



Toxics Cleanup Program Policy

Policy 550A

Resource Contact: TCP Cost Recovery Coordinator

Established: December 15, 1993

References: RCW 70.105D.050

Revised: February 13, 2015

RCW 70.105D.030

RCW 70.105D.055

WAC 173-340-550

TCP Policy 550 B (Liens)

TCP Procedure 550A (Cost Recovery under MTCA Orders and Decrees)

VCP Staff User Manual

Ecology Policy 21.06

Policy 550A Cost Recovery

Purpose: The Model Toxics Control Act (MTCA) requires the State to seek to recover the amounts spent for investigative and remedial actions and orders and agreed orders from Potentially Liable Parties (PLPs).

MTCA also authorizes the Department of Ecology (Ecology) to recover the cost of providing advice and assistance to persons who conduct remedial actions independently.

The purpose of this policy is to provide guidance to Ecology staff on how to fulfill these statutory mandates and authorities.

Applicability: This policy applies to the following types of sites:

- Sites where Ecology is conducting remedial actions.
- Sites where Ecology is supervising remedial actions conducted by PLPs under an order or decree.
- Sites where Ecology is reviewing remedial actions conducted independently by persons under the Voluntary Cleanup Program (VCP).

1. To the Extent Possible, Ecology Shall Recover All Remedial Action Costs Incurred Under MTCA and Reasonably Attributable to a Site

Ecology shall seek to recover remedial action costs incurred under MTCA and reasonably attributable to individual sites. These costs include:

- The cost of direct activities.
- The support costs of direct activities (overhead).
- Any interest charges for past due payments.

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WAC 173-340-550 describes what these costs include and how they are calculated. The VCP Staff User Manual provides guidance on what types of costs may be charged to a VCP Customer.

Ecology shall recover remedial actions costs by sending invoices to PLPs, prospective purchasers, or persons requesting advice under the VCP. While the timing of cost recovery for individual sites can be considered on a case-by-case basis, the general expectation is that costs will be paid as they are incurred.

2. Ecology Will Typically Not Cost-Recover Certain Remedial Action Costs

The following remedial action costs will typically not be cost-recovered:

- Costs related to conducting initial investigations, site hazard assessments, initial data entry and listing of sites, and overseeing grants related to these activities. For the most part, these are costs incurred by Ecology and local health departments/districts (under a grant from Ecology) to investigate complaints, and track and prioritize sites for future work. As such, these costs are not tracked by individual site. However, if these activities involve significant site testing or other investigative costs (such as installation of soil borings or monitoring wells), it is appropriate to track these costs, with the intent of future cost-recovery when additional actions are taken at a site (order/deed negotiations; VCP contract).
- Costs related to administration and technical oversight of Integrated Planning Grants, Area-wide Groundwater Investigation Grants and Safe Drinking Water Grants. These are grants provided to local governments to either facilitate economic re-development of brownfield sites or where a local government is augmenting Ecology's responsibility to investigate and remediate contamination caused by other potentially liable persons.
- Administration costs for all other remedial action grants and loans incurred by Ecology's grant financial manager. These costs are paid out of grant funds. However, technical oversight costs for site work under these grants and loans is cost-recoverable.
- Costs of post-cleanup remedial actions for VCP sites. This includes periodic (5-year) reviews, amending or terminating an environmental covenant, or removing a site from the hazardous sites list. Because these costs typically occur after the VCP contract has been closed out, these activities do not lend themselves to cost-recovery.
- Costs related to administration and technical oversight of Interagency Agreements.
- Remedial action costs incurred under federal grants where Ecology is under no obligation to cost-recover. For example, the costs for overseeing cleanups at federal facilities where a federal grant has been provided to cover those costs.
- Litigation costs. These can only be awarded by a judge as part of certain types of litigation.

3. Cost-Recovery is a Priority Responsibility of Section Managers, Unit Supervisors, and Cleanup Project Managers

Section Managers and Unit Supervisors shall consider how cost-recovery will be conducted before assigning a site to Ecology staff. Prior to beginning significant work on a site, supervisors shall provide staff with instructions consistent with this policy to ensure costs will be recovered.

4. All Consent Decrees, Agreed Orders, and Enforcement Orders Shall Contain Provisions for Cost Recovery

Unless specifically authorized by the TCP Program Manager, consent decrees, agreed orders, and enforcement orders shall include a provision for cost recovery. Ecology and the Attorney General's Office have developed boilerplate orders and decrees that include a cost recovery provision. Those boilerplates are available through the TCP intranet web site. Any modification of the cost recovery provisions in those boilerplates must be cleared through the Attorney General's Office and TCP's Cost Recovery Coordinator.

5. Ecology Shall Recover the Costs Incurred in Providing Advice under the Voluntary Cleanup Program (VCP) from the Party Requesting the Advice

Ecology shall seek to recover the costs of providing advice under the VCP from the party requesting the advice (referred to as the "VCP Customer"). To recover those costs, staff shall follow the policies and procedures set forth in the VCP Staff User Manual.

a. Transfer of Sites from the VCP to Ecology Supervision under an Order or Decree

Before initiating negotiations for an order or decree, Ecology shall generally do the following:

- Terminate the VCP Agreement and stop conducting and charging for work under that Agreement; and
- Obtain a Super Index Code (SIC) from the TCP Budget Manager and start charging all of Ecology's costs, including the costs of negotiating an order or decree, to that SIC.

Before entering the order or decree, Ecology shall generally recover all unpaid VCP costs. However, if appropriate and approved by the regional Section Manager, Ecology may enter into an order or decree before recovering all unpaid VCP costs. This may be appropriate, for instance, if:

- The VCP Customer is not a party to the order or decree (in such cases, appropriate cost recovery will occur under the VCP Agreement); or
- Ecology requires payment of any unpaid VCP costs under the order or decree.

If Ecology requires payment of unpaid VCP costs under the order or decree, then Ecology shall specify the unpaid amount in the order or decree and close the VCP account upon issuance of the order or decree.

b. Transfer of Sites from Ecology Supervision under an Order or Decree to the VCP

Before entering into a VCP Agreement, Ecology shall generally require payment of any unpaid costs incurred under, or during negotiations for, an order or decree.

However, if appropriate and approved by the regional Section Manager, Ecology may enter into a VCP Agreement before recovering all of those costs. This may be appropriate, for instance, if the prospective VCP Customer was not a party to, or in negotiations for, the order or decree.

6. A Super Index Code (SIC) Unique to Each Site Shall be used to Track Costs Incurred at Sites Where Ecology is Conducting or Supervising Remedial Actions Under an Order or Decree

Before beginning significant work on a site where Ecology is expecting to conduct or supervise remedial actions, the Cleanup Project Manager shall contact TCP's Budget Manager to request a SIC to track expenses incurred at the site. This code shall be used to track time and other expenses incurred reasonably attributable to the site.

7. Ecology Staff Shall Complete a Site Log for Each Site Worked on During Each Pay Period

The Cleanup Project Manager and other assigned staff are responsible for tracking time spent on a site by recording their time on their time sheets and detailing their activities in a site log. The Ecology employee and his or her supervisor shall ensure that time recorded on the time sheet is consistent with the time recorded on the site log. A separate site log must be completed for each site worked on, irrespective of whether remedial action at that site is being conducted by Ecology, supervised by Ecology under an order or decree, or conducted independently under the VCP.

A boilerplate site log forms with instructions and an example of a completed site log are attached to this policy. Two types of forms have been provided – one for formal oversight sites, and one for VCP sites. For VCP sites, additional guidance is provided in the VCP Staff User Manual.

8. Ecology's Fiscal Office Shall Maintain Documentation of Costs and Provide Itemized Invoices to Responsible Parties

The Fiscal Cost Recovery Unit is responsible for maintaining site files which document all agency costs associated with the investigative and remedial actions at each site. This includes retaining all original time sheets and site logs.

The Fiscal Cost Recovery Unit is also responsible for preparing invoices in the time frame specified in the order or decree. These invoices will include cost documentation such as copies of Time Accounting Reports (including charge-out rates), Agency Financial Reporting System (AFRS) reports, support costs (Agency and Program) rates, and other documentation appropriate to the specific site.

9. Cleanup Project Managers Shall Review and Approve Invoices before Issuance by Fiscal Office

The Cleanup Project Manager shall approve all invoices before they are sent to the PLP or other responsible persons. See Procedure 550A for the specific steps in preparing, reviewing, and approving of invoices.

10. Ecology Shall Implement a Site-Specific Strategy to Recover Costs if PLP has Failed to Pay Ecology's Costs

If the PLP failed to make a timely payment of an invoice, Ecology shall implement a site-specific strategy to recover its costs. When developing such a strategy, Ecology should consider the following options. Before pursuing these options, the Cleanup Project Manager should consult with their supervisor, TCP's Cost Recovery Coordinator, and the Assistant Attorney General assigned to the site to determine what option is appropriate.

a. Contacting the registered agent to request payment

All corporations, limited liability companies, and registered limited partnerships in Washington State must have a registered agent (RCW 23B.05.010, RCW 25.10.040 and RCW 25.15.020). A registered agent is responsible for receipt of important legal and tax documents. Contacting the registered agent can be especially helpful when a business is no longer operating. The registered agent for a company can be found on the Washington Secretary of State's website under <http://www.secstate.wa.gov/corps/>.

b. Working with other State agencies to apply refunds towards Ecology's costs

Other state agencies such as the Departments of Revenue, Labor and Industries, and Employment Security may owe PLPs money in the form of a refund. It may be possible to intercept these refunds to help pay outstanding Ecology costs. TCP's Cost-Recovery Coordinator can work with these other agencies and the Attorney General's Office to determine if this is a viable option.

c. Use of a collection agency under RCW 19.16.500¹

Ecology has the authority under RCW 19.16.500 to use a collection agency to recover unpaid remedial action costs. The Fiscal Office maintains a contract with a collection agency for this purpose. The costs of the collection agency are charged to the PLP. Before using the collection agency, Ecology must send the PLP a delinquency notice by certified mail, return receipt requested, and wait at least thirty (30) calendar days. A collection agency should be given a limited period of time to attempt to collect the debt (generally no longer than one year). The collection agency should not be used for sites where remedial action is being conducted under a consent decree.

¹ To use this option, delinquencies must exceed the dollar threshold specified in the collection agency contract. Contact Ecology's fiscal staff for the current dollar threshold.

d. Use of its lien authority under RCW 70.105D.055

Ecology has the authority under RCW 70.105D.055 to file a lien against the real property at the site to recover remedial action costs, including oversight costs. Under certain circumstances, such liens can take priority over most other liens, placing Ecology first in line to receive funds if the property is sold, refinanced, or subject to foreclosure. Before filing a lien under this RCW, Ecology must satisfy certain procedural requirements. The Ecology Cleanup Project Manager shall ensure these procedures in RCW 70.105D.055 are followed. Additional information on these procedures can be found on TCP's intranet website.

e. Use of its enforcement authority under RCW 70.105D.050

At sites where Ecology has issued an order, the Attorney General's Office has the authority under RCW 70.105D.050 to file an action in court to recover remedial action costs incurred under that order. Any PLP who refuses, without sufficient cause, to comply with the order is also liable for:

- Up to three times the amount of any costs incurred by the State as a result of its refusal to comply.
- A civil penalty up to twenty-five thousand dollars for each day it refuses to comply.

At sites where Ecology has issued a consent decree, an action has already been filed in court. Therefore, the Attorney General's Office does not need to file another action to enforce the decree.

f. Writing off the debt in accordance with Ecology Policy 21-06

Under the limited circumstances specified in Ecology Policy 21-06 Writing off Agency Receivables from the Agency Financial Records, Ecology may write off unpaid remedial action costs. The procedures for writing off costs are also specified in that policy. In general, for the last bill on a site, TCP will consider writing off costs when the cost of recovery exceeds the amount of the delinquency. This option should be used rarely and only as a last resort, after using all reasonable means to recover Ecology's costs.

11. The TCP Management Team Shall Routinely Review the Program's Cost Recovery Activities and Status

During its monthly meetings, the TCP Management Team shall routinely review the status of cost recovery and discuss cost recovery and enforcement strategies for sites where payments are delinquent.

Quarterly, the TCP Cost Recovery Coordinator shall provide the TCP Management Team a report on the total amount of costs billed, the total amount of payments received, delinquent bills, and problem areas which need the attention of the Management Team.

Approved:



James J. Pendowski, Program Manager
Toxics Cleanup Program

2/19/15
Date:

Policy Disclaimer: This policy is solely to guide Ecology staff, and is not intended to impose any mandatory duties or obligations on Ecology. It does not create rights, substantive, or procedural, enforceable by any party in litigation. Ecology may act at variance with this policy or change or withdraw this policy at any time.

Attachments:

- Instructions for completing site logs
- Example of completed site log
- Blank site log forms

INSTRUCTIONS FOR COMPLETING SITE LOGS

For each pay period, the Cleanup Project Manager (and any other staff or attorneys who assisted the Cleanup Project Manager) shall complete a site log using the following steps:

STEP 1 – IDENTIFY BILLABLE CHARGES

Billable activities are those that are reasonably attributable to the Site and, for VCP projects, the services requested by the Customer. They may include, but are not limited to, the following:

- Investigations**, including any work performed by, or on behalf of, Ecology to investigate the Site or to oversee the investigation of the Site by PLPs or others. (**Note:** Do not include the cost of initial investigations or site hazard assessments unless significant sampling expense was incurred.)
- Interim actions and cleanup actions**, including any work performed by, or on behalf of, Ecology to clean up the Site or to oversee the cleanup of the Site by PLPs or others.
- Post-cleanup actions**, including monitoring and inspections, any work performed to de-list the site, periodic reviews, and amending or terminating environmental covenants.
- Meetings** with PLPs/Customers, their representatives (such as consultants or attorneys), other Ecology staff, or the Attorney General's Office.
- Communications** (by phone, e-mail, or letter) with PLPs/Customers, their representatives (such as consultants or attorneys), other Ecology staff, the public, or the Attorney General's Office. Charges may include the time required to draft letters and e-mails and transcribe phone conversations. *It is particularly important to document all phone calls and e-mails soliciting payment of invoices as this establishes a foundation for future legal action.*
- Document review and comment**, including review or comment on remedial action plans or reports and any other documents about the Site or the remedial action planned or performed at the Site.
- Document development**, including development of orders and decrees, remedial action plans and reports, and any other documents about the Site or the remedial action planned or conducted at the Site. Charges may include internal reviews and the time required to conduct any negotiations with the PLP/Customer or other parties, including local governments.
- Data management activities**, including managing environmental data in BIM and administrative information in ISIS. **Note:** Do not include the cost of staff covered by the agency or program overhead rate, including ISIS data coordinators and EIM system support staff.
- Permits**, including preparation and review of the permit and technical support documents, and related public involvement and notices. **Note:** If the applicant has paid a permit fee to Ecology to cover Ecology's costs, do not include these costs in billable activities.
- Site visits.**
- Public involvement activities**, including preparing focus sheets and public notices, publication costs, communications with the public, and participation in hearings and meetings.
- Travel costs** related to any of the activities above, including travel time, transportation, lodging, and per diem.

Non-billable activities are those that support the Toxics Cleanup Program but are not reasonably attributable to a specific Site or, for VCP projects, the services requested by the Customer. These costs are factored into the overhead rate. They include, but are not limited to, the following:

- Financial management activities** (billing for remedial actions), including the time required for completing site logs and time sheets, entering data into time accounting systems, reviewing invoices, and recovering unpaid costs.
- Staff and Committee meetings that are not site-specific**, including travel costs and the time required to review materials for the meetings.
- Equipment and supplies that are not site-specific**, such as office supplies, computers, and safety equipment.
- Policy or guidance development**, including the time required to draft or review and comment on documents.
- Responding to public disclosure requests, even if site-specific**, including the time required for collecting or organizing documents and the cost of copying documents.
- Training**, including general staff training (such as diversity training); TCP all staff conferences; and specific training for TCP staff on site management; financial management; data management; policy, technical and legal issues; and safety.
- Personnel activities**, such as meetings with your supervisor that are not site-specific, evaluations by your supervisor, and activities associated with union representation.
- Holidays and leave**, including sick, annual, and other forms of leave. **Note:** Exchange time earned from working overtime at a specific site should be billed to the site when it is earned.

For VCP projects, what billable activities should not be charged to VCP Customers?

Ecology has decided that, as a matter of policy, the following billable activities should not be charged to VCP Customers:

- Travel costs other than time**, including transportation, lodging, and per diem. *For example, when visiting or working at a Site, charge the Customer for your time traveling to and from the Site, but not the cost of transport (such as a rental car), lodging, or per diem.*
- Reviewing the contents of the Site file** upon assigning a new Cleanup Project Manager to an existing (not new) VCP project.
- Conducting post-cleanup remedial actions**, including:
 - Removing the Site from the Hazardous Sites List (HSL), if listed.
 - Periodically reviewing the cleanup, including confirmational monitoring reports.
 - Amending or terminating a covenant, unless as part of another VCP project.
 - Rescinding an NFA opinion.

STEP 2 – DOCUMENT BILLABLE CHARGES

By the end of each pay period, the Cleanup Project Manager completes a site log for each Site or VCP project worked on during that period using the boilerplate site log form found on the TCP intranet web site. Follow these steps to document billable charges.

- **Create a separate site log for each Site or VCP project worked on during a pay period.** Do not combine work on multiple Sites or VCP projects on a single site log.
- **Create a separate site log for each pay period worked on a Site or VCP project.** Do not combine work conducted on a Site or VCP project during different pay periods on a single site log.
- **Do not include non-billable work on a site log.**
- **Using the boilerplate site log form found on the TCP intranet web site.** Include the following information on each site log:
 - Employee name.
 - Site name.
 - Facility / Site number.
 - Super Index Code (SIC) number.
 - VCP project number (if applicable).
 - Year, month, and pay period.

For each activity conducted during the pay period, identify the following:

- Date of the activity.
- Hours spent on the activity.
- Description of the activity.
- **For Ecology-conducted and Ecology-supervised cleanups, enter the Super Index Code (SIC) assigned to the Site.** Note that some sites may have more than one SIC assigned. Make sure the correct SIC is entered. Contact the TCP Budget Manager for SIC information.

For cleanups conducted independently under the VCP, enter your region's code for billable VCP work.

- **Record hours worked using tenths of an hour (for example 2.3 hours).** Do not use hundredths of an hour (for example 2.25 hours).
- **Provide a sufficient level of detail to allow the reader to know exactly what you were doing.** Remember that site logs are necessary to justify the costs charged to the PLP or VCP Customer.

Use the following as a guide when completing your site log:

1. For **document development**, identify the document prepared.
2. For **document review**, identify the document reviewed (name, author, date issued).
3. For **meetings**, identify:
 - The subject of the meeting.
 - Who attended the meeting.
 - Where the meeting occurred. If not at Ecology, then note that the time recorded includes your travel time.
4. For **other communications**, identify:
 - The subject of the communication.
 - With whom you communicated.
 - The method of communication (for example, by phone).

However, when describing meetings or communications with the Attorney General's Office, keep the description sufficiently general to **protect attorney-client privilege**.

As further guidance, see the sample site log attached to this policy and on the TCP intranet web site.

Sample Site Log
WASHINGTON STATE DEPARTMENT OF ECOLOGY
TOXICS CLEANUP PROGRAM VCP SITE LOG

USE THIS FORM TO DOCUMENT TIME WORKED ON VCP SITES

CLEANUP SITE NAME: Jane Doe's Dry Cleaner		
FACILITY / SITE NUMBER: 1986598	YEAR: 2020	
CLEANUP SITE NUMBER: 14592	MONTH: August	
SUPER INDEX CODE (SIC NUMBER): J1C54	PAYROLL PERIOD	
VCP PROJECT NUMBER: NW3401		1-15 <input checked="" type="checkbox"/>
EMPLOYEE NAME: Bionic Site Manager		16-31 <input type="checkbox"/>

DATE	HOURS	ACTIVITY DESCRIPTION
8/01/20	5.0	Meeting at the Site to discuss extent of contamination and the substantive requirements for obtaining an NFA determination for the Site. Met with Mary Jane (consultant) and Jane Doe (owner). Includes travel time.
8/06/20	1.5	Reviewed 1 st quarter Ground Water Monitoring Report by ACME Consulting Company of 7/08/20.
8/07/20	2.5	Meeting at Ecology to discuss need for additional performance monitoring at the Site. Met with Mary Jane (consultant).
8/09/20	0.5	Telephone conversation with Bob Smith (Jane Doe's attorney) regarding environmental covenant for the Site.
8/14/20	1.0	Reviewed draft environmental covenant submitted by Bob Smith (Jane Doe's attorney) on 8/12/20.
8/15/20	0.5	Telephone conversation with AAG Wisdom regarding draft covenant referenced above.
Total	11.0	

FOR ON-DEMAND BILLING FOR VCP ONLY <i>This box for use only by the VCP Site Manager assigned to the site.</i>
If this site log contains your <u>final charges</u> for the VCP project and you want to use on-demand billing to invoice those charges, check here: <input type="checkbox"/>
List any other Ecology staff or attorneys who need to submit site logs before final invoicing can occur.

I certify that the hours recorded on this form are consistent with the Employee's Timesheet:

EMPLOYEE'S SIGNATURE _____ DATE _____

SUPERVISOR'S SIGNATURE _____ DATE _____

**WASHINGTON STATE DEPARTMENT OF ECOLOGY
TOXICS CLEANUP PROGRAM VCP SITE LOG**

USE THIS FORM TO DOCUMENT TIME WORKED ON VCP SITES

CLEANUP SITE NAME:	
FACILITY / SITE NUMBER:	YEAR:
CLEANUP SITE NUMBER:	MONTH:
SUPER INDEX CODE (SIC NUMBER):	PAYROLL PERIOD
VCP PROJECT NUMBER:	1-15 <input type="checkbox"/>
EMPLOYEE NAME:	16-31 <input type="checkbox"/>

DATE	HOURS	ACTIVITY DESCRIPTION
Total		

<p>FOR ON-DEMAND BILLING FOR VCP ONLY <i>This box for use only by the VCP Site Manager assigned to the site.</i></p> <p>If this site log contains your <u>final charges</u> for the VCP project and you want to use on-demand billing to invoice those charges, check here: <input type="checkbox"/></p> <p>List any other Ecology staff or attorneys who need to submit site logs before final invoicing can occur.</p>
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I certify that the hours recorded on this form are consistent with the Employee's Timesheet:

EMPLOYEE'S SIGNATURE _____ DATE _____

SUPERVISOR'S SIGNATURE _____ DATE _____

**WASHINGTON STATE DEPARTMENT OF ECOLOGY
TOXICS CLEANUP PROGRAM NON-VCP SITE LOG**

USE THIS FORM TO DOCUMENT TIME WORKED ON NON-VCP SITES

CLEANUP SITE NAME:	
FACILITY / SITE NUMBER:	YEAR:
CLEANUP SITE NUMBER:	MONTH:
SUPER INDEX CODE (SIC NUMBER):	PAYROLL PERIOD
EMPLOYEE NAME:	1-15 <input type="checkbox"/> 16-31 <input type="checkbox"/>

DATE	HOURS	ACTIVITY DESCRIPTION
Total		

I certify that the hours recorded on this form are consistent with the Employee's Timesheet:

EMPLOYEE'S SIGNATURE _____ DATE _____

SUPERVISOR'S SIGNATURE _____ DATE _____