

Remedial Action Grants and Loans Rule Making Work Group Meeting

Summary of Discussion

December 5, 2013, 9:30am-3:00pm
Radisson Hotel – SeaTac

Budget and Application Process

The Work Group believes the budget and application process for remedial action grants is not clear (i.e., a “black box”). They requested that Ecology clarify the following in guidance:

- The decision-making process (i.e., the budget and application process).
- What factors Ecology considers when prioritizing projects for funding.
- How and when local governments should get involved in the process.

The Work Group also suggested that Ecology communicate with current and potential grant recipients more formally (e.g., meetings or listserv messages) and more regularly.

Redevelopment Opportunity Zones (ROZs)

The legislation authorizes local governments to establish “redevelopment opportunity zones” or “ROZ” within their jurisdictions (RCW 70.105D.150). By establishing such zones, local governments can focus and prioritize funds and resources at both the state and local level. Within such zones, the legislation provides additional tools to facilitate the cleanup and redevelopment of contaminated sites.

Are you considering establishing ROZs?

Yes. The Work Group members are considering establishing ROZs, but mostly as a defensive measure to ensure that their cleanup projects qualify or are prioritized for funding.

The Work Group believes ROZs may be a useful tool for some smaller local governments that need to focus and get Ecology’s attention. But for most local governments, the Work Group believes the establishment of a ROZ is merely another condition that has to be met to qualify or prioritize a project for funding. They would not establish a ROZ for their own planning purposes. And the benefits of a ROZ, apart from any funding priority assigned to it, are not sufficient to justify establishing a ROZ.

Should Ecology prioritize funding or resources for sites within ROZs beyond that directed by the legislation?

No. The Work Group believes Ecology should not prioritize funding or resources for sites within ROZs beyond that directed by the legislation. For reasons, see discussion above.

Are ROZs a useful priority-setting mechanism? How can Ecology ensure ROZs remain a useful priority-setting mechanism?

The Work Group fears a “gold rush effect” to establish a ROZ simply to achieve priority in funding. This would reduce the usefulness of a ROZ as a priority-setting mechanism and burden local governments with establishing them. There are some challenges in order achieve equity under the rule. Small communities in Eastern Washington may have small but devastating properties.

Should a ROZ be limited to properties that are contiguous or in close proximity to each other?

The Work Group would like some flexibility in defining a ROZ. While they agree properties should be in close proximity with each other, they do not think the properties should have to be contiguous. Many private property owners may not want to be located within a ROZ. The Work Group would also like the ability to add properties to a ROZ or delete properties from a ROZ over time.

Are you considering establishing a brownfield renewal authority to manage cleanup and redevelopment of brownfield properties within a ROZ?

No. The Work Group members are not currently considering establishing brownfield renewal authorities to manage cleanup and redevelopment of brownfield properties within a ROZ. Other authorities already exist.

In what circumstances should Ecology use the new types of prospective purchaser agreements?

Ecology has not developed any rules or guidelines on the use of the new types of prospective purchaser agreements. Ecology intends to enter into such agreements on a pilot basis once ROZs have been developed. This will help Ecology to develop any necessary rules or guidelines.

The Work Group did not provide any opinions on when the new types of agreements should be used. They asked when Ecology thought agreed orders might be useful. Ecology noted that they would most likely be used to expedite the investigation of a property by a prospective purchaser.

Integrated Planning Grants

These grants provide funding to local governments to develop integrated project plans for the cleanup and reuse of contaminated sites, and the assessments that are necessary to develop such plans. These grants were previously issued as a pilot program. Grant criteria are currently specified in the guidelines, not the rule.

The legislation:

- Specifically authorizes Ecology to provide these types of grants. Ecology plans to include these grants in the rule.
- Clarifies what types of activities are eligible for funding. Ecology plans to specify in the rule the types of activities that are eligible for funding.

- Authorizes Ecology to enter into a grant agreement with a local government before it acquires or secures access to a property, provided the agreement includes a schedule to do so. Ecology plans to use this provision for these grants. This should help facilitate some projects.
- Direct Ecology to prioritize funding of projects located within redevelopment opportunity zones designated by local governments.

Do you think the list of eligible activities in the legislation needs to be clarified in the rule or guidelines?

No. The Work Group believes the list of eligible activities in the legislation does not need to be clarified in the rule or guidelines. Ecology should retain as much funding discretion as possible under the law to meet project-specific needs. Any clarification or elaboration should not limit Ecology’s funding discretion. The Work Group appreciates the clarification in the statute that specifically allows for building and infrastructure assessment. It is important to understand what the potential for adaptive reuse is.

Are there any other issues Ecology should address in the rule or guidelines?

The Work Group believes these grants are useful and often essential to getting cleanups done. Individual members asked Ecology to consider the following:

- Raising the \$200,000 funding limit per site, perhaps by 25%.
- Allow integrated planning for ROZs, which may include more than one site, and raising the funding limit for such projects accordingly.
- Given that many projects are incremental in nature, allowing for additional funding as the project progresses.

Area-wide Groundwater Remedial Action Grants

These grants provide funding to local governments that investigate groundwater contaminated by hazardous substances from multiple sources. The purpose of these investigations is to identify the sources and facilitate the cleanup of the area-wide contamination. However, no investigations have been funded to date, in part because grant recipients were required to be potentially liable persons (PLPs) or seek reimbursement from PLPs.

The legislation:

- Eliminates the requirement that the local government be a PLP or seek reimbursement from PLPs. Ecology may still seek to recover its costs from PLPs.
- Authorizes Ecology to enter into a grant agreement with a local government before it acquires or secures access to a property, provided the agreement includes a schedule to do so. Ecology plans to use this provision for these grants. This should help facilitate some projects.
- Directs Ecology to prioritize funding of projects located within redevelopment opportunity zones designated by local governments.

Ecology is considering making the following additional changes:

- Limiting these grants to investigations. If a local government is a PLP at one of the sites, it would still have access to Oversight and Independent Remedial Action Grants when conducting the cleanup. Private PLPs would be expected to pay for any cleanup, just as at any other site.
- Capping these grants to a certain dollar amount to enable more jurisdictions to take advantage of these grants.
- Altering the matching fund requirements to require some local participation to ensure expenditures are carefully monitored.

Will the changes above provide sufficient incentive for you to conduct area-wide groundwater remedial investigations?

The removal of the requirement that the local government be a PLP or seek reimbursement from PLPs is necessary, but may not be sufficient to incentivize local governments. Requiring a local match would create a disincentive. Other, more practical difficulties remain, including getting rights of access to conduct investigations from private land owners. Many such land owners would prefer not to know about any contamination.

In addition, many uncertainties remain. In particular:

- What types of investigations would be necessary or allowed. Ecology may need to clarify this in the rules or guidelines.
- Whether the investigations would be able to provide useful information that will actually facilitate the cleanup of sites.
- Whether the grants will be sufficiently large to fund the types of investigations that would be useful, such as tracer studies. Capping grants may cause a problem.

Are there any other issues Ecology should address in the rule or guidelines?

The Work Group believes that Ecology needs to provide flexibility in the grant and may need to have background information to review when considering the grant. It is not clear at this point whether or not local governments would take advantage of this type of grant, but there was general agreement that they should be maintained.

Oversight Remedial Action Grants

These grants provide funding to local governments that investigate and clean up contaminated sites under the supervision of Ecology or the U.S. Environmental Protection Agency.

The legislative does not specifically address these types of grants. However, the legislation does establish a preference for projects “that result in significant reductions in the time to complete” (RCW 70.105D.170(2)(a)). To help expedite cleanup, Ecology is considering providing additional grant funds (reducing the required local match) under the following circumstances:

- If the remedial actions are completed by the dates specified in the order or decree.
- If model remedies are used as part of the remedy.

Ecology is also considering amending the rule to provide for up to 3 years of monitoring used to confirm attainment of cleanup standards upon construction completion as an eligible cost. Routine post-closure monitoring required by the Resource, Conservation, and Recovery Act (RCRA) or the Washington State Hazardous Waste Management Act, Chapter 70.105 RCW, would continue to be an ineligible cost.

Will the changes above create sufficient incentives to lead to faster cleanups through the grant process? What types of incentives, if any, should Ecology consider?

Ecology should not provide additional grant funds (reducing the required local match) under the following circumstances:

- **If the remedial actions are completed by the dates specified in the order or decree.**

Local governments are not entirely in control of the schedule (Ecology and third parties, such as federal permitting agencies can delay actions) and there is no reason to incentivize deadlines that they are required to meet anyway.

- **If the remedial investigations and cleanups are completed within the LEAN timeframes.**

Again, local governments are not entirely in control of the schedule. Furthermore, and perhaps more significantly, such a condition would not account for site-specific conditions and could bias the remedy selection process in favor of more permanent and more expensive cleanups that may not otherwise be justifiable.

- **If model remedies are used as part of the remedy.**

Local governments do not need additional incentives to use model remedies. There is already an incentive to use a model remedy: feasibility studies of cleanup alternatives are not required. Ecology needs more incentives to develop model remedies than local governments need incentives to use them. Also, even when Ecology develops model remedies, they will only be available for less complex sites, such as gas stations and dry cleaners. Most local government sites are more complex and so will not be able to use them.

Other suggestions from the group include:

- If Ecology wants to incentivize more permanent cleanups than are required under the rules, then consider providing additional funding for selecting such cleanups.
- If Ecology wants to expedite cleanups, then have project managers find pressure points and address those points.
- If Ecology wants to incentive cleanups where there are multiple PLPs, then consider going solo with a local government. If need funding from other PLPs, then consider cashing out with PLPs.

Should Ecology provide funding for monitoring for more than one year after construction completion?

The Work Group agreed that funding should be provided to confirm that cleanup standards have been achieved after construction completion. Several members of the Work Group do not think there should be any limits on funding monitoring. However, there was also an understanding that such monitoring could be indefinite and that such funding would then not be available to them to leverage other cleanup projects. There was little support to extend funding for post-construction operation and maintenance activities.

Are there any other issues Ecology should address in the rule or guidelines?

Work Group members asked Ecology to consider the following:

- In general, provide more flexibility regarding what types of activities are eligible for funding.
- As part of the cleanup, provide funding for certain types of work that sets the stage for future redevelopment of the site, such as grading.
- As part of the cleanup, provide funding for habitat restoration, especially in critical areas.

Also, the Work Group advised that Ecology needs to be careful about the LEAN process and creating goals; they may not meet local government needs and goals.

Extended Grant Agreements

The legislation specifically authorizes Ecology to enter into “extended grant agreements” (EGAs) with local governments for multi-biennial projects costing more than \$20 million. The initial duration may not exceed ten years, but may be extended upon finding that substantial progress has been made. EGAs may not exceed 50% of the total eligible remedial action costs for the project. Ecology may not allocate funding under an EGA unless the local government demonstrates that funds awarded during the previous biennium have been substantially expended or contracted.

The legislation prioritizes funding for EGAs over all other types of remedial action grants. This priority will provide more certainty to local governments that state funding will be available in future years.

Are you interested in entering into “extended grant agreements” (EGAs)? Will they provide you the certainty that you need?

Yes. The Work Group members are very interested in entering into EGAs. The certainty provided is dependent upon the ability of the grantee to budget long-term and the availability of state funds. For some entities, extended grant agreements may help offset book liability.

Should Ecology limit the number of EGAs or the amount of funding committed to EGAs?

Yes. The Work Group is concerned that Ecology may enter into too many EGAs and commit too much funding in future biennia. They want to be sure that other projects (ongoing or new), that do not qualify for EGAs will still be able to be funded.

The Work Group emphasized that Ecology needs to develop a long-term financing plan before committing to any EGAs. Ecology needs to know, for example:

- The number of projects that may qualify for EGAs.
- The total amount of funding and the funding per biennium for each of those projects.

Options identified for limiting EGAs include:

- Limiting the total amount of remedial action grant funds allocated to EGAs per biennium.
- Creating criteria for prioritizing projects that qualify for EGAs. However, there was no support for scoring systems. And there was no agreement as to what criteria should be used. Some suggested that Ecology should use the criteria for prioritizing prospective purchaser agreements.
- Limiting the number of EGAs per jurisdiction.

To limit the impact of EGAs in a particular biennium, the idea of deferring some payments to future years was discussed. The state would still be obligated to pay the remainder. But this could still create some uncertainty for local governments who depend on the cash flow from the grants.

How should Ecology factor in multiple contaminated sites within an area when determining eligibility for such grants?

The legislation does not seem to allow sites to be combined to meet the eligibility requirements for EGAs (\$20 million over multiple biennia) for EGAs. Furthermore, given that the demand for EGAs is likely to exceed the supply of funding for EGAs, there is not much interest in finding ways to make more sites eligible by combining them. However, local governments remain concerned that EGAs could crowd out other relatively large, multi-biennia projects.

Independent Remedial Action Grants

These grants provide funding to local governments that investigate and clean up contaminated sites independently under the Voluntary Cleanup Program (VCP). Under the current rule, local governments are only reimbursed after the entire site is cleaned up and Ecology has issued a No Further Action (NFA) determination. This is intended to ensure limited grant funds are directed to cleanups that have fully complied with MTCA.

The legislation now allows Ecology to also periodically reimburse local governments during the cleanup process. To implement this change, Ecology is considering providing two options for reimbursement:

- Post-cleanup reimbursement (existing): Continue the current process of reimbursing only after the cleanup is completed and Ecology has issued a NFA determination. Under this option, a local government would not need to enroll in the VCP until after the cleanup is completed, or obtain Ecology's approval of any pre-cleanup work plans or reports under the VCP. This option would work best for simpler, low-cost cleanups.
- Periodic reimbursement (new): Reimburse periodically during the cleanup process. Under this option, a local government would need to enroll in the VCP before applying for a grant or receiving any funding under the grant.

Ecology is considering various periodic reimbursement approaches, including:

- By phase. Under this approach, upon completing each phase of the remedial action (e.g., remedial investigation), the local government would need to submit a report to Ecology for review and approval under the VCP. Upon approval of the work, Ecology would reimburse the local government for that phase of work.
- By quarter. Under this approach, the local government would need to submit a remedial action work plan (e.g., remedial investigation work plan) for Ecology review and approval by Ecology.

Ecology is considering how to help ensure independent cleanups that are periodically reimbursed are completed. Options include:

- Capping funding for each phase.
- Retaining some percentage of funding until NFA determination is issued.
- Providing relatively more funding for cleanup actions than for remedial investigations.

Ecology is also considering the following additional changes to these grants:

- Increasing the current limit on total grant funding (\$200,000) and reducing the current 5 year limit on retroactive funding.
- Allowing funding of property-specific cleanups, instead of just site-wide cleanups. Ecology provides NFA determinations for properties under the VCP.
- To encourage faster cleanups, provide additional grant funds (reduce required local match) if model remedies are used as part of the remedy.
- Clarify that monitoring used to confirm attainment of cleanup standards upon construction completion would be an eligible cost.

Should Ecology maintain the current post-cleanup reimbursement option?

Yes. Ecology should maintain the current post-cleanup reimbursement option. This option may still be useful for simple cleanups.

Which of the periodic reimbursement options should Ecology adopt?

Ecology should provide both of the proposed periodic reimbursement options to provide local governments flexibility.

Should Ecology provide funding incentives to complete independent cleanups that are periodically reimbursed?

The Work Group does not oppose creating funding incentives to complete independent cleanups that are periodically reimbursed. But there was not strong support. They did not specify a preferred option.

Should Ecology increase the current limit on total grant funding (\$200,000)?

Yes. Ecology should increase or even eliminate the current limit on total grant funding.

Should Ecology reduce the current 5 year limit on retroactive funding?

No. Ecology should not reduce the current limit on retroactive funding. The Work Group understood that retroactive funding may not be as necessary given the periodic reimbursement option. However, they thought that Ecology should retain the current limit because the post-cleanup reimbursement option is being maintained and even some simple cleanups may take a longer time to complete.

Should Ecology provide funding for property-specific cleanups?

In general, Ecology should prioritize funding for site-wide cleanups over property-specific cleanups. First, in principle, local governments should clean up the entire site. Adjacent private property owners should not be left holding the bag. Second, the state should use its limited funds to get cleanups done.

However, Ecology should consider providing funding for property-specific cleanups in situations where the site cleanup is completed in phases. But even in those cases, the entire site should be required to be cleaned up as a condition of receiving funding.

Should Ecology provide funding incentives to expedite independent cleanups?

No. As for oversight remedial action grants, the Work Group does not believe that Ecology should provide funding incentives to expedite cleanups, including additional funding for using model remedies.

The Work Group suggested that shorter Ecology review time would help speed the process. The program is committed to providing opinions within 90 days. VCP site managers average about 45-50 days. It was noted that VCP site managers are responsible for dozens of sites.

Safe Drinking Water Grants

These grants help local governments provide safe drinking water to areas where a hazardous substance has contaminated drinking water. These grants have been used, for example, to connect rural homes on private wells impacted by pesticide use to nearby community water systems. The rule requires the owners to “substantially participate” in the costs of providing the alternative water. The rule also limits funding where the contamination is due to bacterial contamination or nitrates.

The legislation does not specifically address these grants, but Ecology is considering addressing the following issues in the proposed rule making:

- For financing construction costs, what does “substantially participate” mean and under what conditions should this be required?
- Should lead and copper be added to the list of contaminants where funding is limited, since these often originate from within water systems, not contaminated sites?

Are these appropriate topics to be addressed in this rule making and are there any other issues Ecology should address in the rule or guidelines?

The Work Group did not provide any input on this topic.

Additional Funding of Economically Disadvantaged Counties and Cities

Under the current rule, for several different types of grants, Ecology may provide additional funding (reduce the local match) if the local government is a county, or is located in a county, that is “economically disadvantaged.”

However, the rule does not address situations where there is an economically distressed city within a county that is not economically disadvantaged. To date, Ecology has addressed these situations on a case-by-case basis according to guidelines that it has developed (such as unemployment rate and per capita income as compared to a poverty rate). Those guidelines reflect the criteria used for identifying economically disadvantaged counties. Ecology is considering establishing criteria in the rule for identifying economically disadvantaged cities.

Do you have any suggestions about what criteria Ecology should use to determine whether a city or town is economically disadvantaged?

It was suggested that we consider ability to pay as a criteria. If there are any other suggestions for criteria that are easily obtained and relatively current, Ecology would like suggestions.

Other Topics Identified by Work Group

Source Control

Ecology already had the authority under MTCA to fund source control work that is considered a “remedial action,” as that term is defined in the statute.

The legislation establishes a competitive storm water grant program to address impacts from existing development. The program is funded by the Environmental Legacy Stewardship Account (ELSA). RCW 70.105D.170(2)(c). Ecology intends to implement that program as follows:

- August 2013 – Provide \$120,000 to each city and county with Municipal Stormwater permits to examine stormwater facility needs and prepare preliminary designs for priority projects. These projects will be eligible for the 2014 competitive stormwater grant program.
- August 2013 through August 2014 – Convene stakeholder workgroup to develop criteria for the competitive stormwater grant program.
- September 2014 – Open the application period for the competitive stormwater grant program, as part of Ecology’s integrated water quality financial assistance program application cycle.

The legislation also provides Ecology the authority to fund under the Local Toxics Control Act (LTCA) “storm water pollution source projects that: (A) work in conjunction with a remedial action; (B) protect completed remedial actions against recontamination; or (C) prevent hazardous cleanup sites.” RCW 70.105D.070(4)(a)(iii).

The Toxics Cleanup Program, which manages the remedial action grant program, and the Water Quality Program, which manages the storm water grant program, intend to work together to ensure that the state’s investment in cleanup projects is protected (i.e., recontamination from storm water is addressed).