

Attachment D
SMS/MTCA Integration
July 26, 2010

Colored underlined text reflects proposed new language, language changes, or concepts. New language has been added as shown and some text has been moved to different sections that are not necessarily shown.

WAC 173-204-550 or 500 (Decision pending). Text moved from WAC 173-204-580 to separate the review process from the substantive requirements that a cleanup must meet. Updated language or terminology is necessary for this section according to Attachment B.

(1) Each person performing a cleanup action to meet the intent of this chapter shall comply with the standards of WAC 173-204-560(7), Cleanup study report. Except for cleanups conducted under chapter 70.105D RCW, the department shall review each cleanup study report and issue a written approval of one or more of the cleanup action alternatives described in the cleanup study report, or issue a written disapproval of all alternatives described in the cleanup study report. The department's approval of one or more cleanup study report cleanup action alternatives shall constitute the cleanup decision and shall be referenced in one or more permit or administrative authorities established under chapter 90.48 or 70.105D RCW, Section 401 of the federal Clean Water Act, chapter 173-225 WAC, establishment of implementation procedures of application for certification, or other administrative authorities available to the department. The department may approve the cleanup alternative recommended in the cleanup study report, may approve a different alternative discussed in the report, or may approve an alternative(s) with appropriate conditions. The department's disapproval of all cleanup study report cleanup action alternatives shall be issued by certified mail, return receipt requested, to the cleanup action proponent(s). The procedures for department review of the cleanup study report and selection of a cleanup action under chapter 70.105D RCW shall be in accordance with the procedures of chapter 173-340 WAC.

WAC 173-204-560(4). Addition to subpart (4) and moved from WAC 173-204-580(4).

In evaluating cleanup action alternatives, the department shall consider:

- (a) The net environmental effects of the alternatives, including consideration of residual effects, recovery rates, and many adverse effects of cleanup construction or disposal activities;
- (b) The relative cost-effectiveness of the alternatives in achieving the approved site cleanup standards; and
- (c) The technical effectiveness and reliability of the alternatives.

WAC 173-204-560(4)(f)(iii). New addition.

A phased approach for evaluation of alternatives may be required for certain sites, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed

evaluation. The final evaluation of cleanup action alternatives that pass the initial screening shall consider the following factors:

- (A) Overall protection of human health and the environment, time required to attain the cleanup standard(s), and onsite and off-site environmental impacts and risks to human health resulting from implementing the cleanup alternatives;
- (B) Permanence, the degree to which the alternative permanently reduces the toxicity, mobility or volume of contaminants, including the adequacy of the alternative in destroying the contaminants, the reduction or elimination of contaminants releases and sources of releases, the degree of irreversibility of waste treatment process, and the characteristics and quantity of treatment residuals generated.
- (C) Attainment of the cleanup standard(s) and compliance with applicable federal, state, and local laws;
- (D) Short-term effectiveness, including protection of human health and the environment during construction and implementation of the alternative; and
- (E) Long-term effectiveness, including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual, biological and human health risk, and effectiveness of controls for ongoing discharges and/or controls required to manage treatment residues or remaining wastes cleanup and/or disposal site risks;
- (F) Ability to be implemented. The ability to be implemented including the potential for landowner cooperation, consideration of technical feasibility, availability of needed off-site facilities, services and materials, administrative and regulatory requirements, scheduling, monitoring requirements, access for construction, operations and monitoring, and integration with existing facility operations and other current or potential cleanup actions;
- (G) Cost, including consideration of present and future direct and indirect capital, operation, and maintenance costs and other foreseeable costs;
- (H) The degree to which community concerns are addressed;
- (I) The degree to which recycling, reuse, and waste minimization are employed; and
- (J) Environmental impact. Sufficient information shall be provided to fulfill the requirements of chapter 43.21C RCW, the State Environmental Policy Act. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated shall be included.

WAC 173-204-580 Selection of cleanup actions.

(1) Purpose. (Section redesigned to define substantive requirements to meet MTCA. Cleanups may proceed under several different authorities which are described in Section 173-204-550.

(2) Minimum requirements for sediment cleanup actions.

(3) Cleanup time frame.

(4) Factors. **(Deleted and included in WAC 173-204-560).**

(4) Public participation.

(5) Land access.

(1) Purpose. This section describes the minimum requirements for selecting sediment cleanup actions.

(2) Minimum requirements for sediment cleanup actions. All cleanup actions conducted under this chapter shall meet the following requirements:

(a) Threshold requirements. The sediment cleanup action shall:

- (i) Achieve a degree of cleanup that is protective of human health and the environment;
- (ii) Achieve compliance with applicable state, federal, and local laws;
- (iii) Achieve compliance with site cleanup standards;
- (iv) Provide adequate monitoring to ensure the effectiveness of the cleanup action.

(b) Other requirements. When selecting from cleanup action alternatives that fulfill the threshold requirements, the selected action shall:

- (i) Use permanent solutions to the maximum extent practicable;
- (ii) Provide for a reasonable restoration time frame (See subsection 3 of this section);
- (iii) Achieve compliance with sediment source control requirements pursuant to WAC 173-204-400 through 173-204-420, if necessary;
- (iv) Provide for landowner review of the cleanup action plan; and
- (v) Consider public concerns raised during review of the draft cleanup action plan.

(c) Department review. The department shall review and provide written approval of the preferred and/or alternate cleanup actions and necessary sediment recovery zones proposed in the cleanup study report prior to implementing a cleanup action(s).

(3) Cleanup time frame.

(a) The cleanup action selected shall provide for a reasonable time frame for completion of the cleanup action, based on consideration of the following factors:

- (i) Potential risks posed by the site to biological resources and human health;
- (ii) Practicability of achieving the site cleanup standards in less than a ten-year period;
- (iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by the site contamination;
- (iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by the site contamination;
- (v) Likely effectiveness and reliability of institutional controls;
- (vi) Degree of, and ability to control and monitor, migration of contamination from the site; and
- (vii) Natural recovery processes which are expected to occur at the site that will reduce concentrations of contaminants.

(b) The department may authorize cleanup time frames that exceed the ten-year period used in deriving the site cleanup standards of WAC 173-204-570(4) where cleanup actions are not practicable to accomplish within a ten-year period.

- (4) Public participation. The department shall provide opportunity for public review and comment on all cleanup action plans for cleanup actions conducted under this chapter.
- (5) Land access. In cases where the person(s) responsible for cleanup is not able to secure access to lands subject to a cleanup action, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access shall be submitted to the department in writing by the person(s) named in the cleanup action plan.

[Statutory Authority: Chapters 43.21C, 70.105D, 90.48, 90.52, 90.54 and 90.70 RCW. 91-08-019 (Order 90-41), § 173-204-580, filed 3/27/91, effective 4/27/91.]