



Toxics Cleanup Program Policy

Policy 550C

Resource Contact: Policy and Technical Support Staff *Effective:* June 30, 2006
Replaces: Policy 500C
References: WAC 173-340-550 (7) *Revised:* June 30, 2006

Prepaid Cleanup Oversight

The purpose of this policy is to provide Department of Ecology (Ecology) staff and other interested persons with guidance for implementation of WAC 173-340-550(7). This provision of the Model Toxics Control Act (MTCA) rule provides for prepayment of Ecology's oversight costs to enable resources to be dedicated to the oversight of cleanup at lower priority sites.

Due to limited resources, Ecology is not able to work on every contaminated site. However, a potentially liable person (PLP) and prospective purchaser may wish to begin remedial action at a facility, or several facilities, before Ecology is able to dedicate resources to provide formal oversight of remedial actions. One option is for these persons to proceed with an independent remedial action and seek a no further action letter from Ecology through Ecology's Voluntary Cleanup Program.

At some sites, a PLP or a prospective purchaser may want more formal Ecology oversight, for example, through an agreed order or consent decree. In these situations, the person may enter into an agreement with Ecology to oversee the remedial action if:

- The person agrees to pay, in advance, for Ecology's costs.
- Entering into such agreement is in the public interest.
- The terms of the proposed agreement are acceptable to both parties.

This policy outlines the requirements and limitations of these agreements. This policy is not intended to address Independent Cleanups where a person is seeking technical assistance through Ecology's Voluntary Cleanup Program.

1. Prepayment Shall Be Required at Lower Priority Sites Requesting Ecology Oversight

If a potentially liable person or prospective purchaser a site which is not prioritized for immediate action by Ecology, and wants to clean it up with Ecology's advice and oversight beyond what they can receive through the voluntary cleanup program, then they may request an agreement with Ecology to pay for oversight. Such an agreement is called a "prepayment agreement."

The agreement shall provide for prepayment of Ecology's anticipated cost of overseeing remedial actions. Prepayment methods shall be written into the agreement, and shall include a requirement that deposits be made before work by Ecology staff is begun. The deposit shall remain in the account until the last billing. All interest earned on that deposit will remain with the State of Washington.

NOTE: This requirement for prepayment does not apply to sites identified by Ecology as a priority for remedial action under an order or decree. In these instances, Ecology oversight costs will be recovered through the normal cost-reimbursement provisions of the order or decree.

2. Prepayment Will Be Accomplished Through Formal Agreements

The formal agreement for prepayment of Ecology's technical assistance will take the form of either an Interagency Agreement (I/A) when the entity is public or a Memorandum of Understanding (MOU) when the entity is private. These agreements shall cover all anticipated costs (through all phases). These agreements shall not replace, but be preliminary to, or work in conjunction with, any Consent Decrees or Agreed Orders for the site. When a Consent Decree or Agreed Order is in place to cover remaining anticipated costs, the Consent Decree or Agreed Order may replace the original agreement, provided the Consent Decree or Agreed Order includes all costs covered by the original agreement.

3. Entering into Prepayment Agreements is Contingent upon Staff Availability

Whether Ecology can respond favorably to a request for a prepayment agreement will depend, in part, on Ecology and the attorney general receiving authorization for the staffing necessary to implement the agreement. Prior to agreeing to enter into such an agreement, the Section Manager with the authority over the site shall consult with the Program Manager and the Ecology Division of the Office of the Attorney General on staffing availability.

4. Status as a Potentially Liable Person Shall Be Accepted in Prepayment Agreements

To streamline the administrative process, Ecology shall require potentially liable persons entering into a prepayment agreement to accept their status as a potentially liable person.

5. Potentially Liable Persons Must Enter Into an Agreed Order or Consent Decree

The Potentially Liable Person(s) entering into a prepayment agreement with Ecology must agree to enter into a Consent Decree or Agreed Order that covers the anticipated remedial actions at the site.

6. The Agreement Shall Address All Phases of Work

In order for Ecology to commit to an agreement, the potentially liable person must be willing to deposit sufficient funds to cover Ecology's costs of overseeing all phases of work at the site. Ecology shall provide an estimate of the direct and indirect cost it plans to expend to oversee all phases of cleanup from initial investigation through cleanup action and review of construction documentation.

7. Public Notice Shall Be Required For All Such Agreements

Ecology shall provide public notice on all agreements consistent with WAC 173-340-600. This includes notice to those who have made a timely request, those residing in the potentially affected vicinity, the newspaper of largest circulation, and a public comment period. Notice will also be

provided in Ecology's Site Register. Substantive amendments to an agreement are also subject to public notice.

8. Agreements May be Amended

Anytime Ecology estimates that advice and oversight will require more staff time, more dollars, or a longer period of time, the agreement shall be amended to reflect the new estimate.

Approved.



James J. Pendowski, Program Manager
Toxics Cleanup Program

NOTE: This policy is intended solely for the guidance of Ecology staff. It is not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the State of Washington. Ecology may act at variance with this policy depending on site-specific circumstances, or modify or withdraw this policy at any time.