



# Chapter 173-322 WAC

Remedial Action Grants and Loans

Pre-Proposal Draft for Public Review – Clean Version

**Department of Ecology**  
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**WAC 173-322-010**      **Purpose and authority**

This chapter recognizes that the state contains hundreds of hazardous waste sites which threaten the state's water resources, including those used for public drinking water; that many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and the environment; and that the costs of eliminating these threats in many cases are beyond the financial means of local governments and ratepayers.

This chapter establishes requirements for a program of grants and loans to local governments for remedial action pursuant to RCW 70.105D.070 (4) and (8). The intent of the remedial action grants and loans program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup on ratepayers and taxpayers. The remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out remedial actions.

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**WAC 173-322-020**      **Definitions**

Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200 and 173-204-505.

**"Abandoned or derelict vessels"** means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel.

**"Agreement signature date"** means, for the purposes of grant and loan agreements, the date the agreement document is signed by the department.

**"Applicant"** means a local government that applies for a grant or loan.

**"Area-wide groundwater contamination"** means groundwater contamination multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

**"Biennium"** means the 24-month fiscal period extending from July 1st of odd-numbered years to June 30th of even-numbered years.

**"Brownfield property"** means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.

**"Budget"** means, for the purpose of grant and loan agreements, a breakdown of the total eligible cost by task.

**"Cleanup action"** means the term as defined in WAC 173-340-200 or WAC 173-204-505.

**"Construction completion"** means physical construction of a cleanup action component is complete.

**"Coordinated water system plan"** means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

**"Decree" or "consent decree"** means a consent decree issued under WAC 173-340-520 or the federal cleanup law.

**"Department"** means the department of ecology.

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**"Director"** means the director of the department of ecology.

**"Economically disadvantaged county"** means a county that meets, as of July 1st of each odd-numbered year, the following criteria:

- The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and
- The county either has an unemployment rate that is twenty percent above the state average for the immediately previous three years or has a median household income that is less than seventy-five percent of the state median household income for the previous three years.

**"Economically disadvantaged city or town"** means a city or town that meets, as of July 1st of each odd-numbered year, the following criteria:

- The per capita income of the city or town is less than the state average for the immediately previous three years; and
- The city or town either has an unemployment rate that is twenty percent above the state average for the immediately previous three years or has a median household income that is less than seventy-five percent of the state median household income for the previous three years.

*[NOTE: We are still considering what criteria should be used, what the break point should be, and what sources should be used. In addition to the above criteria, we are also considering per capita taxable retail sales and assessed valuation.]*

**"Extended grant agreement"** means a grant agreement entered into under RCW 70.105D.070(4)(e)(i).

**"Federal cleanup law"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

**"Grant agreement"** means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

**"Hazardous substances"** means any hazardous substance as defined in WAC 173-340-200.

**"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.

**"Highly impacted community"** means a community that the department has determined is likely to bear a disproportionate burden of public health risks from environmental pollution.

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**"Independent remedial actions"** means remedial actions conducted without department oversight or approval and not under an order or consent decree.

**"Initial investigation"** means a remedial action that consists of an investigation under WAC 173-340-310.

**"In-kind contributions"** means property or services that benefit a project and are contributed to the recipient by a third party without direct monetary compensation. In-kind contributions include interlocal costs, donated or loaned real or personal property, volunteer services, and employee services donated by a third party.

**"Innovative technology"** means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under the conditions that exist at the hazardous waste site. Innovative technology has limited performance and cost data available.

**"Interim action"** means a remedial action conducted under WAC 173-340-430.

**"Loan agreement"** means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest rates and repayment schedule, scope of work, performance schedule, and project budget.

**"Local government"** means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70.105D.160.

**"No further action (NFA) determination"** means a written opinion issued by the department under WAC 173-340-515 (5) that the independent remedial actions performed at a hazardous waste site meet the substantive requirements of chapter 173-340 WAC and that no further remedial action is required at the hazardous waste site. The opinion is advisory only and not binding on the department.

**"Order"** means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

**"Oversight costs"** are remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

**"Oversight remedial actions"** means remedial actions conducted under an order or decree.

**"Partial funding"** means funding less than the maximum percentage of total eligible costs allowed under this chapter.

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**"Potentially liable person"** or **"PLP"** means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

**"Potentially responsible party"** or **"PRP"** means "covered persons" as defined under section 9607 (a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

**"Public water system"** means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with such system.

**"Prospective purchaser"** means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

**"Purveyor"** means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

**"Recipient"** means a local government that has been approved to receive a grant or loan.

**"Recipient's share" or "match"** means the recipient's share of the total eligible costs.

**"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.

**"Remedial investigation/feasibility study" or "RI/FS"** means a remedial action that consists of activities conducted under WAC 173-340-350 or WAC 173-204-550 intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action.

**"Retroactive costs"** means costs incurred before the agreement signature date.

**"Safe drinking water"** means water meeting drinking water quality standards set by chapter 246-290 WAC.

**"Safe drinking water action"** means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

**"Scope of work"** means the tasks and deliverables of the grant or loan agreement. **"Site"** means 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

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container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

**"Total eligible cost"** means the total cost of the agreement that is eligible under the agreement.

**"Treatment"** means a remedial action which permanently destroys, detoxifies, or recycles hazardous substances.

**"Voluntary cleanup program"** means the program established by the department under RCW 70.105D.030(1)(i).

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**WAC 173-322-030      Relation to other legislation and administrative rules**

- (1)**      Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste investigation and cleanup.
  
- (2)**      Nothing in this chapter shall modify the order or decree the department has secured with potentially liable persons or prospective purchasers for remedial action. The execution of remedial actions pursuant to the order or decree shall in no way be contingent upon the availability of grant funding.
  
- (3)**      All grants and loans shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants and loans.

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**WAC 173-322-040      Funding cycle**

- (1) Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsection (3) of this section. To be included in the department’s budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.
- (2) Application submittal.** Applications for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsections (3) and (4) of this section. Completed applications should be submitted by the dates published by the department.
- (3) Project evaluation and ranking.** Project proposals and applications for each type of grant or loan will be reviewed by the department for completeness and evaluated to determine:

  - (a)** Project eligibility; and
  - (b)** Funding priority under WAC 173-322-045.
- (d) Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

  - (a)** Funding priority under WAC 173-322-045;
  - (b)** Cost eligibility;
  - (c)** Allowable funding of eligible costs;
  - (d)** Availability of state funds and other funding sources.

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**WAC 173-322-045      Funding priorities**

- (1) Among types of grants and loans.** The department will fund remedial action grants and loans in the following order of priority:

  - (a)** Oversight remedial action grants and loans under an existing extended grant agreement;
  - (b)** Other remedial action grants and loans for previously funded projects, provided that substantial progress has been made; and
  - (c)** Remedial action grants and loans for new projects.
- (2) For each type of grant or loan.** For each type of remedial action grant or loan, the department will prioritize projects for funding or limit funding for projects based on the factors specified in this chapter. This provision does not apply to oversight remedial action grants and loans under an existing extended grant agreement.
- (3) Oversight remedial action loans.** The department will fund an oversight remedial action loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds exceeds the amount allocated, the department will give oversight remedial action grant and loan the same priority.

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**WAC 173-322-050      Fiscal controls**

- (1) General.** The department will establish reasonable costs for all grants and loans, require local governments to manage projects in a cost-effective manner, and ensure that all potentially liable persons assume responsibility for remedial action.
- (2) Funding discretion.** The department retains the discretion to not provide a grant or loan for a project or to provide less funding for a project than the maximum allowed under this chapter.
- (3) Funding limits.** Funding limits are specified in this chapter, as applicable, for each type of grant or loan.
- (4) Retroactive funding.** Retroactive costs are not eligible for funding, except as provided under this chapter for each type of grant or loan.
- (5) Funding of multi-biennial projects.** For multi-biennial projects, the department may not award more funds each biennium than is required to complete the scope of work for that biennium. The biennial scope of work must be approved by the department and account for any work not completed during the previous biennium.
- (6) Consideration of contribution and insurance claims.** A recipient may use proceeds from a contribution or insurance claim as match, provided that the recipient complies with the following conditions.

  - (a) Notice of action.** Upon application or within thirty days of taking an action to recover the contribution or insurance claim, whichever is later, the recipient must notify the department of the action.
  - (b) Notice of settlement.** Upon application or within thirty days of a settlement or court order involving the contribution or insurance claim, whichever is later, the recipient must:

    - (i)** Notify the department of the settlement or court order;
    - (ii)** Specify the amount of proceeds received under the settlement or court order;  
and
    - (iii)** Provide the department a copy of the settlement or court order.
  - (c) Proceeds exceeding match.** If the proceeds from the contribution or insurance claim exceed the match, then the department may reduce the total eligible cost or require repayment of costs reimbursed by the department by up to the amount the proceeds exceed the match, after subtracting from that amount the legal costs incurred by the recipient pursuing the claim.
- (7) Financial reporting.** Recipients must submit to the department the following:

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- (a) Annually, upon publication, a copy of the recipient's "Comprehensive Annual Financial Report"; and
  - (b) Quarterly, an updated reimbursement schedule for the grant period broken down by month.
- (8) Financial responsibility.** As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, the potentially liable persons (PLPs) bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a PLP. Remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.
- (9) Puget Sound action agenda.** The department may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

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**WAC 173-322-060      Site assessment grants**

- (1) Purpose.** The purpose of site assessment grants is to provide funding to local governments that conduct initial investigations and site hazard assessments on behalf of the department. The department retains the authority to review and verify results and make determinations based on the initial investigations and site hazard assessments conducted by local governments.
- (2) Project eligibility.** To be eligible for a site assessment grant, a project must meet the following requirements:

  - (a)** The applicant must be a local health district or department;
  - (b)** The department has agreed the applicant may conduct initial investigations or site hazard assessments on its behalf; and
  - (c)** The scope of work for initial investigations and site hazard assessments must conform to WAC 173-340-310 and 173-340-320 and applicable department guidelines.
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on:

  - (a)** The need for initial investigations or site hazard assessments within the jurisdiction of the applicant, as determined by the department;
  - (b)** The population within the jurisdiction of the applicant; and
  - (c)** The performance of the applicant under prior site assessment agreements.
- (4) Application process.**

  - (a) Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.
  - (b) Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
  - (c) Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

    - (i)** Project eligibility under subsection (2) of this section; and

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- (ii) Funding priority under subsection (3) of this section.
- (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
  - (i) Funding priority under subsection (3) of this section;
  - (ii) Cost eligibility under subsections (5) and (6) of this section;
  - (iii) Allowable funding under subsection (7) of this section; and
  - (iv) Availability of state funds and other funding sources.
- (5) **Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and approved by the department to be reimbursed.
  - (a) **Eligible costs.** Eligible costs for site assessment grants include, but are not limited to, reasonable costs for the following:
    - (i) Initial investigations under WAC 173-340-310;
    - (ii) Site hazard assessments under WAC 173-340-320; and
    - (iii) Administrative or technical support for initial investigations, site hazard assessments, or health assessments performed by the department.
  - (b) **Ineligible costs.** Ineligible costs for site assessment grants include, but are not limited to, the following:
    - (i) The cost of developing the grant application or negotiating the grant agreement;
    - (ii) The cost of dispute resolution under the grant agreement;
    - (iii) Retroactive costs, except as provided under subsection (6) of this section;
    - (iv) Legal costs including, but not limited to, the cost of seeking legal advice, pursuing contribution or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, defending actions taken against the recipient, penalties incurred by the recipient, and any attorney fees incurred by the recipient.
    - (v) In-kind contributions.

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- (6) Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs were incurred between the start of the biennium and the agreement signature date and are eligible under subsection (5) of this section.
- (7) Funding of total eligible cost.**

  - (a) Department share.** The department may fund up to one hundred percent of the total eligible cost.
  - (b) Recipient share.** The recipient shall fund the percentage of the total eligible cost not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

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**WAC 173-322-070      Oversight remedial action grants**

- (1) Purpose.** The purpose of oversight remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites under an order or decree. The grants are intended to encourage and expedite remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.
- (2) Project eligibility.** For the purposes of this grant, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over multiple biennia. The department may provide more than one grant for a project. To be eligible for a grant, a project must meet the following requirements:

  - (a)** The applicant must be a local government;
  - (b)** The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site;
  - (c)** The applicant must meet one of the following criteria:

    - (i)** The applicant is required by the department to conduct remedial action under an order or decree issued under chapter 70.105D RCW;
    - (ii)** The applicant is required by the U.S. Environmental Protection Agency to conduct remedial action under an order or decree issued under the federal cleanup law and the order or decree has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; or
    - (iii)** The applicant has signed an order or decree issued under chapter 70.105D RCW requiring a potentially liable person (PLP) other than the applicant to conduct remedial action at a landfill site and the applicant has entered into an agreement with the PLP to reimburse the PLP for a portion of the remedial action costs incurred under the order or decree for the sole purpose of providing relief to ratepayers or taxpayers from remedial action costs; and
  - (d)** The project must be included in the department's ten-year financing plan required under RCW 70.105D.030(5).
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322-045 and the following factors:

  - (a)** The threat posed by the hazardous waste site to human health and the environment;
  - (b)** The land reuse potential of the hazardous waste site;
  - (c)** Whether the hazardous waste site is located within a highly impacted community;

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- (d) The readiness of the applicant to start and complete the work to be funded by the grant and whether substantial progress has been made in prior biennia;
  - (e) The ability of the grant to expedite cleanup of the hazardous waste site;
  - (f) The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste site;
  - (g) The distribution of grants throughout the state and to various types and sizes of local governments; and
  - (h) Other factors as determined and published by the department.
- (4) **Application process.**
- (a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department
  - (b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
  - (c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:
    - (i) Project eligibility under subsection (2) of this section; and
    - (ii) Funding priority under subsection (3) of this section.
  - (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
    - (i) Funding priority under subsection (3) of this section;
    - (ii) Cost eligibility under subsections (5) and (6) of this section;
    - (iii) Allowable funding under subsection (7) of this section; and
    - (iv) Availability of state funds and other funding sources.

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- (5) Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and approved by the department to be reimbursed.
- (a) Eligible costs.** Eligible costs for oversight remedial action grants include, but are not limited to, reasonable costs for the following:
- (i)** Emergency or interim actions;
  - (ii)** Remedial investigations;
  - (iii)** Feasibility studies and selection of remedy;
  - (iv)** Engineering design and construction of selected remedy; and
  - (v)** Operation and maintenance or monitoring of constructed remedy for up to one year after construction completion of each cleanup action component.
- (b) Ineligible costs.** Ineligible costs for oversight remedial action grants include, but are not limited to, the following:
- (i)** The cost of developing the grant application or negotiating the grant agreement;
  - (ii)** The cost of dispute resolution under the order or decree or the grant agreement;
  - (iii)** The costs incurred under an order or decree by a potentially liable person or a potentially responsible party other than the recipient, except as provided under subsection (2)(c)(iii) of this section;
  - (iv)** Retroactive costs, except as provided under subsection (6) of this section;
  - (v)** Oversight costs;
  - (vi)** Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
  - (vii)** Mitigation costs not required as part of a remedial action;
  - (viii)** Legal costs including, but not limited to, the cost of seeking client advice, pursuing contribution or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
  - (ix)** In-kind contributions.

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**(6) Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

- (a)** Costs incurred under the order or decree between the effective date of the order or decree and the signature date of the grant agreement;
- (b)** Costs incurred under the order or decree during the period of a prior grant agreement that were not reimbursed because insufficient funds were available under the prior grant agreement;
- (c)** Costs incurred negotiating the order or decree, provided that the costs were incurred within ninety days of the effective date of the order or decree; and
- (d)** Costs incurred before the effective date of the order or decree conducting independent remedial actions, provided that the actions are:
  - (i)** Conducted within five years of the effective date of the order or decree;
  - (ii)** Consistent with the remedial actions required under the order or decree;
  - (iii)** Compliant with the substantive requirements of chapter 173-340 WAC; and
  - (iv)** Incorporated as part of the order or decree.

**(7) Funding of total eligible cost.**

- (a) Department share.** The department may fund up to fifty percent of the total eligible cost. Except for extended grant agreements, the department may fund a higher percentage of the total eligible cost as follows.
  - (i)** The department may fund up to an additional twenty-five percent of the total eligible cost if the applicant is:
    - (A)** An economically disadvantaged county, city or town; or
    - (B)** A special purpose district with a hazardous waste site located within an economically disadvantaged county, city or town.
  - (ii)** The department may fund up to an additional fifteen percent of the total eligible cost if the applicant uses innovative technology.
  - (iii)** The department may fund up to a total of ninety percent of the total eligible cost if the total eligible project cost is less than five million dollars and the director or designee determines the additional funding would:
    - (A)** Prevent or mitigate unfair economic hardship imposed by cleanup liability;



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**WAC 173-322-080**      **Independent remedial action grants**

- (1) Purpose.** The purpose of independent remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites independently under the voluntary cleanup program. The grants are intended to encourage and expedite independent remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.
- (2) Project eligibility.** For the purposes of this grant, a project consists of independent remedial actions at a single hazardous waste site. A project may extend over multiple biennia. The department may provide more than one grant for a project, subject to the funding limitation in subsection (7) of this section. To be eligible for a grant, the project must meet the following requirements:

  - (a)** The applicant must be a local government;
  - (b)** The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site;
  - (c)** The applicant must qualify for one of the following two reimbursement options:

    - (i) Post-cleanup reimbursement.** To qualify, the applicant must have completed independent remedial actions at the hazardous waste site and received a no further action (NFA) determination for the site under the voluntary cleanup program.
    - (ii) Periodic reimbursement.** To qualify, the applicant must:

      - (A)** Enroll the hazardous waste site in the voluntary cleanup program before applying for a grant;
      - (B)** Complete independent remedial actions at the hazardous waste site in accordance with a scope of work and schedule in the grant agreement;
      - (C)** For each phase of the remedial action, submit work plans and reports to the department for review and funding authorization under the voluntary cleanup program; and
      - (D)** Have necessary access to conduct independent remedial actions at the hazardous waste site or obtain such access in accordance with a schedule in the grant agreement.
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322-045 and the following factors:

  - (a)** The threat posed by the hazardous waste site to human health and the environment;

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- (b) The land reuse potential of the hazardous waste site;
  - (c) Whether the hazardous waste site is located within a highly impacted community;
  - (d) The readiness of the applicant to start and complete the work to be funded by the grant and whether substantial progress has been made in prior biennia;
  - (e) The ability of the grant to expedite cleanup of the hazardous waste site;
  - (f) The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste site;
  - (g) The distribution of grants throughout the state and to various types and sizes of local governments; and
  - (h) Other factors as determined and published by the department.
- (4) **Application process.**
- (a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.
  - (b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
  - (c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:
    - (i) Project eligibility under subsection (2) of this section; and
    - (ii) Funding priority under subsection (3) of this section.
  - (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
    - (i) Funding priority under subsection (3) of this section;
    - (ii) Cost eligibility under subsections (5) and (6) of this section;



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penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

**(viii)** In-kind contributions.

**(6) Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

**(a)** For post-cleanup reimbursement only, costs incurred within five years of the date of the completed grant application; and

**(b)** Costs incurred during the period of a prior grant agreement that were not reimbursed because insufficient funds were available under the prior grant agreement.

**(7) Limit on total eligible cost.** The total eligible cost for a project may not exceed six hundred thousand dollars.

**(8) Funding of total eligible cost.**

**(a) Department share.** Except as otherwise provided in this subsection, the department may only fund up to fifty percent of the total eligible cost.

**(i)** The department may fund up to an additional twenty-five percent of the total eligible cost if the applicant is:

**(A)** An economically disadvantaged county, city or town; or

**(B)** A special purpose district with a hazardous waste site located within an economically disadvantaged county, city or town.

**(ii)** The department may fund up to a total of ninety percent of the total eligible cost if the director or designee determines the additional funding would:

**(A)** Prevent or mitigate unfair economic hardship imposed by cleanup liability;

**(B)** Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

**(C)** Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.

**(b) Recipient share.** The recipient shall fund the percentage of the total eligible cost not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

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- (9) **Funding options.** The department may reimburse a recipient using one of the following two options:
- (a) **Post-cleanup reimbursement.** Under this option, the department will reimburse the recipient only after the recipient has completed independent remedial actions at the hazardous waste site and the department has issued a no further action (NFA) determination for the site under the voluntary cleanup program.
  - (b) **Periodic reimbursement.** Under this option, the department will reimburse the recipient after completing each phase of the remedial action. To be reimbursed for a phase of the remedial action, the recipient must submit the following to the department for review and funding authorization under the voluntary cleanup program:
    - (i) A remedial action work plan for the phase. The recipient may not start work until the department has reviewed and authorized funding for the planned work; and
    - (ii) A remedial action report for the phase. The department will not reimburse the recipient for any work until the department determines no further action is necessary to complete the phase.
- (10) **Administration of multiple grants.** The department may provide independent remedial action grants to a local government for more than one project under a single grant agreement.

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**WAC 173-322-090      Area-wide groundwater remedial action grants**

- (1) Purpose.** The purpose of area-wide groundwater remedial action grants is to provide funding to local governments that investigate and clean up known or suspected areas of area-wide groundwater contamination. The investigations are intended to facilitate the cleanup and redevelopment of properties affected by area-wide groundwater contamination.
- (2) Project eligibility.** For the purposes of this grant, a project consists of the investigation and cleanup of area-wide groundwater contamination in a single area. A project may extend over multiple biennia. The department may provide more than one grant for a project, subject to the funding limitation in subsection (7) of this section. To be eligible for a grant, a project must meet the following requirements:

  - (a)** The applicant must be a local government;
  - (b)** The project must involve the investigation or cleanup of known or suspected area-wide groundwater contamination;
  - (c)** The remedial actions must not be required under an order or decree;
  - (d)** The applicant must have the necessary access to conduct the remedial actions or obtain such access in accordance with a schedule in the grant agreement; and
  - (e)** The project must be included in the ten-year financing plan required under RCW 70.105D.030(5).
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322-045 and the following factors:

  - (a)** The threat posed by the hazardous waste sites to human health and the environment;
  - (b)** The land reuse potential of the hazardous waste sites;
  - (c)** Whether the hazardous waste sites are located within a highly impacted community;
  - (d)** The readiness of the applicant to start and complete the work to be funded by the grant and whether substantial progress has been made in prior biennia;
  - (e)** The ability of the grant to expedite cleanup of the hazardous waste sites;
  - (f)** The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste sites;
  - (g)** The distribution of grants throughout the state and to various types and sizes of local governments; and
  - (h)** Other factors as determined and published by the department.

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**(4) Application process.**

- (a) Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department
- (b) Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
- (c) Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

  - (i)** Project eligibility under subsection (2) of this section; and
  - (ii)** Funding priority under subsection (3) of this section.
- (d) Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

  - (i)** Funding priority under subsection (3) of this section;
  - (ii)** Cost eligibility under subsections (5) and (6) of this section;
  - (iii)** Allowable funding under subsections (7) and (8) of this section; and
  - (iv)** Availability of state funds and other funding sources.

**(5) Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and approved by the department to be reimbursed.

- (a) Eligible costs.** Eligible costs for area-wide groundwater remedial action grants include, but are not limited to, the reasonable costs for the following:

  - (i)** Emergency or interim actions;
  - (ii)** Remedial investigations;
  - (iii)** Feasibility studies and selection of remedy;
  - (iv)** Engineering design and construction of selected remedy; and

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- (v) Operation and maintenance or monitoring of constructed remedy for up to one year after construction completion of each cleanup action component.
- (b) **Ineligible costs.** Ineligible costs for area-wide groundwater remedial action grants include, but are not limited to, the following:

  - (i) The cost of developing the grant application or negotiating the grant agreement;
  - (ii) The cost of dispute resolution under the grant agreement;
  - (iii) Retroactive costs, except as provided under subsection (6) of this section;
  - (iv) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
  - (v) Mitigation costs not required as part of the remedial action;
  - (vi) Legal costs including, but not limited to, the costs of seeking client advice, pursuing contribution or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, the cost of defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
  - (vii) In-kind contributions.
- (6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs were incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs were not previously reimbursed because funds were not available.
- (7) **Limit on total eligible cost.** The total eligible cost for a project may not exceed five hundred thousand dollars.
- (8) **Funding of total eligible cost.**

  - (a) **Department share.** The department may fund up to one hundred percent of the total eligible cost.
  - (b) **Recipient share.** The recipient shall fund the percentage of the total eligible cost not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

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**WAC 173-322-100      Safe drinking water action grants**

- (1) Purpose.** The purpose of safe drinking water action grants is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking water to areas contaminated by, or threatened by contamination from, hazardous waste sites.
  
- (2) Project eligibility.** For the purposes of this grant, a project consists of safe drinking water actions at a single hazardous waste site. A project may extend over multiple biennia. The department may provide more than one grant for a project. To be eligible for a grant, a project must meet the following requirements:
  - (a)** The applicant must be a local government;
  - (b)** The applicant must be a purveyor, as defined in WAC 173-322-020, or the applicant must be applying on behalf of a purveyor;
  - (c)** The applicant or purveyor must be in substantial compliance, as determined by the department of health, with applicable rules of the state board of health or the department of health, including chapter 246-290 WAC (Group A public water supplies), chapter 246-291 WAC (Group B public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits);
  - (d)** The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;
  - (e)** The drinking water source must:
    - (i)** Exhibit levels of hazardous substances that exceed the primary maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310;
    - (ii)** Exhibit levels of hazardous substances that exceed the cleanup levels established by the department of ecology under Part VII of chapter 173-340 WAC; or
    - (iii)** Be threatened to exceed the levels of hazardous substances identified in (e)(i) or (ii) of this subsection;
  - (f)** If the safe drinking water action includes water line extensions, then the extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies; and
  - (g)** The safe drinking water action must not be required under an order or decree.

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- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322-045 and the following factors:
- (a)** The threat posed by the hazardous waste site to drinking water;
  - (b)** The number of persons affected by contaminated drinking water;
  - (c)** Whether the drinking water serves a highly impacted community;
  - (d)** Whether the water system is owned by a local government;
  - (e)** The per capita cost of providing safe drinking water;
  - (f)** The readiness of the applicant to start and complete the work to be funded by the grant and whether substantial progress has been made in prior biennia; and
  - (g)** Other factors as determined and published by the department.
- (4) Application process.**
- (a) Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department
  - (b) Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
  - (c) Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:
    - (i)** Project eligibility under subsection (2) of this section; and
    - (ii)** Funding priority under subsection (3) of this section.
  - (d) Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
    - (i)** Funding priority under subsection (3) of this section;
    - (ii)** Cost eligibility under subsections (5) and (6) of this section;

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- (iii) Allowable funding under subsection (7) of this section; and
  - (iv) Availability of state funds and other funding sources.
- (5) **Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and approved by the department to be reimbursed.
  - (a) **Eligible costs.** Eligible costs for safe drinking water action grants include, but are not limited to, reasonable costs for the following, if needed:
    - (i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;
    - (ii) Transmission lines between major system components, including inter-ties with other water systems;
    - (iii) Treatment equipment and facilities;
    - (iv) Distribution lines from major system components to system customers or service connections;
    - (v) Bottled water, as an interim action;
    - (vi) Fire hydrants;
    - (vii) Service meters;
    - (viii) Project inspection, engineering, and administration;
    - (ix) Individual service connections, including any fees and charges;
    - (x) Drinking water well decommissioning under WAC 173-160-381;
    - (xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards.
  - (b) **Ineligible costs.** Ineligible costs for safe drinking water action grants include, but are not limited to, the following:
    - (i) The cost of developing the grant application or negotiating the grant agreement;
    - (ii) The cost of dispute resolution under the grant agreement;
    - (iii) Retroactive costs, except as provided under subsection (6) of this section;
    - (iv) The cost of oversizing or extending a water system for future development;
    - (v) The cost of individual service connections for undeveloped lots;

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- (vi) Operation and maintenance costs;
  - (vii) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
  - (viii) Legal costs including, but not limited to, the costs of seeking client advice, pursuing contribution or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
  - (ix) In-kind contributions.
- (6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs were incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs were not reimbursed because insufficient funds were available under the prior grant agreement.
- (7) **Funding of total eligible cost.**
- (a) **Department share.** The department may fund up to ninety percent of the total eligible cost.
  - (b) **Recipient share.** The recipient shall fund the percentage of the total eligible cost not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

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**WAC 173-322-130      Oversight remedial action loans**

- (1) Purpose.** The purpose of oversight remedial action loans is to supplement local government funding and funding from other sources to meet the match requirements for oversight remedial action grants under WAC 173-322-070. The loans are intended to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.
- (2) Types of loans.** There are two different types of oversight remedial action loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different applicant eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.

  - (a) Standard loan.** A standard loan is a loan that includes the terms and conditions for repayment.
  - (b) Extraordinary financial hardship loan.** An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Any such loan must be approved by the director or designee.
- (3) Project eligibility.** For the purposes of this loan, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over multiple biennia. The department may provide more than one loan for a project. To be eligible for a loan, a project must meet the following requirements:

  - (a)** The applicant must be a local government;
  - (b)** The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);
  - (c)** The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from other sources. The financial review shall be conducted at the direction and cost of the department. Based on that financial review, the applicant must demonstrate the following:

    - (i)** For a standard loan, its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source; or
    - (ii)** For an extraordinary financial hardship loan, its financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base.

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- (d) The hazardous waste site must present an immediate danger to human health and the environment; and
- (e) The inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site.
- (4) **Funding priority.** The department will assign an oversight remedial action loan the same priority as the associated oversight remedial action grant.
- (5) **Application process.**

  - (a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department’s budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department
  - (b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
  - (c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

    - (i) Project eligibility under subsection (3) of this section. If the department determines the applicant meets the eligibility requirements for an extraordinary financial hardship loan, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan; and
    - (ii) Funding priority under subsection (4) of this section.
  - (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

    - (i) Funding priority under subsection (4) of this section;
    - (ii) Cost eligibility under subsections (6) and (7) of this section;
    - (iii) Allowable funding under subsection (8) of this section; and
    - (iv) Availability of state funds and other funding sources.

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- (6) **Cost eligibility.** The eligible costs for oversight remedial action loans shall be the same as the eligible costs for oversight remedial action grants set forth in WAC 173-322-070(5).
- (7) **Retroactive cost eligibility.** The eligibility of retroactive costs for oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants set forth in WAC 173-322-070(6).
- (8) **Funding and repayment.**
- (a) **General.** If the department provides the applicant an oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(7)(a), then the department may also provide the applicant a loan to enable the applicant to meet the match requirement for the grant. The loan shall be used to supplement local government funding and funding from other sources to meet the match requirement.
- (b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant under WAC 173-322-070(7)(b).
- (c) **Local government funding of match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant or loan. The applicant may not use in-kind contributions or proceeds from contribution claims to meet the match requirement.
- (d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department. For extraordinary financial hardship loans, the repayment terms and conditions can be deferred. Deferred terms are dependent on periodic review of the applicant's ability to pay. Deferred terms and conditions may not be indefinite.

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**WAC 173-322-140      Integrated planning grants**

- (1) Purpose.** The purpose of integrated planning grants is to provide funding to local governments to conduct assessments of brownfield properties and develop integrated projects plans for their cleanup and adaptive reuse. The grants are intended to encourage and expedite the cleanup of brownfield properties and to lessen the impact of the cleanup cost on ratepayers and taxpayers.
- (2) Project eligibility.** For the purposes of this grant, a project consists of integrated planning for a single hazardous waste site or for an area affected by multiple hazardous waste sites. A project may extend over multiple biennia. The department may provide more than one grant for a project, subject to the funding limitation in subsection (7) of this section. To be eligible for a grant, the project must meet the following requirements:

  - (a)** The applicant must be a local government;
  - (b)** The hazardous waste site must be located within the jurisdiction of the applicant;
  - (c)** The applicant must have the necessary access to complete the project or obtain such access in accordance with the schedule in the grant agreement; and
  - (d)** The project must not be required under an order or decree.
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322-045 and the following factors:

  - (a)** The threat posed by the hazardous waste site to human health and the environment;
  - (b)** The land reuse potential of the hazardous waste site;
  - (c)** Whether the hazardous waste site is located within a highly impacted community;
  - (d)** The readiness of the applicant to start and complete the work to be funded by the grant and whether substantial progress has been made in prior biennia;
  - (e)** The ability of the grant to expedite cleanup of the hazardous waste site;
  - (f)** The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste site;
  - (g)** The distribution of grants throughout the state and to various types and sizes of local governments; and
  - (h)** Other factors as determined and published by the department.
- (4) Application process.**

  - (a) Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial

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action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be included in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department

- (b) Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
- (c) Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

  - (i)** Project eligibility under subsection (2) of this section; and
  - (ii)** Funding priority under subsection (3) of this section.
- (d) Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

  - (i)** Funding priority under subsection (3) of this section;
  - (ii)** Cost eligibility under subsections (5) and (6) of this section;
  - (iii)** Allowable funding under subsections (7) and (8) of this section; and
  - (iv)** Availability of state funds and other funding sources.
- (5) Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and approved by the department to be reimbursed.

  - (a) Eligible costs.** Eligible costs for integrated planning grants include, but are not limited to, reasonable costs for the following:

    - (i)** Environmental site assessments;
    - (ii)** Remedial investigations;
    - (iii)** Health assessments;
    - (iv)** Feasibility studies;
    - (v)** Site planning;
    - (vi)** Community involvement;

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- (vii) Land use and regulatory analyses;
  - (viii) Building and infrastructure assessments;
  - (ix) Economic and fiscal analyses; and
  - (x) Any environmental analyses under chapter 43.21C RCW.
- (b) **Ineligible costs.** Ineligible costs for integrated planning grants include, but are not limited to, the following:
  - (i) The cost of developing the grant application or negotiating the grant agreement;
  - (ii) The cost of dispute resolution under the grant agreement;
  - (iii) Retroactive costs, except as provided under subsection (6) of this section;
  - (iv) Legal costs including, but not limited to, the cost of seeking client advice, pursuing contribution or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
  - (v) In-kind contributions.
- (6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs were incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs were not reimbursed because insufficient funds were available under the prior grant agreement.
- (7) **Limit on total eligible cost.** The total eligible cost for a project may not exceed two hundred thousand dollars.
- (8) **Funding of total eligible cost.**
  - (a) **Department share.** The department may fund up to one hundred percent of the total eligible cost.
  - (b) **Recipient share.** The recipient shall fund the percentage of the total eligible cost not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.
- (9) **Administration of multiple grants.** The department may provide integrated planning grants to a local government for more than one project under a single grant agreement.