among two or more MTCA accounts.
- OFM capital budget staff will consult OFM executive management on its view of budgeting capital appropriation levels for MTCA-funded projects based on calculated underexpenditure rates and whether to pursue this approach when developing the Governor's capital budget request.
- Ecology will document underexpenditure rates for capital appropriations from MTCA accounts in the biennial report on MTCA expenditures required by Section 6 of 2E2SSB 5296. Ecology will also include assumed underexpenditure rates for the first biennium in each new capital project request.

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