

Chapter 173-340 WAC

MODEL TOXICS CONTROL ACT--CLEANUP

W AC			Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.
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PART I--OVERALL CLEANUP PROCESS

WAC 173-340-100 Purpose. This chapter is promulgated under the Model Toxics Control Act. It establishes administrative processes and standards to identify, investigate, and cleanup facilities where hazardous substances have come to be located. It defines the role of the department and encourages public involvement in decision making at these facilities.

The goal of this chapter is to implement the policy declared by chapter 70.105D RCW. This chapter provides a workable process to accomplish effective and expeditious cleanups in a manner that protects human health and the environment. This chapter is primarily intended to address releases of hazardous substances caused by past activities although its provisions may be applied to potential and ongoing releases of hazardous substances from current activities. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-100, filed 4/3/90, effective 5/4/90.]

WAC 173-340-110 Applicability. (1) This chapter shall apply to all facilities where there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment. Under this chapter, the department may require or take those actions necessary to investigate and remedy these releases.

(2) Nothing herein shall be construed to diminish the department's authority to address a release or threatened release under other applicable laws or regulations. The cleanup process and procedures under this chapter and under other laws may be combined. The department may initiate a remedial action under this chapter and may upon further analysis determine that another law is more appropriate, or vice versa.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-340-010	Purpose. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-010, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.
173-340-020	Definitions. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-020, filed 6/8/88.]

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(3) If a hazardous substance remains at a facility after actions have been completed under other applicable laws or regulations, the department may apply this chapter to protect human health or the environment. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-110, filed 4/3/90, effective 5/4/90.]

WAC 173-340-120 Overview. (1) Purpose. This section provides an overview of the cleanup process that typically will occur at a site where a release of a hazardous substance has been discovered. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

(2) Site discovery. Site discovery includes:

(a) Release reporting. A reporting program is established to help identify potential hazardous waste sites. Owners and operators who know of or discover a release of a hazardous substance due to past activities must report the release to the department under WAC 173-340-300. Current releases of hazardous substances must be reported to the department under the state's hazardous waste and water quality laws. The term "hazardous substance" includes a broad range of substances as defined by chapter 70.105D RCW.

(b) Initial investigation. Within ninety days of learning of a hazardous substance release, the department will conduct an initial investigation of the site under WAC 173-340-310. For sites that may need further remedial action, an early notice letter will be sent to the owner and operator informing them of the department's decision.

(3) Site priorities. Priorities for further remedial action are set by the following process:

(a) Site hazard assessment. Based on the results of the initial investigation, a site hazard assessment will be performed if necessary, under WAC 173-340-320. The purpose of the site hazard assessment is to gather information to confirm whether a release has occurred and to enable the department to evaluate the relative potential hazard posed by the release. If the department decides that no further action is required, it will notify the public of that decision through the site register.

(b) Hazardous sites list. The department will maintain a list of sites that require further remedial action. Sites will be listed after the completion of a site hazard assessment. Sites placed on the list will be ranked using the department's hazard ranking method. The department may remove a site from the hazardous sites list if the cleanup action at the site has achieved the cleanup standards and all remedial actions except confirmational monitoring have been completed. See WAC 173-340-330.

(c) Biennial program report. Every even-numbered year, the department will prepare a biennial program report for the legislature. The hazard ranking, along with other factors, will be used in this report to identify the projects and expenditures recommended for appropriation. See WAC 173-340-340.

(4) Detailed site investigations and cleanup decisions. The following steps will be taken to ensure that the proper method of cleanup is chosen for the site.

(a) Remedial investigation and feasibility study. A state remedial investigation/feasibility study will be performed at ranked sites under WAC 173-340-350. The state remedial investigation/feasibility study defines the extent of the problems at the site and evaluates alternative cleanup actions.

(b) Selection of cleanup action. The department will evaluate the remedial investigation/feasibility study and select a cleanup action that will protect human health and the environment consistent with WAC 173-340-360. The cleanup action will be set forth in a draft cleanup action plan that addresses cleanup requirements for hazardous substances at the site. After public comment on the draft plan, a final cleanup action plan will be issued by the department.

(5) Site cleanup. Once the appropriate cleanup action has been selected for the site, the actual cleanup will be performed.

(a) Cleanup actions. WAC 173-340-400 describes the design and construction requirements for implementing the cleanup action plan.

(b) Compliance monitoring and review. The cleanup action must include compliance monitoring under WAC 173-340-410 and in some cases periodic review under WAC 173-340-420 to ensure the long-term effectiveness of the cleanup action.

(6) Procedures for conducting remedial actions.

(a) Remedial action agreements. The department has authority to take remedial actions or to order persons to conduct remedial actions under WAC 173-340-510 and 173-340-540. However, the department encourages agreements for investigations and cleanups in appropriate cases. These agreements can be agreed orders or consent degrees reached under the procedures of WAC 173-340-520 and 173-340-530.

(b) Independent remedial actions. Persons may decide to perform investigations and cleanups without department approval under this chapter. The department will use the appropriate requirements contained herein in its evaluation of the adequacy of any independent remedial actions performed. Nothing in this chapter prohibits persons from performing such actions before the department is ready to act at the site; however, all interim and cleanup actions must be reported to the department under WAC 173-340-300. Furthermore, independent remedial actions are done at the potentially liable person's own risk and the department may take or require additional remedial actions at these sites at any time. (See WAC 173-340-510.)

(c) Public participation. The public will receive notice and an opportunity to comment on most of the steps in the cleanup process. At many sites, a public participation plan will be prepared to provide opportunities for more extensive public involvement in the cleanup process.

These requirements are described in WAC 173-340-600. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-120, filed 4/3/90, effective 5/4/90.]

WAC 173-340-130 Administrative principles. (1) Introduction. The department shall conduct or require

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remedial actions consistent with the provisions of this section, as typically defined by the subsequent sections.

(2) Information sharing. It is the policy of the department to make available information about releases or threatened releases with property owners or other persons with potential liability for a site in order to encourage them to conduct prompt remedial action. It is also the policy of the department to make information available to interested members of the public.

(3) Information exchange.

(a) Technical assistance. Persons are encouraged to contact the department and seek assistance on the general administrative and technical requirements of this chapter. The department may provide informal advice and assistance to potentially liable persons at any time during the development of a remedial action. Unless the department is providing formal guidance for the implementation of an order or decree any comments by the department or its agents are advisory and not commitments or approvals binding on the department. A person may not represent this advice as an approval of a remedial action. If the person requesting the advice is seeking binding commitments or approvals an order or consent decree shall be used. The department advises persons requiring site-specific legal or technical assistance to hire an attorney or engineering consultant with the appropriate environmental expertise.

(b) Response to requests. If the department believes that responding to a request for technical assistance would involve substantial time or resources or would not be in the public interest, the department may decline to provide the requested assistance. The department shall inform the requester of its response. The department may require one or more of the following before devoting time to the request:

(i) A proposed schedule;

(ii) Payment, in advance, for its costs in responding to the request;

(iii) Other assurances that the requester is serious about carrying out the provisions of this chapter; or

(iv) Other information.

(4) Scope of public participation. The department seeks to encourage public participation in all steps of the cleanup process. The department shall encourage a level of participation appropriate to the conditions at a facility and the level of the public's interest.

(5) Scope of information. It is the department's intention that adequate information will be gathered at a site to enable decisions on appropriate actions. It is also the department's intention that decisions be made once adequate information is obtained. Studies can be performed and submittals made at varying levels of detail appropriate to the conditions at the site. For example, the department might decide that a study of a small site with minimal ground water impacts need not include as detailed an analysis of the ground water flow system as for a study of a geologically more complex site. Once the department has adequate information it will make cleanup decisions within the framework provided in this chapter and in site-specific orders or decrees.

(6) Combining steps. Several steps in the cleanup process may be combined into fewer steps, when appropriate. For example, the department and a potentially liable person may agree that conditions at a site are such that the remedial investigation/feasibility study and remedial design and implementation steps could be combined into a single step.

(7) Routine cleanup actions. Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine cleanup actions. For example, the department may decide to approve a routine cleanup action based upon a single investigation that includes a site hazard assessment and a simplified state remedial investigation/feasibility study and engineering design plan.

(a) A cleanup action may be considered routine if the following criteria are met:

(i) It involves an obvious and limited choice among cleanup methods;

(ii) It uses a cleanup method that is reliable and has proven capable of accomplishing cleanup standards;

(iii) Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow an adequate margin of safety for protection of human health and the environment;

(iv) The department has experience with similar actions; and

(v) The action does not require an environmental impact statement.

(b) Routine cleanup actions consist of or are comparable to one or more of the following remedial actions:

(i) Cleanup of above-ground structures;

(ii) Cleanup of below-ground structures;

(iii) Cleanup of contaminated soils where the action would restore the site to cleanup levels; or

(iv) Cleanup of solid wastes, including containers.

(c) Cleanup of ground water will not normally be considered a routine cleanup action.

(d) A routine cleanup action may be conducted under any of the procedures described in WAC 173-340-510. However, the department will attempt to ensure that all routine cleanup action decisions are consistent with this chapter.

(8) Preparation of documents. Except for the initial investigation, any of the studies, reports, or plans used in the cleanup process can be prepared by either the department or the potentially liable person. The department retains all authority to review and verify the documents submitted and to make decisions based on the documents.

(9) Inter-agency coordination.

(a) The department shall ensure appropriate local, state, and federal agencies and tribal organizations are kept informed and, as appropriate, involved in the development and implementation of remedial actions. The department may require a potentially liable person to undertake this responsibility. If the potentially liable person demonstrates that they are unable to obtain adequate involvement to allow the remedial action to proceed by a particular government agency or tribe, the department shall request the involvement of the agency or tribe.

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(b) The nature and degree of coordination and consultation shall be commensurate with the other agencies and tribes interest and need at the site. Interested agencies and tribes shall also be included in the mailing list for public notices under WAC 173-340-600. To facilitate coordination, it is important for the agencies and tribes to provide specific comments, including the identification of additional information needed or mitigating measures that are necessary or desirable to satisfy their concerns.

(c) In order to provide for expeditious cleanup actions, all federal, state, and local agencies are encouraged to coordinate when providing notices, holding meetings and hearings, and preparing documents. Whenever reasonable, the department shall coordinate and combine its activities with other agencies and tribes to minimize the duplication of notices, hearings and preparation of documents, unless otherwise prohibited.

(10) Appeals. Unless otherwise indicated all department decisions made under this chapter are remedial decisions and may be appealed only as provided for in RCW 70.105D.060. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-130, filed 4/3/90; effective 5/4/90.]

WAC 173-340-140 Deadlines. (1) Purpose. It is the department's intent to move sites through the cleanup process as expeditiously as possible. However, the department is limited by the amount of personnel and funds it can expend in any given fiscal year. This section is intended to establish reasonable deadlines for remedying releases within these constraints. The procedure for setting priorities is described in WAC 173-340-330, and 173-340-340.

(2) Within ninety days of learning of a release or threatened release of a hazardous substance, the department shall complete an initial investigation under WAC 173-340-310.

(3) At least twice a year, the department will determine which sites with completed initial investigations are a high priority for further investigation. At that time, the department will schedule high priority sites for further investigations to commence within six months. This determination will be based on best professional judgment of department staff. Sites may be scheduled for further investigation at any time if the department determines that the site warrants expedited action.

(4) The department shall complete the site hazard assessment and hazard ranking on high priority sites within one hundred eighty days of the scheduled start date. These sites will be identified in the department's site register. Sites not designated as a high priority will be scheduled for future investigations and listed in the biennial report to the legislature. (WAC 173-340-340). The department will conduct at least thirty-five site hazard assessments each fiscal year until the number of sites needing site hazard assessments are reduced below this number.

(5) Within thirty days of ranking, the department shall designate which sites are a high priority for a state remedial investigation/feasibility study and which sites are a lower priority where further action can be delayed. The department shall review these lower priority sites and provide an opportunity for public comment as part of the biennial report to the legislature (WAC 173-340-340).

(6) For all sites designated as a high priority the state remedial investigation/feasibility study shall be completed under WAC 173-340-350 within eighteen months of signing the order or decree. The department may extend the deadline up to twelve months if the circumstances at the site merit a longer timeframe. The department shall provide the public an opportunity to comment on any extension. The department shall initiate a state remedial investigation/feasibility study on at least ten sites per fiscal year.

(7) The department shall select the cleanup action under WAC 173-340-360 and file a consent decree or issue an order for cleanup action for all designated high priority sites within six months of the completion of the state remedial investigation/feasibility study. The department may extend the deadline for up to four months for consent decree and order discussions. The department shall provide the public with an opportunity to comment on any deadline extension.

(g) The department will publish site schedules for designated high priority sites in the site register under WAC 173-340-600(6). [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-140, filed 4/3/90, effective 5/4/90.]

Part II--DEFINITIONS AND USAGE

WAC 173-340-200 Definitions. For the purpose of this chapter, the following definitions shall apply:

(1) "Act" means the same as the "Model Toxics Control Act" and "chapter 70.105D RCW."

(2) "Agreed order" means an order issued under WAC 173-340-530.

(3) "Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup standards, utilizes permanent solutions to the maximum extent practicable, and includes adequate monitoring to ensure the effectiveness of the cleanup action.

(4) "Cleanup action plan" means the document prepared by the department under WAC 173-340-360 which selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action.

(5) "Cleanup process" means the process, for identifying, investigating, and cleaning up hazardous waste sites under chapter 70.105D RCW.

(6) "Cleanup standards" means the standards promulgated under RCW 70.105D.030 (2)(d).

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(7) "Compliance monitoring" means a remedial action that consists of monitoring as described in WAC 173-340-410.

(8) "Containment" means a container, vessel, barrier, or structure, whether natural or constructed, by which a hazardous substance is prevented or hindered from release to or migration into the environment.

(9) "Day" means calendar day; however, any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.

(10) "Decree" means consent decree under WAC 173-340-520. "Consent decree" is synonymous with decree.

(11) "Department" means the department of ecology.

(12) "Director" means the director of ecology or the director's designee.

(13) "Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

(14) "Exposure" means subjection to the action, influence, or effects of a substance or condition.

(15) "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(16) "Food crop" means any domestic plant which is produced for the purpose of, or may be used in whole or in part for, consumption by people or livestock. This shall include nursery, root, or seedstock to be used for the production of food crops.

(17) "Ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(18) "Hazardous sites list" means the list of hazardous waste sites maintained under WAC 173-340-330.

(19) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste as designated by rule under chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule under chapter 70.105 RCW;

(c) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C., Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(20) "Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

(21) "Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or decree.

(22) "Initial investigation" means a remedial action that consists of an investigation under WAC 173-340-310 to determine that a release or threatened release may have occurred that warrants further action under this chapter.

(23) "Interim action" means a remedial action conducted under WAC 173-340-430 that partially addresses the cleanup of a site.

(24) "Mail" means delivery through the United States Postal Service or an equivalent method of delivery or transmittal, including private mail carriers, or personal delivery.

(25) "Mixed funding" means any funding provided to potentially liable persons from the state toxics control account under WAC 173-340-560.

(26) "Model Toxics Control Act" or "act" means the act approved by the voters at the November 1988 general election, also known as Initiative 97 (chapter 70.105D RCW).

(27) "Natural person" means any unincorporated individual or group of individuals.

(28) "Order" means an enforcement order issued under WAC 173-340-540 or an agreed order issued under WAC 173-340-530.

(29) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment. The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility.

(30) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(31) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

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(32) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made a timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(33) "Public Participation plan" means a plan prepared under WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular facility.

(34) "Regional office" means one of the regional offices of the department of ecology.

(35) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(36) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(37) "Routine cleanup action" means a remedial action that consists of a cleanup action meeting the requirements in WAC 173-340-130(7).

(38) "Safety and health plan" means a plan prepared under WAC 173-340-810.

(39) "Sampling and analysis plan" means a plan prepared under WAC 173-340-820.

(40) "Science advisory board" means the advisory board established by the department under RCW 70.105D.030(4).

(41) "Sensitive environment" means an area of particular environmental value, where a release could pose a greater threat than in other areas including: Wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

(42) "Site" means the same as facility.

(43) "Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

(44) "Site register" means the public information document described in WAC 173-340-600.

(45) "State remedial investigation/feasibility study" means a remedial action that consists of activities performed under WAC 173-340-350 to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup plan.

(46) "Surface water" means lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

(47) "Wastewater facility" means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewaters.

(48) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this classification, wetlands must have one or more of the following attributes:

(a) At least periodically, the land supports predominantly hydrophytes;

(b) The substrate is predominately undrained hydric soil; and

(c) The substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-200, filed 4/3/90, effective 5/4/90.]

WAC 173-340-210 Usage. For the purposes of this chapter, the following shall apply:

(1) Unless the context clearly requires otherwise the use of the singular shall include the plural and conversely.

(2) The terms "applicable," "appropriate," "relevant," "unless otherwise directed by the department" and similar terms implying discretion mean as determined by the department, with the burden of proof on other persons to demonstrate the requirements are or are not necessary.

(3) "Conduct" means to perform or undertake whether directly or through an agent or contractor, unless this chapter expressly provides otherwise.

(4) "Include" means included but not limited to.

(5) "May" means the provision is optional and permissive, and does not impose a requirement.

(6) "Shall" means the provision is mandatory.

(7) "Threat" means threat or potential threat.

(8) "Under" means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-210, filed 4/3/90, effective 5/4/90.]

PART III—SITE REPORTS AND CLEANUP DECISIONS

WAC 173-340-300 Site discovery and reporting. (1) Purpose. As part of a program to identify hazardous waste sites, this section sets forth the requirements for reporting a release of a hazardous substance due to past activities, whether discovered before or after the effective date of this regulation. It also sets forth the requirements for reporting independent cleanup actions. The department may take any other actions it deems appropriate to identify potential hazardous waste sites consistent with chapter 70.105D RCW.

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(2) Release report. Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment shall report such information to the department by June 1, 1990, or for discovery of releases after this date, within ninety days of discovery. To the extent known, the report shall include: The identification and location of the hazardous substance, circumstances of the release and the discovery, and any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.

(3) Exemptions. The following releases are exempt from these notification requirements:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;

(c) A release in accordance with a permit that authorizes the release;

(d) A release previously reported to the department in fulfillment of a reporting requirement in this chapter or in another law or regulation;

(e) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 9603(c));

(f) A release to the air;

(g) Releases discovered in public water systems regulated by the department of health; or

(h) A release to a permitted wastewater facility.

An exemption from these notification requirements does not imply a release from liability in future actions by the department.

(4) Report of independent actions.

(a) Report. Any person who conducts an independent interim action or cleanup action shall submit a written report to the department within ninety days of the completion of the action. For the purposes of this section, the department will consider an interim action or cleanup action complete if no remedial action other than compliance monitoring has occurred at the site for ninety days. This is not intended to preclude earlier reporting of such actions.

(b) Contents. The report shall include the information in subsection (2) of this section if not already reported, and results of all site investigations, cleanup actions and compliance monitoring planned or underway. The department may require additional reports on the work performed.

(c) Combined reports. If the independent interim action or cleanup action is completed within ninety days of discovery, a single written report may be submitted on both the release and the action taken. The reports shall contain the information specified in subsections (2) and (4) of this section and shall be submitted within ninety days of completion of the interim action or cleanup action.

(d) Notification. The department shall publish a notice of all reports on independent interim actions and cleanup actions received under this section in the site register.

(5) Department response. Within ninety days of receipt of information under this section, the department shall respond in accordance with WAC 173-340-310. Receipt of information regarding an independent interim action or cleanup action under subsection (3) or (4) of this section shall not obligate the department to take any action beyond that prescribed in WAC 173-340-310 and subsection (4)(d) of this section. Neither submission of information on independent interim action and cleanup actions nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.

(6) Other obligations. Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-300, filed 4/3/90, effective 5/4/90.]

WAC 173-340-310 Initial investigation. (1) Purpose. The purpose of the initial investigation is to determine whether or not a release or threatened release of a hazardous substance may have occurred that warrants further action under this chapter.

(a) Applicability and timing. Whenever the department receives information and has a reasonable basis to believe that there may be a release or a threatened release of a hazardous substance that may pose a threat to human health or the environment, the department shall conduct an initial investigation within ninety days.

(b) Exemptions. The department shall not be required to conduct an initial investigation when:

(i) The circumstances associated with the release or threatened release are known to the department and have previously been or currently are being evaluated by the department or other government agency; or

(ii) The release is permitted.

(2) Contents. The initial investigation shall include at a minimum: A site visit and documentation of conditions observed.

(3) Department deferral to others. The department may rely on another government agency or a contractor to the department to conduct an initial investigation on its behalf, provided the department determines such agency or contractor is not suspected to have contributed to the release or threatened release of a hazardous substance and that no conflict of interest exists.

(4) Department decision. Based on the information obtained about the site, the department shall within thirty days of completion of the initial investigation make one or more of the following decisions:

(a) A site hazard assessment is required;

(b) Emergency remedial action is required;

(c) Interim action is required; or

(d) The site requires no further action under this chapter at this time because either:

(i) There has been no release or threatened release of a hazardous substance; or

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(ii) A release or threatened release of a hazardous substance has occurred, but in the department's judgment, does not pose a threat to human health or the environment; or

(iii) Action under another authority is appropriate.

A decision for a particular follow-up action does not preclude the department from requiring some other action in the future based on reevaluation of the site or additional information.

(5) Early notice letter.

(a) For sites requiring further remedial action under chapter 70-105D RCW, the department will notify the owner, operator, and any potentially liable person known to the department of its decision. This letter may be combined with the notice in WAC 173-340-500.

(b) The notification shall be a letter mailed to the person which includes:

(i) The basis for the department's decision;

(ii) Information on the cleanup process provided for in this chapter;

(iii) A statement that it is the department's policy to work cooperatively with persons to accomplish prompt and effective cleanups;

(iv) A person or office of the department to contact regarding the contents of the letter; and

(v) A statement that the letter is not a determination of liability and that cooperating with the department in planning or conducting a remedial action is not an admission of guilt or liability.

Nothing in this section shall preclude the department from taking or requiring appropriate remedial action at any time. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-310, filed 4/3/90, effective 5/4/90.]

WAC 173-340-320 Site hazard assessment. (1)

Purpose. The purpose of the site hazard assessment is to provide sufficient sampling data and other information to:

(a) Confirm or rule out that a release or threatened release of a hazardous substance has occurred;

(b) To identify the hazardous substance and provide some information regarding the extent and concentration of the substance;

(c) Identify site characteristics that could result in the hazardous substance entering and moving through the environment;

(d) Evaluate the potential for the threat to human health and the environment; and

(e) Determine the hazard ranking of the site under WAC 173-340-330, if appropriate.

(2) **Timing.** Unless otherwise directed by the department, a site hazard assessment shall be completed before proceeding to any subsequent phase of remedial action, other than an emergency or interim action.

(3) **Administrative options.** The site hazard assessment may be conducted under any of the procedures described in WAC 173-340-510.

(4) **Scope and content.** A site hazard assessment is an early study to provide preliminary data regarding the relative

potential hazard of the site. A site hazard assessment is not intended to be a detailed site characterization, however it shall include sufficient sampling, site observations, maps, and other information needed to meet the purposes specified in subsection (1) of this section. To fulfill this requirement, a site hazard assessment shall include, as appropriate, the following information:

(a) Identification of hazardous substances, including what was released and is threatened to be released and/or, if known, what products of decomposition, recombination, or chemical reaction are currently present on site, and an estimate of their quantities and concentrations,

(b) Evidence confirming a release or threatened release of hazardous substances to the environment;

(c) Description of facilities containing releases, if any, and their condition;

(d) Identification of the location of all areas where a hazardous substance is known or suspected to be, indicated on a site map;

(e) Consideration of surface water run-on and run-off and the hazardous substances leaching potential;

(f) Preliminary characterization of the subsurface and ground water actually or potentially affected by the release, including vertical depth to ground water and distance to nearby wells, bodies of surface water, and drinking water intakes;

(g.) Preliminary evaluation of receptors, including: Human population, food crops, recreation areas, parks, sensitive environments, irrigated areas, and aquatic resources currently or potentially affected by ground water, air, or surface water containing the release of hazardous substances at the site, including distances to these receptors; and

(h) Any other physical factors which may be significant in estimating the potential or current exposure to sensitive biota.

(5) **Guidance.** The department shall make available guidance for how to conduct a site hazard assessment to meet the requirements of this section.

(6) **Notification.** The department shall make available the results of the site hazard assessment to the site's owner and operator and any person who has received a potentially liable person status letter under WAC 173-340-500 regarding the site. If the department finds after a site hazard assessment that the site requires no further action, it shall publish this decision in the site register. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-320, filed 4/3/90, effective 5/4/90.]

WAC 173-340-330 Hazardous sites list. (1) **Purpose.** The department shall maintain a list of sites where remedial action has been determined by the department to be necessary. This hazardous sites list shall fulfill the department's responsibilities under RCW 70.105D.030 (2)(b) and (3). From this list, the department shall select those sites where action is anticipated and include those in the biennial program report. (See WAC 173-340-340.)

(2) **Hazard ranking.** Sites placed on the list shall be given a hazard ranking. The purpose of hazard ranking is to

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estimate, based on the information compiled during the site hazard assessment, the relative potential risk posed by the site to human health and the environment. This assessment considers air, ground water, and surface water migration pathways, human and nonhuman exposure targets, properties of the substances present, and the interaction of these variables.

(a) The department shall evaluate each site on a consistent basis using the procedure described in the "*Washington Ranking Method Scoring Manual*," and all revisions and additions thereto. The ranking procedure and major amendments to the manual shall be reviewed by the science advisory board established under chapter 70.105D RCW. Information obtained in the site hazard assessment, plus any additional data specified in the manual, shall be included in the hazard ranking evaluation.

(b) The department shall periodically provide notification of the results of hazard ranking in the site register established under WAC 173-340-600. The department shall make available hazard ranking results for each site to the site owner and operator and any potentially liable person known to the department prior to publishing in the site register.

(c) The department may at its discretion re-rank a site if, prior to the initiation of state action at the site, the department receives additional information within the scope of the evaluation criteria which indicates that a significant change in rank may result.

(3) Listing.

(a) Sites shall be placed on the hazardous sites list if, after the completion of a site hazard assessment, the department has determined that further action is required at the site. The list shall be updated at least once per year. Placement of a site on the hazardous sites list does not, by itself, imply that persons associated with the site are liable under chapter 70.105D RCW.

(b) The hazardous sites list shall also reflect the current status of remedial action at each site. The department may change a site's status to reflect current conditions. The status for each site shall be identified as one of the following:

- (i) Sites awaiting further remedial action;
- (ii) Sites with remedial action in progress;
- (iii) Sites where a cleanup action has been conducted but confirmational monitoring is underway;
- (iv) Sites with independent remedial actions; or
- (v) Other categories established by the department.

(4) Removing sites from the list.

(a) The department may remove a site from the list only after it has determined that:

- (i) All remedial actions except confirmational monitoring have been completed and compliance with the cleanup standards has been achieved at the site; or
- (ii) The listing was erroneous.

(b) A site owner, operator, or potentially liable person may request that a site be removed from the list by submitting a petition to the department. The petition shall include thorough documentation of all investigations performed, all cleanup actions taken, and of adequate compliance monitoring to demonstrate to the department's satisfaction that one of the

conditions in (a) of this subsection has been met. The department may require payment of costs incurred, including an advance deposit, for review and verification of the work performed. The department shall review such petitions; however, the timing of the review shall be at its discretion and as resources may allow.

(c) The department will maintain a record of sites that have been removed from the list under (a)(i) of this subsection. This record will be made available to the public upon request.

(5) Relisting of sites. The department may relist a site which has previously been removed if it determines that the site requires further remedial action.

(6) Notice. The department shall provide public notice and an opportunity to comment when the department proposes to remove a site from the list. Additions to the list, changes in site status, and removal from the list shall be published in the site register. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-330, filed 4/3/90, effective 5/4/90.]

WAC 173-340-340 Biennial program report. (1) Before November 1 of each even-numbered year, the department shall prepare a biennial program report for the legislature containing its plan for conducting remedial actions for the following two fiscal years. This report shall identify the projects and expenditures recommended for appropriation from both the state and local toxics control accounts. In determining which sites the department shall consider for planned action, emphasis shall be given to sites posing the highest risk to human health and the environment, as indicated by a site's hazard ranking. The department may also consider other factors in setting site priorities. After legislative action and any revisions, this report shall become the department's biennial program plan.

(2) The department shall provide public notice and a hearing on the proposed plan. For purposes of this subsection only, public notice shall consist of mailings to all persons who have made a timely request and to appropriate news media, and publication in the state register. Notice shall also be provided in the site register. The public comment period on the proposed plan shall run for at least thirty days from the date of the publication in the site register. [Statutory Authority: Chapter 70.105D RCW. 90--08-086, § 173-340-340, filed 4/3/90, effective 5/4/90.]

WAC 173-340-350 State remedial investigation and feasibility study. (1) Purpose. The purpose of a state remedial investigation/feasibility study is to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360.

(2) Timing. Unless otherwise directed by the department, a state remedial investigation/feasibility study shall be completed before selecting a cleanup action under WAC 173-340-360, except for an emergency or interim action.

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(3) Administrative options. A state remedial investigation/feasibility study may be conducted under any of the procedures described in WAC 173-340-510.

(4) Public participation will be accomplished in a manner consistent with WAC 173-340-600.

(5) Scope. The scope of a state remedial investigation/feasibility study will depend on the informational needs of the specific facility. This requires that the process remain flexible, with the scope of the state remedial investigation/feasibility study varying from site to site to avoid the collection of unnecessary information so that the cleanup can proceed in a timely manner. However, in all cases sufficient information must be collected, developed, and evaluated to enable the selection of a cleanup action under WAC 173-340-360. In addition, for facilities on the federal national priorities list, the state remedial investigation/feasibility study shall comply with federal requirements.

(6) Contents. A state remedial investigation/feasibility study shall include the following information as appropriate:

(a) General facility information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history; and other pertinent information.

(b) Site conditions map. An existing site conditions map which illustrates relevant current site features such as: Property boundaries; proposed facility boundaries; surface topography; surface and subsurface structures; utility lines; well locations; and other pertinent information,

(c) Field investigations. Sufficient investigations to characterize the distribution of hazardous substances present at the site, and threat to human health and the environment. Where applicable to the site, these investigations will need to address the following:

(i) Surface water and sediments. Investigations of surface water and sediments to characterize significant hydrologic features such as: Surface drainage patterns and quantities, areas of erosion and sediment deposition, surface waters, floodplains, and actual or potential hazardous substance migration routes towards and within these features. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution and concentrations of hazardous substances. Properties of surface and subsurface sediments which are likely to influence the type and rate of hazardous substance migration, or are likely to affect the ability to implement alternative cleanup actions shall be characterized.

(ii) Soils. Investigations to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the soil due to the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement alternative cleanup actions shall be characterized.

(iii) Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected aquifers; ground water divides; areas of ground water recharge and discharge; location of public and private production wells; and ground water quality data.

(iv) Air. An evaluation of air quality impacts, including sampling, where appropriate, and information regarding local and regional climatological characteristics which are likely to affect the hazardous substance migration such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; temperature extremes; prevailing wind direction; and wind velocity.

(v) Land use. Information characterizing human populations exposed or potentially exposed to the hazardous substance released from the facility and present and proposed land uses and zoning for the site and potentially affected areas.

(vi) Natural resources and ecology. Information to determine the impact or potential impact of the hazardous substance from the facility on the natural resources and ecology of the area such as: Sensitive environment, plant and animal species, and other environmental receptors.

(vii) Hazardous substance sources. A description of and sufficient sampling to define the location, quantity, areal and vertical extent, concentration within and sources of waste disposal areas. Where relevant, information on the physical and chemical characteristics, and the biological effects of hazardous substances shall be provided,

(viii) Regulatory classifications. Regulatory designations classifying affected air, surface water and ground water, if any.

(d) Risk assessment. A risk assessment characterizing the current and potential threats to human health and the environment that may be posed by hazardous substances. This assessment may not be required when the department determines that proposed cleanup standards are obvious and undisputed and allow an ample margin of safety for protection of human health and the environment.

(e) Cleanup action alternatives. An evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route, shall be required. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the facility. A phased approach for evaluation of alternatives may be required for certain facilities, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action

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alternatives that pass the initial screening shall consider the following factors:

(i) Overall protection of human health and the environment, including the degree to which existing risks are reduced, time required to reduce risk at the facility and attain cleanup standards, and on-site and off-site risks resulting from implementing the alternative;

(ii) Attainment of cleanup standards and compliance with applicable federal, state, and local laws;

(iii) Short-term effectiveness, including protection of human health and the environment during construction and implementation of the alternative, and degree of risk to human health and the environment prior to attainment of cleanup standards;

(iv) Long-term effectiveness, including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual risk, and effectiveness of controls required to manage treatment residues or remaining wastes;

(v) Permanent reduction of toxicity, mobility and volume through treatment, including adequacy of the alternative in treating or managing the hazardous materials, reduction or elimination of hazardous material releases and sources of releases, degree of irreversibility of waste treatment process, and the characteristics and quantity of treatment residuals generated;

(vi) Ability to be implemented. The ability to be implemented including 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 remedial actions;

(vii) Cost, including consideration of present and future direct and indirect capital, operation and maintenance costs;

(viii) The degree to which community concerns are addressed; and

(ix) The degree to which recycling, reuse, and waste minimization are employed.

(f) Work plans. A sampling and analysis plan, and a safety and health plan shall be prepared as part of state remedial investigation/feasibility study activities. These plans shall conform to the requirements specified in this chapter.

(g) Treatability studies. The department may require treatability studies as necessary to provide sufficient information to develop and evaluate cleanup action alternatives for a site.

(h) Any information needed to fulfill the applicable requirements of the State Environmental Policy Act.

(i) Other information as required by the department.

(7) In appropriate cases the department may allow departure from the requirements of subsection (5) of this section and will allow information to be incorporated by reference to avoid unnecessary duplication.

(8) Report. A report shall be prepared at the completion of the remedial investigation/feasibility study. Additionally, the department may require reports to be submitted following discrete elements of the remedial investigation/feasibility

study. Reports prepared under this section and under an order or decree shall be submitted to the department for review and approval. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-350, filed 4/3/90, effective 5/4/90.]

WAC 173-340-360 Selection of cleanup actions. (1) General requirements. All cleanup action plans approved and cleanup actions conducted under this chapter shall meet the following requirements:

(a) Achieves a degree of cleanup that is protective of human health and the environment;

(b) Addresses the requirements of applicable state, federal, and local laws;

(c) Uses permanent solutions to the maximum extent practicable;

(d) Provides adequate monitoring to ensure the effectiveness of the cleanup action;

(e) Is appropriate for conditions and circumstances at the facility; and

(f) Achieves compliance with cleanup standards.

(2) General considerations.

(a) Cleanup actions involving treatment which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances shall be preferred over cleanup actions not involving such treatment.

(b) The off-site transport and disposal of hazardous substances or contaminated materials without treatment is the least favored alternative cleanup action where practicable treatment technologies are available.

(3) Draft cleanup action plan. The department shall issue a draft cleanup action plan for cleanup actions conducted under the provisions of this chapter. The cleanup action plan shall include the following:

(a) A description of the cleanup action to be implemented, including an explanation of how that action will meet the requirements of RCW 70.105D.030 (1)(b) and (2)(d);

(b) A brief summary of other cleanup alternatives evaluated in the remedial investigation/feasibility study or comparable documents;

(c) A brief summary of how the proposed cleanup alternative addresses the factors in WAC 173-340-350 (6)(e);

(d) A schedule for implementation of the cleanup action plan; and

(e) Identification of applicable federal, state, and local requirements to be met to complete the cleanup action.

(4) Public participation. The department will provide public notice and opportunity for comment on the draft cleanup plan as described in WAC 173-340-600.

(5) Final plan. After completion of the public comment period the department shall issue a final cleanup action plan and publish its availability in the site register and by other appropriate methods.

(6) For routine actions, the department may use an order or decree to fulfill the requirements of this section, provided that the information of subsection (3) of this section is included therein. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-360, filed 4/3/90, effective 5/4/90.]

PART IV--SITE CLEANUP AND MONITORING

WAC 173-340-400 Cleanup actions. Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim options.

(1) Purpose. The purpose of this section is to ensure that the cleanup action is designed, constructed, and operated in a manner which is consistent with:

- (a) The cleanup action plan;
- (b) Accepted engineering practices; and
- (c) The requirements of WAC 173-340--360 (1) and (2).

(2) Administrative options. A cleanup action may be conducted under any of the procedures described in WAC 173-340-510.

(3) Public participation. During cleanup action implementation, public participation shall be accomplished in a manner consistent with the requirements of WAC 173-340-600.

(4) Plans describing the cleanup action. Design, construction, and operation of the cleanup action shall be consistent with the purposes of this section and shall consider relevant information provided by the slats remedial investigation/feasibility study. For most cleanups, to ensure this is done it will be necessary to prepare the following engineering documents. The scope and level of detail in these documents may vary from site to site depending on the site specific conditions and nature and complexity of the proposed cleanup action. In some cases it may be appropriate to combine the information in these various documents into one report to avoid unnecessary duplication. Any document prepared in order to implement a cleanup may be used to satisfy these requirements provided they contain the required information. In addition, for facilities on the national priorities list the plans prepared for the cleanup action shall also comply with federal requirements.

(a) Engineering design report. The engineering design report shall include sufficient information for the development and review of construction plans and specifications. It shall document engineering concepts and design criteria used for design of the cleanup action. The following information shall be included in the engineering design report, as appropriate:

- (i) Goals of the cleanup action including specific cleanup or performance requirements;
- (ii) General information an the facility including a summary of information in the state remedial investigation/feasibility study updated as necessary to reflect the current conditions;
- (iii) Identification of who will own, operate, and maintain the cleanup action during and following construction;
- (iv) Facility maps showing existing site conditions and proposed location of the cleanup action;
- (v) Characteristics, quantity, and location of materials to be treated or otherwise managed, including ground water containing hazardous substances;
- (vi) A schedule for final design and construction;

(vii) A description and conceptual plan of the actions, treatment units, facilities, and processes required to implement the cleanup action including flow diagrams;

(viii) Engineering justification for design and operation parameters, including: Design criteria, assumptions and calculations for all components of the cleanup action; expected treatment, destruction, immobilization, or containment efficiencies and documentation on how that degree of effectiveness is determined; demonstration that the cleanup action will achieve compliance with cleanup requirements by citing pilot or treatability test data, results from similar operations, or scientific evidence from the literature;

(ix) Design features for control of hazardous materials spills and accidental discharge (for example, containment structures, leak detection devices, run-on and run-off controls);

(x) Design features to assure long-term safety of workers and local residences (for example, hazardous substances monitoring devices, pressure valves, bypass systems, safety cutoffs);

(xi) A discussion of methods for management or disposal of any treatment residual and other waste materials containing hazardous substances generated as a result of the cleanup action;

(xii) Facility specific characteristics which may affect design, construction, or operation of the selected cleanup action, including: Relationship of the proposed cleanup action to existing facility operations; probability of flooding, probability of seismic activity, temperature extremes, local planning and development issues; soil characteristics and ground water system characteristics;

(xiii) A general description of construction testing which will be used to demonstrate adequate quality control;

(xiv) A general description of compliance monitoring which will be performed during and after construction to meet the requirements of WAC 173-340-410;

(xv) A general description of construction procedures proposed to assure that the safety and health requirements of WAC 173-340-810 are met;

(xvi) Any information not provided in the state remedial investigation/feasibility study needed to fulfill the applicable requirements of the State Environmental Policy Act (chapter, 43-21C RCW);

(xvii) Any additional: information needed to address the applicable state, federal and local requirements; and property access issues which need to be resolved to implement the cleanup action; and

(xviii) other information as required by the department.

(b) Construction plans and specifications. Construction plans and specifications shall detail the cleanup actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the following information as applicable:

(i) A general description of the work to be performed and a summary of the engineering design criteria from the engineering design report;

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(ii) General location map and existing facility conditions map;

(iii) A copy of any permits and approvals;

(iv) Detailed plans and procedural material specifications necessary for construction of the cleanup action;

(v) Specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods;

(vi) Startup procedures and criteria to demonstrate the cleanup action is prepared for routine operation;

(vii) Additional information to address applicable state, federal, and local requirements;

(viii) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during construction, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(ix) Provisions to assure safety and health requirements of WAC 173-340-810 are met; and

(x) Other information as required by the department.

(c) Operation and maintenance plan. An operation and maintenance plan which presents technical guidance and regulatory requirements to assure effective operations under both normal and emergency conditions. The operation and maintenance plan shall include the following elements, as appropriate:

(i) Name and phone number of the responsible individuals;

(ii) Process description and operating principles;

(iii) Design criteria and operating parameters and limits;

(iv) General operating procedures, including startup, normal operations, operation at less than design loading, shutdown, and emergency or contingency procedures;

(v) A discussion of the detailed operation of individual treatment units, including a description of various controls, recommended operating parameters, safety features, and any other relevant information;

(vi) Procedures and sample forms for collection and management of operating and maintenance records;

(vii) Spare part inventory, addresses of suppliers of spare parts, equipment warranties, and appropriate equipment catalogues;

(viii) Equipment maintenance schedules incorporating manufacturers recommendations;

(ix) Contingency procedures for spills, releases, and personnel accidents;

(x) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during operation and maintenance, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(xi) Description of procedures which assure that the safety and health requirements of WAC 173-340-810 are met, including specification of contaminant action levels and contingency plans, as appropriate;

(xii) Procedures for the maintenance of the facility after completion of the cleanup action, including provisions for removal of unneeded appurtenances, and the maintenance of

covers, caps, containment structures, and monitoring devices; and

(xiii) Other information as required by the department.

(5) In appropriate cases the department may authorize departure from the requirements of subsection (4) of this section, and may allow information to be incorporated by reference to avoid unnecessary duplication.

(6) Permits and approvals, if required for construction or to otherwise implement the cleanup action shall be identified and where possible, resolved prior to, or during, the design phase to avoid delays during construction and implementation of the cleanup action.

(7) Construction. Construction shall be conducted in accordance with the construction plans and specifications, and other plans prepared under this section.

(a) Department inspections.

(i) The department may perform site inspections and construction oversight. The department may require that construction activities be halted at a site if construction or any supporting activities: Are not consistent with approved plans; are not in compliance with environmental regulations or accepted construction procedures; or endanger human health or the environment.

(ii) The department may conduct a formal inspection of the site following construction and an initial operational shake down period to ensure satisfactory completion of the construction. If such an inspection is performed, the construction documentation report and engineer's opinion specified in (b)(ii) of this subsection shall be available prior to the inspection.

(b) Construction documentation.

(i) All aspects of construction shall be performed under the supervision of a professional engineer registered in the state of Washington or a qualified technician under the direct supervision of a professional engineer registered in the state of Washington. During construction detailed records shall be kept of all aspects of the work performed including construction techniques and materials used, items installed, and tests and measurements performed.

(ii) As built reports. At the completion of construction the engineer responsible for the supervision of construction shall prepare as built drawings and a report documenting all aspects of facility construction. The report shall also contain an opinion from the engineer, based on testing results and inspections, as to whether the cleanup action has been constructed in substantial compliance with the plans and specifications and related documents.

(iii) In appropriate cases the department may authorize departure from the requirements of this subsection and may allow information to be incorporated by reference to avoid unnecessary duplication.

(c) Plan modifications. Changes in the design or construction of the cleanup action performed under an order or decree shall be approved by the department.

(8) If the department determines that any plans prepared under this section represent a substantial change from the cleanup action plan, the department shall provide public notice and opportunity for comment under WAC 173-340-600.

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(9) Plans or reports prepared under this section and under an order or decree shall be submitted to the department for review and approval.

(10) Waste management. Any waste contaminated by a hazardous substance generated during cleanup activities and requiring off-site treatment, storage or disposal, shall be transported to a facility permitted or approved to handle these wastes. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-400, filed 4/3/90 effective 5/4/90.]

WAC 173-340-410 Compliance monitoring requirements. (1) Purpose. The purposes of compliance monitoring and evaluation of the data are to:

(a) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the safety and health plan;

(b) Performance monitoring. Confirm that the interim action of cleanup action has attained cleanup standards and, if appropriate, other performance standards;

(c) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, other performance standards have been attained.

(2) General requirements. Compliance monitoring shall be required for all cleanup actions, and may be required for interim and emergency actions, performed under this chapter.

(3) Compliance monitoring plans. A compliance monitoring plan shall be prepared for all cleanup actions and may be required for interim and emergency actions unless otherwise directed by the department. Plans prepared under this section and under an order or decree shall be submitted to the department for review and approval. Protection monitoring may be addressed in the safety and health plan. Performance and confirmational monitoring may be addressed in separate plans and may be combined with other plans or submittals, such as those in WAC 173-340-400 and 173-340-820.

Compliance monitoring plans shall be specific for the media being tested and shall contain the following elements:

(a) A sampling and analysis plan meeting the requirements of WAC 173-340-820 which shall explain in the statement of objectives how the purposes of WAC 173-340-410(2) are met;

(b) Data analysis and evaluation procedures used, to demonstrate and confirm compliance and justification for these procedures, including:

(i) A description of any statistical method to be employed; or

(ii) If sufficient data is not available prior to writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility; and

(c) Other information as required by the department. [Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-410, filed 4/3/90, effective 5/4/90.]

WAC 173-340-420 Periodic review. If the department selects or approves a cleanup action that results in hazardous substances remaining at a site, the department shall review such cleanup action no less frequently than every five years after the initiation of such cleanup action to assure that human health and the environment are being protected. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-420, filed 4/3/90, effective 5/4/90.]

WAC 173-340-430 Interim actions. (1) Purpose. The purpose of this section is to describe how certain interim actions can occur prior to the selection and completion of a cleanup action. An interim action is:

(a) An action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility; or

(b) An action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; or

(c) An action needed to provide for completion of a site hazard assessment, state remedial investigation/feasibility study or design of a cleanup action.

Example. A site is identified where oil-based wood preservative has leaked from a tank and is puddled on the ground and is floating on the water table. Run-off from adjacent properties passes through the site. Neighborhood children have been seen on the site. In this case, several interim actions would be appropriate prior to fully defining the extent of the distribution of hazardous substances at the site and selecting a cleanup action. These interim actions might consist of removing the tank, fencing the site, rerouting runoff, and removing the product puddled on the ground and floating on the water table. Further studies would then determine what additional soil and ground water cleanup would be needed.

(2) General requirements.

(a) Interim actions may:

(i) Achieve cleanup standards for a portion of the site; or

(ii) Provide a partial cleanup, that is, cleanup hazardous substances from all or part of the site, but not achieve cleanup standards; or

(iii) Provide a partial cleanup of hazardous substances and not achieve cleanup standards, but provide information on how to achieve cleanup standards for a cleanup. For example, demonstration of an unproven cleanup method.

(b) Relationship to the cleanup action:

(i) If the cleanup action is known, the interim action shall be consistent with the cleanup action.

(ii) If the cleanup action is not known, the interim action shall not foreclose reasonable alternatives for the cleanup action. This is not meant to preclude the destruction or removal of hazardous substances.

(3) Timing.

(a) Interim actions may occur anytime during the cleanup process. Interim actions shall not be used to delay or supplant the cleanup process. An interim action may be done prior to or in conjunction with a site hazard assessment and hazard ranking. However, sufficient technical information must be available regarding the facility to ensure the interim action is appropriate and warranted.

(b) Interim actions shall be followed by additional remedial actions unless compliance with cleanup standards has been confirmed at the site.

(c) The department shall set appropriate deadlines commensurate with the actions taken for completion of the interim action.

(4) Administrative options. Except as provided in WAC 173-340-530, interim cleanup actions may be conducted under any of the procedures described in WAC 173-340-510.

(5) Public participation will be accomplished in a manner consistent with WAC 173-340-600.

(6) Submittal requirements. Unless otherwise directed by the department and except for emergencies, a report shall be prepared prior to conducting an interim action. Reports prepared under an order or decree shall be submitted to the department for review and approval. Reports shall be of a scope and detail commensurate with the work performed and site-specific characteristics, and shall include, as appropriate:

(a) A description of the interim action and how it will meet the criteria identified in subsections (1) and (2) of this section;

(b) Information from the applicable subsections of the remedial investigation/feasibility study of WAC 173-340-350, including at a minimum;

(i) A description of existing site conditions and a summary of all available data related to the interim action;

(ii) Alternative interim actions considered and an explanation why the proposed alternative was selected;

(c) Information from the applicable subsections of the design and construction requirements of WAC 173-340-400;

(d) A compliance monitoring plan meeting the applicable requirements of WAC 173-340-410;

(e) A safety and health plan meeting the requirements of WAC 173-340-810; and

(f) A sampling and analysis plan meeting the requirements of WAC 173-340-820.

(7) Construction. Construction of the interim action shall be in conformance with WAC 173-340-400(5). [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-430, filed 4/3/90, effective 5/4/90.]

PART V--ADMINISTRATIVE PROCEDURES FOR REMEDIAL ACTIONS

WAC 173-340-500 Determination of status as a potentially liable person. (1) Status letter. The department shall issue a potentially liable person status letter to any person it believes to be potentially liable as provided for in RCW 70.105D.020(8), unless an emergency requires otherwise. Persons will be notified when the department has credible evidence of their potential liability under RCW 70.105D.040 and when the department is ready to proceed with remedial action except for emergencies and initial investigations. The status letter shall be sent by certified mail, return receipt requested, or by personal service.

(2) Contents of letter. The status letter shall provide:

(a) The name of the person the department believes to be potentially liable;

(b) A general description of the location of the facility;

(c) The basis for the department's belief that the person has a relationship to the facility;

(d) The basis for the department's belief that a release or threatened release of a hazardous substance has occurred at the facility and that the release or threatened release poses a threat to human health or the environment;

(e) An indication of the department's intentions regarding enforcement or other actions at the facility; and

(f) The names of other persons to whom the department has sent a status letter.

(3) Opportunity to comment. Any comments shall be submitted in writing to the department within thirty days from the date of receipt by the potentially liable person of the status letter unless the department provides an extension.

(4) Determination of status. If after reviewing any comments submitted, the department concludes that credible evidence supports a finding of potential liability, then the department shall issue a determination of potentially liable person status.

(5) Voluntary waiver. Persons may accept status as a potentially liable person at any time through a voluntary waiver of their right to notice and comment.

(6) Additional potentially liable persons. The department reserves the right to notify additional potentially liable persons at any time, and as resources permit, will facilitate potentially liable persons' efforts to identify additional potentially liable persons. The department shall notify in writing, all persons who previously received a status letter for the facility whenever additional status letters have been sent. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-500, filed 4/3/90, effective 5/4/90.]

WAC 173-340-510 Administrative options for remedial actions. (1) Policy. It is the responsibility of each and every liable person to conduct remedial action so that sites are cleaned up well and expeditiously where a release or threatened release of a hazardous substance requires remedial

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action. Potentially liable persons are encouraged to initiate discussions and negotiations with the department and the office of the attorney general which may lead to an agreement on the remedial action to be conducted with the state of Washington. The department may provide informal advice and assistance on the development of proposals for remedial action, as provided by WAC 173-340-130. Any approval by the department or the state of remedial action shall occur by one of the means described in subsections (2) and (3) of this section.

(2) Actions initiated by the potentially liable person. Potentially liable persons may initiate a remedial action, as follows:

(a) A person may initiate negotiations for a consent decree by submitting a letter under WAC 173-340-520(1).

(b) A person may request an agreed order by submitting a letter under WAC 173-340-530.

(3) Action initiated by the department. The department may initiate remedial action by:

(a) Issuing a letter inviting negotiations on a consent decree under WAC 173-340-520(2); or

(b) Issuing an enforcement order under WAC 173-340-540.

(4) Department remedial action. Nothing in this chapter shall preclude the department from taking appropriate remedial action on its own at any time. Except for emergency actions and initial investigations, reasonable effort will be made to notify potentially liable persons prior to the department taking remedial actions for which the recovery of public funds can be sought under RCW 70.105D.050(3).

(5) Independent remedial action. Nothing in this chapter shall preclude potentially liable persons from taking independent remedial action without oversight or approval from the department at sites not in discussions or negotiations for, or under, an order or decree. A potentially liable person may not take independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:

(a) Such action does not foreclose or preempt the remedial actions under discussion or negotiations and such action does not foreclose the selection of cleanup action; or

(b) If the potentially liable person has provided reasonable notice to the department and the department does not object to such action.

The department will use the appropriate requirements contained herein to evaluate the adequacy of any independent remedial action performed. Persons performing independent remedial actions do so at their own risk and may be required to take additional remedial actions if the department deems such actions necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law. [Statutory Authority: Chapter 70.150D RCW 90-08-086, § 173-340-510, filed 4/3/90, effective 5/4/90.]

WAC 173-340-520 Consent decrees. (1) Initiated by potentially liable persons. To request a consent decree a

person shall submit a letter to the department and office of the attorney general via certified mail, return receipt requested, or by personal delivery.

(a) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially liable person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions;

(viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and

(ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in WAC 173-340-600(8).

(b) The letter may include:

(i) A waiver of the procedural requirements of WAC 173-340-500 and acceptance, for purposes of settlement, of potentially liable person status.

(ii) The contents of detailed proposal under (f) of this subsection.

(c) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a state remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, if not already done by the department, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(e) Response. The department shall respond to the request within sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. This determination will be based in part on a preliminary finding by the department that any resulting consent decree would be in accordance with RCW 70.105D.040 (4)(a). The department may:

(i) Request additional information;

(ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or

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(iii) Provide written reasons for denying the request.

(f) Contents of detailed proposal. The proposal shall contain:

(i) A proposed technical scope of work describing the remedial action to be conducted;

(ii) The data, studies, or any other information upon which the settlement proposal is based;

(iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work; and

(iv) A schedule for proposed negotiations and implementation of the proposed remedial actions.

(g) The department and the office of the attorney general shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within sixty days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(h) Time limits for negotiations. The department shall set the time period and starting date for negotiations. The department and the office of the attorney general shall then negotiate with those potentially liable persons who have received a notice under (e) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action. The length of the negotiation period specified by the department shall be no less than that proposed by the potentially liable person provided it does not conflict with the deadlines established under WAC 173-340-140.

(i) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of such stay shall not exceed one hundred twenty days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances.

The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(2) State-initiated procedures. When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(a) The letters may be delivered with potentially liable person status letters issued under WAC 173-340-500. The period for negotiation shall not commence until the thirty-day comment period required by WAC 173-340-500 has expired or the person expressly waives the procedural requirements of WAC 173-340-500.

(b) Contents of letter. The letter shall:

(i) Inform potentially liable person(s) that the department and the attorney general want to begin negotiations which may lead to a consent decree providing for remedial action;

(ii) Propose a draft consent decree and scope of work;

(iii) Define the negotiation process and schedule which shall not exceed ninety days;

(iv) Reference the department's finding under WAC 173-340-500;

(v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and

(vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.

(c) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work prior to initiating the negotiation phase.

(d) Negotiations. The department and the office of the attorney general shall negotiate with potentially liable persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.

(e) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of the stay shall not exceed ninety days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(f) Deadline extensions. The department may at its discretion extend the deadline for negotiations established in (b) of this subsection, provided the extension does not exceed thirty days.

(3) Filing a decree. After satisfying the public comment and hearing requirements, the department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. After making the requisite findings, the department shall forward the proposed consent decree with the findings required by RCW 70.105D.040(4), to the office of the attorney general. If agreed to by the office of the attorney general, the consent decree will be filed by that office with the appropriate superior court or the federal court having jurisdiction over the matter. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-520, filed 4/3/90, effective 5/4/90.]

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WAC 173-340-530 Agreed orders. (1) Agreed orders may be used for all remedial actions except for nonroutine cleanup actions and interim actions that constitute a substantial majority of a cleanup action likely to be selected. Since an agreed order is not a settlement, an agreed order shall not provide for mixed funding, a covenant not to sue, or protection from claims for contribution. An agreed order means that the potentially liable person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the department will not take additional enforcement action against the potentially liable person to require those remedial actions specified in the agreed order so long as the potentially liable person complies with the provisions of the order. The department may require additional remedial actions should it deem such actions necessary.

(2) Request.

(a) To request an agreed order, a person shall submit a letter to the department based on available information, describing:

(i) The proposed remedial action including a schedule for the work;

(ii) The facility, including location and boundaries;

(iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;

(iv) A summary of the relevant historical use or conditions at the facility;

(v) Names of other persons whom the person has reason to believe may be potentially liable persons at the facility; and

(vi) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include at a minimum the elements listed in WAC 173-340-600(8).

(b) The letter may include a waiver of the procedural requirements of WAC 173-340-500, and acceptance, for purposes of the agreed order, of potentially liable person status.

(c) Recognizing that the basic steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a state remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(3) Response. The department shall respond to the request within sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. The department may:

(a) Request additional information;

(b) Proceed with discussions, if the department believes it is in the public interest to do so; or

(c) Provide written reasons for denying the request.

(4) Discussions on the agreed order shall not exceed sixty days unless the department decides continued discussions are in the public interest.

Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW; however, the duration of such stay shall not exceed sixty days from the date discussions begin. Furthermore, the department can withdraw from discussions if it determines that:

(a) Reasonable progress is not being made toward an agreed order acceptable to the department; or

(b) The agreed order is inappropriate based on new information or changed circumstances.

The department may commence with enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.

(5) Focus of discussions. The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in formulating agreed orders.

(6) When issuing an agreed order, the department shall provide appropriate public participation opportunities under WAC 173-340-600. If the agreed order is for a routine cleanup action and any person requests judicial review, then the applicable consent decree procedures under WAC 173-340-520 will be initiated.

(7) Revisions. If the department and the potentially liable person signing the order agree to substantial changes in the order, the department shall provide appropriate additional public notice and opportunity to comment. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-530, filed 4/3/90, effective 5/4/90.]

WAC 173-340-540 Enforcement orders. The department may issue an enforcement order requiring remedial action after issuing a notice of potentially liable person status letter under WAC 173-340-500. In emergencies, the notice of potentially liable person status may occur concurrently with the issuance of the order. Unless an emergency requires otherwise, the issuance of a potentially liable person status letter shall precede or take place concurrently with the issuance of an enforcement order. Furthermore, except in an emergency, the department shall issue its determination under WAC 173-340-500(4) before an enforcement order can become effective. Failure to comply with an enforcement order may result in substantial liability for costs and penalties as specified in RCW 70.105D.050. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-540, filed 4/3/90, effective 5/4/90.]

WAC 173-340-550 Payment of remedial action costs. (1) Policy. RCW 70.105D.050(3) requires that the state seek to recover the amounts spent by the department for investigative and remedial actions and orders. It is the department's intention to recover those costs which are

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reasonably attributable to the site. Timing of cost recovery for individual sites will be considered on a case-by-case basis, however, the department may demand payment of costs as they are incurred.

(2) Costs. Each person who is liable under chapter 70.105D RCW is liable for remedial action costs incurred by the department. Remedial action costs are costs reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments.

(3) Request for payment. When the department requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.

(4) Interest charges. A minimum of twelve percent interest shall accrue on all remedial action costs not paid within ninety days of the billing date, or within another longer time period designated by the department.

(5) Contribution rights. In addition to any other action under chapter 70.105D RCW, cost recovery is available through contribution actions between potentially liable persons, unless such claims are barred by RCW 70.105D.040 (4)(d). The right to contribution furthers the purposes of chapter 70.105D RCW because it provides an incentive for potentially liable persons to work with the department in complying with chapter 70.105D RCW.

(6) Natural resource damages. Nothing in this section shall affect the authority of the department and the office of attorney general to recover natural resource damages. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-550, filed 4/3/90, effective 5/4/90.]

WAC 173-340-560 Mixed funding. (1) Introduction. Under RCW 70.105D.070 (2)(d)(xi), the department may provide public funds from the state toxics control account to a potentially liable person for the purpose of assisting with the payment of remedial action costs regardless of when incurred. This assistance can be provided in the form of a loan or a contribution, in cash or in kind. Any funding decision under this section is solely the responsibility of the director.

(2) Applicability and request.

(a) Mixed funding shall be provided only to potentially liable persons whom the department has found to be eligible and who have entered into a consent decree with the department under the requirements of this chapter.

(b) The consent decree shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the potentially liable person, costs to be borne by the state toxics control account and terms of the agreement. In the case of loans, the consent decree shall also define any terms and conditions under which the potentially liable person receiving mixed funding has agreed to reimburse the state toxics control account.

(c) The potentially liable person shall submit sufficient documentation to support its request for mixed funding.

(3) Eligibility and mixed funding criteria. The director shall make a determination, based upon specific criteria whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

(a) A substantially more expeditious or enhanced cleanup than would otherwise occur; and

(b) The prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either:

(i) Prevent or mitigate unfair economic hardship faced by the potentially liable person if the remedial action plan were to be implemented without public funding; or

(ii) Achieve greater fairness with respect to the payment of remedial action costs between the potentially liable person entering into a consent decree with the department and any nonsettling potentially liable persons.

(4) Funding decision. The department may have informal discussions on mixed funding. If a potentially liable person is found to be eligible for mixed funding, the director shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the director and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

(5) The department may recover the amount of public funding spent on investigations and remedial actions from potentially liable persons who have not entered into a consent decree under this chapter. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial action costs paid by the department. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-560, filed 4/3/90, effective 5/4/90.]

PART VI--PUBLIC PARTICIPATION

WAC 173-340-600 Public notice and participation.

(1) Purpose. Public participation is an integral part of the department's responsibilities under the Model Toxics Control Act. The department's goal is to provide the public with timely information and meaningful opportunities for participation which are commensurate with each site. The department will meet this goal through a public participation program that includes: The early planning and development of a site-specific public participation plan; the provision of public notices; a site register; public meetings or hearings; and the participation of regional citizens' advisory committees.

(2) Criteria. In order to promote effective and meaningful public participation, the department may determine that public participation opportunities in addition to those specifically required by chapter 70.105D RCW, or this chapter, are appropriate and should be provided.

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In making this determination, the department may consider:

(a) Known or potential risks to human health and the environment that could be avoided or reduced by providing information to the public;

(h) Public concerns about the facility;

(c) The need to contact the public in order to gather information about the facility;

(d) The extent to which the public's opportunity to affect subsequent departmental decisions at the facility may be limited or foreclosed in the future;

(e) The need to prevent disclosure of confidential, unverified, or enforcement-sensitive information;

(f) The routine nature of the contemplated remedial action; and

(g) Any other factors as determined by the department.

(3) Public notice. Whenever public notice is required by chapter 70.105D RCW, the department shall at a minimum provide or require notice as described in this section except as specified for the biennial report in WAC 173-340-340.

(a) Request. Notice shall be mailed to persons who have made a timely request. A request for notice is timely if received prior to or during the public comment period for the current phase of remedial action at the facility. However, the receipt of a request for notice shall not require the department to extend the comment period associated with the notice.

(b) Mail. Notice shall be mailed to persons who reside within the potentially affected vicinity of the proposed action. The potentially affected vicinity shall include all property adjoining the site and any other area that the department determines to be directly affected by the proposed action.

(c) Newspaper publication. Notice of the proposed action shall be published in the newspaper of largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad; legal notice; or any other appropriate format, as determined by the department.

(d) Other news media. Notice of the proposed action shall be mailed to any other news media which the department determines to be appropriate. The department may consider how a medium compares with the newspaper of largest circulation in terms of: Audience reached; timeliness; adequacy in conveying the particular information in the notice; cost; or other relevant factors.

(e) Comment periods. All public notices shall indicate the public comment period on the proposed action. Unless stated otherwise, comment periods shall be for thirty days at a minimum.

(f) Combining public comment requirements. Whenever reasonable, the department shall consolidate public notice and opportunities for public comment under this chapter with public notice and comment requirements under other laws and regulations.

(4) Public meetings. During any comment period announced by a public notice issued under this chapter, if ten or more persons request a public meeting on the subject of the

public notice, the department shall hold a public meeting for the purpose of receiving comments.

(5) Additional methods. In addition to "public notice" required by chapter 70.105D RCW, or this chapter, the department may use any of the following methods to provide information to the public:

(a) Press releases;

(b) Fact sheets;

(c) Public meetings;

(d) Publications;

(e) Personal contact by department employees;

(f) Posting signs at the facility;

(g) Notice in the site register;

(h) Any other methods as determined by the department.

(6) Site register. The department shall regularly publish and maintain a site register, giving notice of the following:

(a) Determinations of no further action under WAC 173-340-320;

(b) Results of site hazard rankings;

(c) Availability of annual and biennial reports;

(d) Issuance of enforcement orders, agreed orders, or proposed consent decrees;

(e) Public meetings or hearings;

(f) Scoping notice of department-conducted state remedial investigation/feasibility study;

(g) Availability of state remedial investigation/feasibility study reports and draft and final cleanup plans;

(h) Change in site status or placing sites on or removing sites from the hazardous sites list under WAC 173-340-330;

(i) Availability of engineering design reports under WAC 173-340-400;

(j) Schedules developed under WAC 173-340-140;

(k) Reports of independent cleanup actions received under WAC 173-340-340;

(l) Commencement of negotiations or discussions under WAC 173-340-320 and 173-340-530;

(m) Deadline extensions or missed deadlines under WAC 173-340-140; and

(n) Any other notice that the department deems appropriate for inclusion.

(7) Evaluation. As part of requiring or conducting a remedial action at any facility, the department shall evaluate public participation needs at the facility, including an identification of the potentially affected vicinity for the remedial action.

(8) Public participation plans.

(a) Scope. The public participation plans required by this section are intended to encourage a coordinated and effective public involvement tailored to the public's needs at a particular facility. The scope of a plan shall be commensurate with the nature of the proposed remedial actions; the level of public concern; and the risks posed by the facility.

(b) Early planning encouraged. In order to develop an appropriate plan, the department or potentially liable person (if submitting a plan to the department) should engage in an early planning process to assess the public participation needs at

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the facility. This process may include identifying and conferring with individuals, community groups, local governments, tribes, public agencies, or any other organizations that may have an interest in or knowledge of the facility.

(c) Plan development. The department shall develop the plan, or work with the potentially liable person to develop the plan. If a plan already exists for a facility, the department shall consider whether the existing plan is still appropriate or whether the plan should be amended. For example, a plan originally developed to address a state remedial investigation/feasibility study may need to be amended to address implementation phases.

(d) Plans required. As part of requiring or conducting a remedial action, except emergency actions, at any site that has been assigned a hazard ranking score, the department shall ensure that a public participation plan is developed and implemented. The department may also require the development of a public participation plan for facilities which have not been assigned a hazard ranking score as part of an agreed order or consent decree with a potentially liable person.

(e) Plan as part of order or decree. A potentially liable person will ordinarily be required to submit a proposed public participation plan as part of its request for an agreed order or a consent decree. If a plan already exists for the facility, the potentially liable person may either resubmit the existing plan with any proposed amendments or submit an entirely new proposed plan. The proposed plan may be revised during the course of discussions or negotiations on the agreed order or consent decree.

The final public participation plan may become part of the agreed order or consent decree.

(f) Contents. The public participation plan shall include the following:

(i) Applicable public notice requirements and how these will be met, including: When public notice will occur; the length of the comment periods accompanying each notice; the potentially affected vicinity and any other areas to be provided notice, to the extent known.

(ii) Information repositories. The plan should identify at least one location where the public can review information about the remedial action. Multiple locations may be appropriate.

(iii) Methods of identifying the public's concerns. Such methods may include: Interviews; questionnaires; meetings; contacts with community groups or other organizations which have an interest in the site; establishing citizen advisory groups for sites; or obtaining advice from the appropriate regional citizens' advisory committee.

(iv) Methods of addressing the public's concerns and conveying information to the public. These may include any of the methods listed in subsection (5) of this section.

(v) Coordination of public participation requirements. The plan should identify any public participation requirements of other applicable federal, state or local laws, and address how

such requirements can be coordinated. For example, if Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applies to the proposed action, the plan should explain how CERCLA and this chapter's public comment periods will be coordinated.

(vi) Amendments to the plan. The plan should outline the process for amending the plan. Any amendments must be approved by the department.

(vii) Any other elements that the department determines to be appropriate for inclusion in the final public participation plan.

(g) Implementation. The department shall retain approval authority over the actions taken by a potentially liable person to implement the plan.

(9) Consent decrees. In addition to any other applicable public participation requirements, the following shall be required for consent decrees.

(a) A public participation plan which meets the requirements of subsection (8) of this section shall be developed when required by subsection (8)(d) of this section.

(b) Notice of negotiations. When the department decides to proceed with negotiations it shall place a notice in the site register advising the public that negotiations have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for negotiations.

(c) Notice of proposed decree. The department shall provide or require public notice of proposed consent decree. The notice may be combined with notice of other documents under this chapter, such as a cleanup action plan, or under other laws. The notice shall briefly:

(i) Identify and generally describe the facility;

(ii) Identify the person(s) who are parties to the consent decree;

(iii) Generally describe the remedial action proposed in the proposed consent decree;

(iv) Indicate the date, place, and time of the public hearing on the proposed consent decree; and

(v) Invite the public to comment at the public hearing or in writing. The public comment period shall run for at least thirty days from the date of the issuance of the notice.

(d) Public hearing. The department shall hold a public hearing on the proposed consent decree for the purpose of providing the public with an opportunity to comment.

(e) Revisions. If the state and the potentially liable person agree to substantial changes to the proposed consent decree, the department shall provide additional public notice and opportunity to comment.

(f) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(10) Agreed orders. In addition to any other applicable public participation requirements, the following shall be required for agreed orders under WAC 173-340-530.

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(a) Public participation plan. A plan meeting the requirements of subsection (8) of this section shall be developed when required by subsection (8)(d) of this section.

(b) Notice of discussions. When the department decides to proceed with discussions it shall place a notice in the site register advising the public that discussions have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for discussions.

(c) Notice of agreed orders. Public notice shall be provided by the department for any agreed order. For all agreed orders, notice shall be mailed no later than three days after the issuance of the agreed order. For agreed orders covering a state remedial investigation/feasibility study, the comment period shall be at least thirty days and shall be completed before the agreed order becomes effective. For other agreed orders, the agreed order may be effective before the comment period is over, unless the department determines it is in the public interest to complete the public comment period prior to the effective date of the agreed order. The department may determine that it is in the public interest to provide public notice prior to the effective date of any agreed order or to hold a public meeting or hearing on the agreed order. This notice shall briefly:

- (i) Identify and generally describe the facility;
- (ii) Identify the person(s) who are parties to the order;
- (iii) Generally describe the remedial action proposed in the proposed order; and
- (iv) invite the public to comment on the proposed order.

(d) Revisions. If the department and the potentially liable person agree to substantial changes to the proposed order, the department shall provide additional public notice and opportunity to comment.

(e) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(11) Enforcement orders. In addition to any other applicable public participation requirements, the department shall provide public notice of all enforcement orders. Except in the case of emergencies, notice shall be mailed no later than three days after the date of the issuance of the order. In emergencies, notice shall be mailed no later than ten days after the issuance of the order.

(a) Contents of notice. All notices shall briefly:

- (i) Identify and generally describe the facility;
- (ii) Identify the person(s) who are parties to the order;
- (iii) Generally describe the terms of the proposed order;

and

- (iv) Invite the public to comment on the proposed order.

(b) The department may amend the order on the basis of public comments. The department shall provide additional public notice and opportunity to comment if the order is substantially changed.

(12) State remedial investigation/feasibility study. In addition to any other applicable public participation requirements, the following shall be required during a state remedial investigation/feasibility study.

(a) Scoping. When the department elects to perform a state remedial investigation/feasibility study, public notice and an opportunity to comment on the scope of the state remedial investigation/feasibility study will be provided.

(b) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(c) Report. The department shall provide or require public notice of state remedial investigation/feasibility study reports prepared under WAC 173-340-350. This public notice may be combined with public notice of the draft cleanup action plan. At a minimum, public notice shall briefly:

- (i) Describe the site and state remedial investigations feasibility study results;
- (ii) If available, identify the department's selected cleanup action and provide an explanation for its selection;
- (iii) Invite public comment on the report. The public comment period shall extend for at least thirty days from the date of mailing of the notice.

(13) Selection of cleanup actions. In addition to any other applicable public participation requirements, the department shall:

(a) Provide a notice of availability of draft or final cleanup action plans and a brief description of the proposed or selected alternative in the site register;

(b) Provide public notice of the draft cleanup action plan. A notice of a draft cleanup plan may be combined with notice on the state remedial investigation/feasibility study. Notice of a draft cleanup action plan may be combined with notice on a draft consent decree or on an order. At a minimum, public notice shall briefly:

- (i) Describe the site;
- (ii) Identify the department's proposed cleanup action and provide an explanation for its selection;
- (iii) Invite public comment on the draft cleanup action plan. The public comment period shall run for at least thirty days from the date of issuance of the public notice.

(14) Cleanup action implementation. In addition to any other applicable public participation requirements, the following shall be required during cleanup action implementation.

(a) Public notice and opportunity to comment on any plans prepared under WAC 173-340-400 that represent a substantial change from the cleanup action plan.

(b) When the department conducts a cleanup action, public notice and an opportunity to comment shall be provided on the engineering design report and notice shall be given in the site register.

(15) Routine cleanup and interim actions. In addition to any other applicable public participation requirements, the following will be required for routine cleanup actions and interim actions.

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(a) Public notice shall be provided for any proposed routine cleanup or interim actions under WAC 173-340-130 or 173-340-430. This public notice shall be combined with public notice of an order or settlement whenever practicable.

(b) At a minimum, public notice shall briefly:

(i) Describe the site;

(ii) Identify the proposed action;

(iii) Identify the likely or planned schedule for the action;

(iv) Reference any planning documents prepared for the action;

(v) Identify department staff who may be contacted for further information; and

(vi) Invite public comment on the routine cleanup or interim action.

The public comment period shall extend for at least thirty days from the date of the mailing of notice. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-600, filed 4/3/90, effective 5/4/90.]

WAC 173-340-610 Regional citizens' advisory committees. (1) The department shall establish regional citizens' advisory committees as part of a public participation program. The regional citizens' advisory committees are intended to promote meaningful and effective public involvement in the department's remedial action program under chapter 70.105D RCW. The committees will advise the department as to the concerns of citizens locally and regionally regarding the remedial actions within each committee's region, with emphasis on issues that affect the region as a whole, rather than site-specific concerns.

(2) Location. There shall be a regional citizens' advisory committee representing each geographic region of the state served by a regional office of the department.

(3) Membership. At any time, each committee shall have no fewer than five and no more than twelve members. The director shall, no later than July 1, 1990, appoint five members to each committee to represent citizens' interests in the region. These members shall serve three-year terms that may be renewed at the director's discretion. These members should represent citizen interests in the region.

(a) The director may appoint up to seven additional members to represent communities that may be affected by the remedial actions within each region. These members shall serve two-year terms that may be renewed at the director's discretion.

(b) At no time shall more than twenty-five percent of the membership of any committee consist of persons who are elected or appointed public officials or their representatives.

(c) The department shall advise the public as to whether any vacancies exist on the committees, and shall accept applications from interested citizens.

(d) The following persons shall not be eligible to serve on any committee:

(i) Persons whom the department has found are potentially liable persons under WAC 173-340-500 with

regard to any facility that is currently the subject of department investigative, remedial or enforcement actions, not including compliance monitoring;

(ii) Agents or employees of such potentially liable persons as described in (d)(i) of this subsection; and

(iii) Agents or employees of the department.

(e) A member shall refrain from participating in a committee matter if that member for any reason cannot act fairly and in the public interest with regard to that matter.

(f) The director may dismiss a member for cause in accordance with the terms of the regional citizens' advisory committee charter.

(4) Meetings. The committees shall meet at least twice a year at the regional offices or elsewhere as agreed upon by a committee and the department. Appropriate department staff may attend these meetings. The department shall brief the committees on the program's major planned and ongoing activities for the year.

(a) The department and the committees may agree to additional meetings.

(b) Each committee will designate one of its members to serve as chair. The committee chairs shall meet every year with the program manager or his/her designee.

(c) All committee meetings shall be open to the public. The department shall inform the public of committee meetings.

(5) Resources to be allocated to the committees.

(a) The department shall determine, after consulting with the committees, the amount of staff time and other department resources that shall be available to the committees for each biennium.

(b) The department shall designate staff to work with the committees.

(c) Members shall be reimbursed for travel expenses (as provided for in chapter 43.03 RCW) for any meetings approved by the department.

(6) Responsibilities. The committees are directed to:

(a) Meet at least twice annually;

(b) Inform citizens within each region as to the existence of the committees and their availability as a resource;

(c) Review the department's biennial program priorities, and advise the department of citizen concerns regarding the program priorities;

(d) Advise the department on a timely basis of citizen concerns regarding investigative or remedial activities within each region, and where possible, suggest ways in which the department can address those concerns;

(e) Annually prepare a brief report to the department describing:

(i) Major citizen concerns that have been brought to the committee's attention during the past year;

(ii) Any committee proposals or recommendations to address these concerns;

(iii) The committee's plans for the coming year; and

(iv) Any other information or issues which the committee believes appropriate for inclusion.

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(7) The committees are encouraged to work with the department and the public to develop additional committee goals or responsibilities. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-610, filed 4/3/90, effective 5/4/90.]

PART VII--CLEANUP STANDARDS

WAC 173-340-700 Reserved.

[Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-700, filed 4/3/90; effective 5/4/90.]

PART VIII--GENERAL PROVISIONS

WAC 173-340-800 Property access. (1) Normal entry procedures. Whenever there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents or contractors may, after reasonable notice, enter upon any real property; public or private; to conduct investigations or remedial actions. The notice shall briefly describe the reason for requesting access. For the purpose of this subsection, unless earlier access is granted, reasonable notice shall mean:

(a) Written notice to site owner and operator to the extent known to the department; sent through the United States Postal Service at least three days prior to entry; or

(b) Notice to site owner and operator to the extent known to the department, in person or by telephone at least twenty-four hours prior to entry.

(2) Notification of property owner. The department will ask a resident, occupant, or other persons in custody of the site to identify the name and address of owners of the property. If an owner is identified who has not been previously notified, the department will make a prompt and reasonable effort to notify such owners of remedial actions planned or conducted.

(3) Orders and consent decrees. Whenever investigations or remedial actions are conducted under a consent decree or order, a potentially liable person shall not deny access to the department's authorized employees, agents, or contractors to enter and move freely alert the property to oversee and verify investigations and remedial actions being performed.

(4) Ongoing operations. Persons gaining access under this section shall take all reasonable precautions to avoid disrupting the ongoing operations on a site. Such persons shall comply with all state and federal safety and health requirements which the department determines to be applicable.

(5) Access to documents. The department's authorized employees, agents or contractors may; after reasonable notice, enter property for the purpose of inspecting documents relating to a release or threatened release at the facility. Persons maintaining such documents shall:

(a) Provide access during normal business hours and allow the department to copy these documents; or

(b) At the department's request, provide legible copies of the requested documents to the department.

(6) Emergency entry. Notice by the department's authorized employees, agents, or contractors is not required for entry onto property to investigate, mitigate, or abate an emergency posed by the release or threatened release of a hazardous substance. The department will make efforts which are reasonable under the circumstances to promptly notify those owners and operators to the extent known to the department of the actions taken.

(7) Other authorities. Where consent has not been obtained for entry, the department shall secure access in a manner consistent with state and federal law, including compliance with any warrant requirements. Nothing in this chapter shall affect site access authority granted under other state laws and regulations.

(8) Access by potentially liable persons. The department shall make reasonable efforts to facilitate access to real property and documents for persons who are conducting remedial actions under either an order or decree.

(9) Information sharing. The department will provide the documents and factual information on releases or threatened releases obtained through this section to persons who request such in accordance with chapter 42.17 RCW and chapter 173-03 WAC. The department does not intend application of these authorities to limit its sharing of such factual information.

(10) Split samples. Whenever the department intends to perform sampling at a site, it shall indicate in its notification under subsection (1) of this section whether sampling may occur. The person receiving notice may take split samples, provided this does not interfere with the department's sampling. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-800, filed 4/3/90, effective 5/4/90.]

WAC 173-340-810 Worker safety and health. (1) General provisions: Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this chapter. These requirements are subject to enforcement by the designated federal and state agencies. All governmental agencies and private employers are directly responsible for the safety and health of their own employees and compliance with those requirements. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(2) Safety and health plan. Potentially liable persons responsible for undertaking remedial actions under WAC 173-340-520 through 173-340-540, shall submit a safety and health plan for the department's review and comment. The safety and health plan must be consistent with chapter 49.17 RCW and regulations promulgated pursuant thereto. [Statutory

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Authority: Chapter 70.105D RCW. 90-080-86, § 173-340-810, filed 4/3/90, effective 5/4/90.]

WAC 173-340-820 Sampling and analysis plans.

(1) General. A sampling and analysis plan shall be prepared for all sampling activities which are part of investigation and remedial actions unless otherwise directed by the department and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans prepared under an order or decree shall be submitted to the department for review and approval.

(2) Contents. The sampling and analysis plan shall specify procedures which ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to insure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily available to the department. The sampling and analysis plan shall contain:

(a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;

(b) Organization and responsibilities for the sampling and analysis activities;

(c) Requirements for sampling activities including:

(i) Project schedule;

(ii) Identification and justification of location and frequency of sampling;

(iii) Identification and justification of parameters to be sampled and analyzed;

(iv) Procedures for installation of sampling devices;

(v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;

(vi) Procedures for the management of waste materials generated by sampling activities, including installation of monitoring devices, in a manner that is protective of human health and the environment;

(vii) Description and number of quality assurance and quality control samples, including blanks and spikes;

(viii) Protocols for sample labeling and chain of custody; and

(ix) Provisions for splitting samples, where appropriate.

(d) Procedures for analysis of samples and reporting of results, including:

(i) Detection or quantification limits;

(ii) Analytical techniques and procedures;

(iii) Quality assurance and quality control procedures; and

(iv) Data reporting procedures, and where appropriate, validation procedures.

(3) Available guidance. The department shall make available guidance for preparation of sampling and analysis plans. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-820, filed 4/3/90, effective 5/4/90.]

WAC 173-340-830 Laboratory analysis procedures.

Reserved. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-830, filed 4/3/90, effective 5/4/90.]

WAC 173-340-840 General submittal requirements.

Unless otherwise specified by the department, all reports, plans, specifications, and similar information submitted under this chapter shall meet the following requirements:

(1) Cover letter. Include a letter describing the submittal and specifying the desired department action or response.

(2) Number of copies. Three copies of the plan or report shall be submitted to the department's office responsible for the facility. The department may require additional copies to meet public participation and interagency coordination needs.

(3) Certification. All engineering work submitted under this chapter shall be under the seal of a professional engineer registered with the state of Washington.

(4) Visuals. Maps, figures, photographs, and tables to clarify information or conclusions shall be legible. All maps, plan sheets, drawings, and cross-sections shall meet the following requirements:

(a) To facilitate filing and handling, be on paper no larger than 24 x 36 inches and no smaller than 8 1/2 x 11 inches. Photo-reduced copies of plan sheets may be submitted provided at least one full-sized copy of the photo-reduced sheets are included in the submittal.

(b) Identify and use appropriate and consistent scales to show all required details in sufficient clarity.

(c) Be numbered, titled, have a legend of all symbols used, and specify drafting or origination dates.

(d) Contain a north arrow.

(e) Use United States Geological Survey datum as a basis for all elevations.

(f) For planimetric views, show a survey grid based on monuments established in the field and referenced to state plane coordinates. This requirement does not apply to conceptual diagrams or sketches when the exact location of items shown is not needed to convey the necessary information.

(g) Where grades are to be changed, show original topography in addition to showing the changed site topography. This requirement does not apply to conceptual diagrams or sketches where before and after topography is not needed to convey the necessary information.

(h) For cross-sections, identify the location and be cross-referenced to the appropriate planimetric view. A reduced diagram of a cross-section location map shall be included on the sheets with the cross-sections.

(5) Sampling data. All sampling data shall be submitted consistent with procedures specified by the department.

(6) Appendix. An appendix providing the principal information relied upon in preparation of the submittal. This should include, for example: A complete citation of references; applicable raw data; a description of, or where readily available, reference to testing and sampling procedures used; relevant calculations; and any other information needed

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to facilitate review. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-840, filed 4/3/90, effective 5/4/90.]

WAC 173-340-850 Recordkeeping requirements.

(1) Any remedial actions at a facility must be documented with adequate records. Such records may include: Factual information or data; relevant decision documents; and any other relevant, site specific documents or information.

(2) Unless otherwise required by the department, records shall be retained for at least ten years from the date of completion of compliance monitoring.

(3) Records shall be retained by the person taking remedial action, unless the department requires that person to submit the records to the department.

(4) The department shall maintain its records in accordance with chapter 42.17 RCW. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-850, filed 4/3/90, effective 5/4/90.]

WAC 173-340-860 Endangerment. In the event that the department determines that any activity being performed at a hazardous waste site is creating or has the potential to create a danger to human health or the environment, the department may direct such activities to cease for such period of time as it deems necessary to abate the danger. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-860, filed 4/3/90, effective 5/4/90.]

WAC 173-340-870 Project coordinator. The potentially liable person shall designate a project coordinator for work performed under an order or decree. The project coordinator shall be the designated representative for the purposes of the order or decree. That person shall coordinate with the department and the public and shall facilitate compliance with requirements of the order or decree. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-870, filed 4/3/90, effective 5/4/90]

WAC 173-340-880 Emergency actions. Nothing in this chapter shall limit the authority of the department, its employees, agents, or contractors to take or require appropriate action in the event of an emergency. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-880, filed 4/3/90, effective 5/4/90.]

WAC 173-340-890 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid; the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.. [Statutory Authority: Chapter 70.150D RCW. 90-08-086, § 173-340-890, filed 4/3/90; effective 5/4/90.]