



# Chapter 173-322 WAC

Remedial Action Grants and Loans

Pre-Proposal Draft for Public Review – Tracked Version

**Department of Ecology**  
**2/12/2014**



# Table of Contents

WAC 173-322-010	Purpose and authority.....	1
WAC 173-322-020	Definitions .....	2
WAC 173-322-030	Relation to other legislation and administrative rules.....	8
WAC 173-322-040	Funding cycle.....	9
WAC 173-322-045	Funding priorities .....	11
WAC 173-322-050	Fiscal controls.....	12
WAC 173-322-060	Site assessment grants .....	15
WAC 173-322-070	Oversight remedial action grants .....	19
WAC 173-322-080	Independent remedial action grants.....	27
WAC 173-322-090	Area-wide groundwater investigation grants .....	35
WAC 173-322-100	Safe drinking water action grants.....	42
WAC 173-322-130	Oversight remedial action loans.....	56
WAC 173-322-140	Integrated planning grants.....	60

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**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 ~~(3)(a) and (7)(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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**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 ~~affected by~~ 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 ~~any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-350 through 173-340-390~~ 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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

"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.

"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 is economically distressed, as defined by chapter 43.168 RCW~~ 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.

~~The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "Remedial Action Program Guidelines," Publication No. 99-505.~~

"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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**"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.

~~"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to RCW 70.105D.030 (2)(b) and WAC 173-340-330.~~

**"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.

**"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.

~~"Initial containment of methamphetamine lab sites" means the first location where hazardous substances are confined by a container, vessel, barrier, or structure, whether natural or constructed, with a defined boundary, and that prevents or minimizes its release into the environment.~~

"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 ~~different site conditions. Innovative technology also means the innovative use of existing technologies that have been established for use under certain site conditions, but not~~ the conditions that exist at the hazardous waste site ~~for which a remedial action grant is sought~~. 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, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~not refer specifically to the departments within a city, town, or county~~ 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.

~~"Methamphetamine lab site assessment" means the actions taken by a local health department or district under WAC 246-205-520 through 246-205-560, including posting the property, inspecting the property, determining whether the property is contaminated, posting contaminated property, and notifying occupants, property owners, and other persons with an interest in the contaminated property.~~

~~"Model Toxics Control Act" or "act" means chapter 70.105D RCW, first passed by the voters in the November 1988 general election as Initiative 97 and as since amended by the legislature.~~

~~"National Priorities List" or "NPL" means a list of hazardous waste sites at which the U.S. Environmental Protection Agency intends to proceed with enforcement or cleanup action.~~

"**No further action (NFA) determination**" means a written opinion issued by the department under WAC 173-340-515 (5)~~(b)~~ 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.

~~"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.~~

"**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,

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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.

~~"Recycling" means a remedial action which permanently removes hazardous substances from the site and successfully directs the material into a new product suitable for further industrial or consumer use.~~

"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 design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.~~

"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 ~~under WAC 173-340-360 through 173-340-390.~~

"Retroactive costs" means costs incurred before the agreement signature date ~~of the grant agreement.~~

"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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**"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 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).

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**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 ~~remedies~~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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**WAC 173-322-040**     ~~Administration~~ 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.
- ~~(1) **Notice of availability.** Local governments will be periodically informed of the availability of remedial action grant and loan funding.~~
- ~~(2) **Application package.** An application package will be sent to all parties expressing interest in remedial action grants or loans and to all local governments that have been required by decree or order to perform remedial actions. Application packages will include guidelines and application forms.~~
- ~~(3) **Application guidance.** The department will prepare a guidance manual on a biennial basis to assist grant and loan applicants and to facilitate compliance with this regulation.~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

- ~~(4) **Application period.** The application for a remedial action grant or loan must be submitted to the department within the period specified in this chapter for the particular type of grant or loan.~~
- ~~(5) **Application form.** The application for a remedial action grant or loan must be completed on forms provided by the department.~~
- ~~(6) **Appropriation of funds.** Grants and loans will be awarded within the limits of available funds. The obligation of the department to make grant payments or provide loans is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant or loan crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.~~
- ~~(7) **Allocation of funds.** In conjunction with the biennial program report and program plan required by WAC 173-340-340, the department will prepare an administrative allocation from the legislative appropriation of the local toxics control account for funding remedial action grants and loans. Within that administrative allocation, the department will allocate subamounts for each type of remedial action grant or loan. The allocations shall be based on estimated costs for work on eligible sites which are identified in the program plan for the biennium.~~
- ~~(8) **Funding.** 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) **Department discretion.** The department may fund all or portions of eligible grant or loan applications.~~
- ~~(10) **Indemnification.** To the extent that the Constitution and laws of the state of Washington permit, the grantee or loan recipient shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee or loan recipient arising out of a grant or loan contract.~~
- ~~(11) **Administrative requirements.** All grants and loans administered by the department under this chapter shall comply with the requirements set forth in the following publication: Washington state department of ecology, "Administrative Requirements for Ecology Grants and Loans," Publication No. 91-18.~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

**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) ~~Partial funding~~**Funding discretion.** ~~The department retains the authority to issue grants or loans which reimburse the local government for less than the maximum percentage allowable under WAC 173-322-060 through 173-322-130~~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) ~~Limit on funding for a hazardous waste site~~**Funding limits.** Funding limits are specified in this chapter, as applicable, for each type of grant or loan.
  - ~~(a) — For hazardous waste sites where oversight remedial actions are being conducted, the department and the local government will establish a final cleanup budget and negotiate grant and loan agreements after the remedial investigation and feasibility study have been completed and a final remedial action plan has been developed by the local government. The funding provided under these agreements will be the final department remedial action fund commitment for cleanup at that hazardous waste site. Grant and loan agreements may be amended, but requests to increase the remedial action budget at that site will receive a lower priority than other applications.~~
  - ~~(b) — For hazardous waste sites where independent remedial actions have been conducted, the remedial action costs eligible for grant funding at a hazardous waste site shall not exceed four hundred thousand dollars.~~
- (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.
- ~~(5) — **Consideration of contribution claims.** The local government may not use proceeds from contribution claims to meet the match requirement for the grant. If the local government receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the local government pursuing the contribution claim. If the local government receives proceeds from a contribution claim after the effective date of the grant agreement, then the local government shall reimburse the~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the local government pursuing the contribution claim.

- ~~(6) — **Consideration of insurance claims.** The local government may use proceeds from insurance claims to meet the match requirement for the grant. If those proceeds exceed the match requirement for the grant, then the department may reduce grant funding or require a reimbursement of grant funding by up to the amount that those proceeds exceed the match requirement, after subtracting from that amount the legal costs incurred by the local government pursuing the insurance claims.~~
- ~~(7) — **Repayment of area-wide groundwater remedial action grant funds.** If the department provides the local government with an area-wide groundwater remedial action grant for conducting remedial action on property owned by private parties, then the grant amount shall be partially repaid to the department. The terms and amount of repayment shall be included in the grant agreement between the local government and the department.~~
- ~~(8) — **Financial reporting.**~~
- ~~(a) — **Grant application.** The local government shall specify in the grant application any proceeds it has received from contribution claims. The local government shall also specify in the grant application any current or potential sources of local funding to meet the match requirement for the grant including, but not limited to, other grants or loans and proceeds from insurance claims.~~
- ~~(b) — **Grant agreement.** If the department provides the local government with a remedial action grant or loan, then the local government shall:~~
- ~~(i) — Submit a copy of the local government's "Comprehensive Annual Financial Report" following its publication, for the year in which the grant is issued and for each year the grant is in effect; and~~
- ~~(ii) — Notify the department of any proceeds the local government receives from a contribution or insurance claim within ninety days of receipt of those proceeds.~~

- (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:

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

- (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:

- (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.

~~(9)~~(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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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

(1) **Purpose.** ~~The purpose of the site hazard assessment grant program is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site.~~ 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) **ApplicantProject eligibility.** To be eligible for a site ~~hazard~~-assessment grant, ~~the applicant a~~ project must meet the following requirements:

(a) The applicant must be a local health district or department;

~~(b) The site must be located within the jurisdiction of the applicant;~~

~~(c)~~(b) The department has agreed ~~that~~ the applicant may conduct ~~the~~ initial investigations or site hazard assessments on its behalf; and

~~(d)~~(c) The scope of work for ~~the~~ initial investigations and site hazard assessments must conform to WAC 173-340-310 and 173-340-320 and applicable department guidelines.

~~(3) Application process.~~

~~(a) Submittal.~~ The application for a site hazard assessment grant may be submitted to the department at any time.

~~(b) Content.~~ The grant application must be completed on forms provided by the department and include the following:

~~(i) Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;~~

~~(ii) A description of the environmental benefits of the project;~~

~~(iii) A copy of the scope of work which conforms to the requirements of WAC 173-340-320 and applicable department guidelines;~~

~~(iv) A budget for the scope of work; and~~

~~(v) A description of all current or potential sources of funding, including other grants or loans.~~

~~(4) Application evaluation and prioritization.~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- ~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~
- ~~(b) — When pending grant applications or anticipated demand for site hazard assessment grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:
  - ~~(i) — Potential public health or environmental threat from the sites;~~
  - ~~(ii) — Ownership of the sites. Publicly owned sites will receive priority over privately owned sites; and~~
  - ~~(iii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~~~

**(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

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

(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 must be approved by the department in order to be eligible for reimbursement to be reimbursed. ~~Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority-setting process.~~

(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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

(v) In-kind contributions.

**(6) Retroactive cost eligibility.** ~~Retroactive costs are not eligible for reimbursement unless:~~

~~(a) The department unreasonably delays the processing of the grant application; or~~

~~(b) The department provided only partial funding under a prior grant agreement because funds were not available.~~

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.** ~~The applicant shall be eligible to receive funding for up to one hundred percent of eligible costs.~~

(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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

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

- (1) **Purpose.** The purpose of ~~the oversight remedial action grants program~~ is to provide funding to local governments that ~~conduct remedial actions~~ 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) **~~Applicant~~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. Except as provided under subsection (3) of this section, to ~~To~~ be eligible for ~~an oversight remedial action a~~ grant, ~~the applicant~~ a project must meet the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
  - (b) The applicant must be a potentially liable person, ~~or a~~ potentially responsible party, or prospective purchaser at the hazardous waste site; ~~and~~
  - (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 ~~and/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) **Retroactive applicant eligibility.** To be eligible to receive an oversight remedial action grant for an order issued under the federal cleanup law before the effective date of the 2005 amendments to this chapter, the applicant must meet the following requirements:~~
- ~~(a) The applicant must be a local government, as defined in WAC 173-322-020;~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

- ~~(b) — The applicant was required by the U.S. Environmental Protection Agency to conduct remedial action under an order issued under the federal cleanup law;~~
- ~~(c) — The order has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and~~
- ~~(d) — The applicant must submit to the department a grant application within six months after the effective date of the 2005 amendments to this chapter.~~

~~(4) — **Application process.**~~

- ~~(a) — **Submittal.** Except as provided under subsection (3) of this section, the application for an oversight remedial action grant must be submitted to the department within sixty days of the effective date of the order or decree.~~
- ~~(b) — **Content.** The grant application must be completed on forms provided by the department and include the following:
  - ~~(i) — Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;~~
  - ~~(ii) — A description of the history of the site, the current status of the site, and the remedial actions to be performed at the site under the order or decree;~~
  - ~~(iii) — A description of the environmental benefits of the project;~~
  - ~~(iv) — A copy of the order or decree;~~
  - ~~(v) — A copy of the scope of work which accomplishes the requirements of the order or decree;~~
  - ~~(vi) — A budget for the scope of work;~~
  - ~~(vii) — A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims;~~
  - ~~(viii) — A commitment by the applicant to provide the required matching funds and a description of the sources of those funds; and~~
  - ~~(ix) — If the applicant claims the use of innovative technology under subsection (7)(c)(i) of this section, a justification for the claim.~~~~

~~(5) — **Application evaluation and prioritization.**~~

- ~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~

~~(b) When pending grant applications or anticipated demand for oversight remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(i) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;~~  
~~(ii) Evidence that the grant will expedite cleanup;~~

~~(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~

**(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 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

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

**(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.**

**~~(6)~~(5) Cost eligibility.** Costs must be eligible under this section, documented by the recipient, and ~~be~~ approved by the department ~~in order to be eligible for reimbursement~~ to be reimbursed.

**(a) Eligible costs.** Eligible costs for oversight remedial action grants include, but are not limited to, ~~the~~ reasonable costs for the following:

**~~(i) — Remedial investigations;~~**

**~~(ii) — Feasibility studies;~~**

**~~(iii) — Remedial designs;~~**

**~~(iv) — Pilot studies;~~**

**~~(v) — Interim actions;~~**

**~~(vi) — Cleanup actions;~~**

**~~(vii) — Landfill closures required under chapters 173-304, 173-350 and 173-351 WAC, if also required as a remedial action under the order or decree;~~**

**~~(viii) — Capital costs of long-term monitoring systems; and~~**

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(ix)~~ — ~~Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.~~

(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 ~~(7)~~(6) of this section;

~~(v)~~ Oversight costs;

~~(iii)~~ — ~~Operating and maintenance costs of long-term monitoring systems;~~

~~(iv)~~ — ~~Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;~~

~~(v)~~ (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, the cost of pursuing contribution or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant/recipient, the

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~cost of~~ defending actions taken against the ~~applicant~~recipient, and any attorney fees incurred by the recipient; and

~~(vii)~~(ix) In-kind ~~services~~contributions.

~~(7)~~(6) **Retroactive cost eligibility.** ~~Retroactive costs are not eligible for reimbursement unless:~~

- ~~(a) — The department unreasonably delays the processing of the grant application;~~
- ~~(b) — The department provided only partial funding under a prior grant agreement because funds were not available;~~
- ~~(c) — The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree; or~~
- ~~(d) — The applicant is eligible under subsection (3) of this section.~~

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.

~~(8)~~(7) **Funding ~~and reimbursement~~of total eligible cost.**

- ~~(a) — **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding. If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible costs.~~

~~(c) **Additional funding.** The applicant shall be eligible to receive funding in excess of the limit set forth in (b) of this subsection under the following circumstances:~~

~~(i) **The applicant used innovative technology.** If the applicant utilizes innovative technology, as defined in WAC 173-322-020, as part of the cleanup action and the eligible costs exceed four hundred thousand dollars, then the applicant shall be eligible to receive additional funding up to fifteen percent of eligible costs. The applicant must include justification for the innovative technology claim in the grant application.~~

~~(ii) **The county is economically disadvantaged.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive additional funding up to twenty-five percent of eligible costs.~~

(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;

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

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

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

~~(d)(b) Match requirement~~Recipient share. ~~The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement. 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.~~

~~(e) Reimbursement of grant funds.~~ ~~If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

(8) Administration of multiple grants. Except for extended grant agreements, the department may provide oversight remedial action grants to a local government for more than one project under a single grant agreement.

(9) Extended grant agreements.

(a) Project eligibility. The department may provide an oversight remedial action grant to a local government for a hazardous waste site under an extended grant agreement if, in addition to meeting the eligibility requirements in subsection (2) of this section, the project extends over multiple biennia and the total eligible cost of the project exceeds twenty million dollars.

(b) Agreement duration. The initial duration of an extended grant agreement may not exceed ten years. The department may extend the duration of the agreement upon finding substantial progress has been made on remedial actions at the site.

(c) Department share. Under an extended grant agreement, the department may not fund more than fifty percent of the total eligible cost.

(d) Cash management. Under an extended grant agreement, 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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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

- (1) **Purpose.** The purpose of ~~the independent remedial action grants program~~ is to provide funding to local governments that ~~have successfully cleaned up hazardous waste sites through independent remedial action~~ investigate and clean up hazardous waste sites independently under the voluntary cleanup program. ~~Independent remedial actions are remedial actions that are voluntarily initiated and conducted without department oversight or approval.~~ 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) **Applicant 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 ~~an independent remedial action a~~ grant, the ~~applicant project~~ must meet the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
  - (b) The applicant must be a potentially liable person, ~~or~~ potentially responsible party, or prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site; ~~and~~
  - (c) ~~The applicant must have completed independent remedial actions at the hazardous waste site and received from the department a no further action (NFA) determination.~~ 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

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

(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) Application process.~~

~~(a) Submittal.~~ The application for an independent remedial action grant must be submitted to the department within sixty days of receipt of the no further action (NFA) determination.

~~(b) Content.~~ The grant application must be completed on forms provided by the department and include the following:

~~(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;~~

~~(ii) A description of the independent remedial action for which the department issued a no further action (NFA) determination;~~

~~(iii) A description of the environmental benefits of the project;~~

~~(iv) A copy of the independent remedial action report required under WAC 173-340-515(4);~~

~~(v) A copy of the document containing the no further action (NFA) determination;~~

~~(vi) A description of the costs incurred in performing the independent remedial actions;~~

~~(vii) A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims; and~~

~~(viii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.~~

~~(4) Application evaluation and prioritization.~~

~~(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the budget for the grant.~~

~~(b) When pending grant applications or anticipated demand for independent remedial action grants exceed the amount of funds available, the department may prioritize~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~applications or limit grant awards based on the date the department receives completed applications.~~

**(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 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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**(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 ~~be~~ approved by the department ~~in order to be eligible for reimbursement~~ to be reimbursed.

**(a) **Eligible costs.**** Eligible costs for independent remedial action grants include, but are not limited to, ~~the~~ reasonable costs for the following:

- ~~(i) Remedial investigations;~~
- ~~(ii) Feasibility studies;~~
- ~~(iii) Remedial designs;~~
- ~~(iv) Pilot studies;~~
- ~~(v) Interim actions;~~
- ~~(vi) Cleanup actions;~~
- ~~(vii) Capital costs of long-term monitoring systems;~~
- ~~(viii) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed; and~~
- ~~(ix) Development of the independent remedial action report required under WAC 173-340-515(4).~~
- (i) Emergency or interim actions;
- (ii) Remedial investigations;
- (iii) Feasibility studies and selection of remedy;
- (iv) Engineering design and construction of selected remedy;

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

(v) Operation and maintenance or monitoring of constructed remedy for up to one year after construction completion of each cleanup action component;

(vi) Development of independent remedial action plans or reports submitted to the department for review under the voluntary cleanup program.

**(b) Ineligible costs.** Ineligible costs for independent 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 voluntary cleanup program or the grant agreement;

~~(iii)~~ Retroactive costs, except as provided under subsection (6) of this section;

~~(iv)~~ Cost of technical consultations provided by the department under ~~WAC 173-340-515(5), including any deposit for such consultations~~the voluntary cleanup program;

~~(iii)~~ Operating and maintenance costs of long-term monitoring systems;

~~(iv)~~ Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;

(v) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(vi) Mitigation costs not required as part of a remedial action;

(vii) Legal costs including, but not limited to, the cost of seeking client advice, the cost of pursuing contribution or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant/recipient, the cost of defending actions taken against the applicant/recipient, and any attorney fees incurred by the recipient; and

(viii) In-kind services/contributions.

**(6) Retroactive cost eligibility.** ~~Retroactive costs are eligible for reimbursement if the costs were incurred within five years of the date of the grant application. Retroactive costs incurred more than five years before the date of the grant application are not eligible for reimbursement unless:~~

~~(a) The department unreasonably delayed the processing of the grant application; or~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(b) The department provided only partial funding under a prior grant agreement because funds were not available.~~

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) **Funding and reimbursement.**~~

~~(a) **Adjustment of eligible costs.** If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim. If the eligible costs exceed four hundred thousand dollars after the department has deducted any contribution claim proceeds, then the department shall limit the eligible costs to four hundred thousand dollars.~~

~~(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible costs.~~

~~(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of eligible costs.~~

~~(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~

~~(e) **Reimbursement of grant funds.** If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

(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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- (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;
  - (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.
- (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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**(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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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

- (1) **Purpose.** ~~The purpose of the area-wide groundwater remedial action grant program is to provide funding to local governments that facilitate the cleanup and redevelopment of property within their jurisdictions where the groundwater has been contaminated by hazardous substances from multiple sources. The grants are intended to encourage and expedite the investigation and cleanup of area-wide groundwater contamination.~~ 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) **ApplicantProject 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 ~~an~~ an area-wide groundwater remedial action grant, ~~the applicant~~ a project must meet the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
  - (b) The ~~hazardous waste site~~ project must involve the investigation or cleanup of known or suspected area-wide groundwater contamination, ~~as defined in WAC 173-322-020;~~
  - ~~(c) — The applicant must be a potentially liable person or a potentially responsible party at the hazardous waste site, have an ownership interest in the hazardous waste site, or apply on behalf of property owners affected by the hazardous waste site to facilitate area-wide groundwater action;~~
  - ~~(d) — The area-wide groundwater action must be required under an order or decree or be approved by the department. If the action is required under an order or decree issued under the federal cleanup law, then the order or decree must have been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and~~
  - ~~(e) — The applicant must agree to conduct or manage the area-wide groundwater action specified in the grant agreement.~~
  - (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).

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

**~~(3) Application process.~~**

- ~~(a) Submittal.~~** If the area-wide groundwater remedial actions are required under an order or decree, then the grant application must be submitted to the department within sixty days of the effective date of the order or decree. If the area-wide groundwater remedial actions are not required under an order or decree, then the grant application may be submitted to the department at any time.
- ~~(b) Content.~~** The grant application must be completed on forms provided by the department and include the following:
  - ~~(i)~~** Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;
  - ~~(ii)~~** A description of the history of the site, the sources of the area-wide groundwater contamination, the current status of the site, and the remedial actions to be performed at the site to address the area-wide groundwater contamination;
  - ~~(iii)~~** A description of the environmental benefits of the project;
  - ~~(iv)~~** A copy of the order or decree, if applicable;
  - ~~(v)~~** A copy of the scope of work that specifies the remedial actions to be performed at the site to address the area-wide groundwater contamination;
  - ~~(vi)~~** A budget for the scope of work;
  - ~~(vii)~~** A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims;
  - ~~(viii)~~** A copy of any reimbursement agreement with affected property owners;
  - ~~(ix)~~** A commitment by the applicant to partially reimburse the department from any current or future funds obtained from affected property owners; and
  - ~~(x)~~** A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

**~~(4) Application evaluation and prioritization.~~**

- ~~(a)~~** The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~(b) — When pending grant applications or anticipated demand for area-wide groundwater remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(i) — Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;~~

~~(ii) — Evidence that the grant will expedite cleanup; and~~

~~(iii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~

(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.

(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)

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

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 be approved by the department ~~in order to be eligible for reimbursement~~ 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) Remedial investigations;~~

~~(ii) Feasibility studies;~~

~~(iii) Remedial designs;~~

~~(iv) Pilot studies;~~

~~(v) Interim actions;~~

~~(vi) Cleanup actions;~~

~~(vii) Capital costs of long-term monitoring systems; and~~

~~(viii) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.~~

(i) Emergency or interim actions;

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- (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 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;
- ~~(i)(iii) Retroactive costs, except as provided under subsection (6) of this section;~~
- ~~(ii) Oversight costs;~~
- ~~(iii) Operating and maintenance costs of long-term monitoring systems;~~
- ~~(iv) Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;~~
- (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, the cost of pursuing contribution or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant/recipient, the cost of defending actions taken against the applicant/recipient, and any attorney fees incurred by the recipient; and
- (vii) In-kind services/contributions.

**(6) Retroactive cost eligibility.** ~~Retroactive costs are not eligible for reimbursement unless:~~

- ~~(a) The department unreasonably delays the processing of the grant application;~~
- ~~(b) The department provided only partial funding under a prior grant agreement because funds were not available; or~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(e) — The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree.~~

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) — **Funding and reimbursement.**~~

~~(a) — **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding. If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(b) — **Funding of eligible costs.** The applicant shall be eligible to receive funding for up to one hundred percent of eligible costs.~~

~~(c) — **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~

~~(d) — **Reimbursement of grant funds.** If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(e) — **Repayment of grant funds.** If the property impacted by the area-wide groundwater contamination is owned by private parties, then the grant amount shall be partially repaid to the department. The terms and amount of repayment shall be included in the grant agreement between the applicant and the department. The applicant shall obtain partial reimbursement from potentially liable persons and potentially responsible parties. Reasonable measures shall be taken by the applicant to maximize reimbursement.~~

(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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**(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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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

- (1) **Purpose.** The purpose of ~~the safe drinking water action grants program~~ 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) **ApplicantProject 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 ~~safe drinking water action~~ grant, ~~the applicant~~ a project must meet the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
  - (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, ~~as contained in~~ including chapter 246-290 WAC (~~Public water supplies~~ 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 public water system must be located in an area determined by the department to be a hazardous waste site or threatened by contamination from a hazardous waste site~~ The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;
  - (e) The ~~public water system~~ drinking water source must:
    - (i) e Exhibit levels of ~~contamination which~~ 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) e Exhibit levels of ~~contamination which~~ hazardous substances that exceed the cleanup ~~standards~~ levels established by the department of ecology under ~~WAC 173-340-700 through 173-340-760~~ Part VII of chapter 173-340 WAC; or
    - (iii) be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or trihalomethane, it must be determined to have originated from a hazardous waste site Be threatened to

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

exceed the levels of hazardous substances identified in (e)(i) or (ii) of this subsection;

~~(f) — An order or decree must require safe drinking water action. The department may waive this requirement if it has determined that no viable potentially liable person (PLP) exists or that public health would be threatened from unreasonable delays associated with the search for PLPs or the development of an order or decree. If the safe drinking water action is required under an order or decree issued under the federal cleanup law, then the order or decree must have been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and~~

~~(g)(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.~~

~~(3) — **Application process.**~~

~~(a) — **Submittal.** If the safe drinking water actions are required under an order or decree, then the grant application must be submitted to the department within sixty days of the effective date of the order or decree. If the safe drinking water actions are not required under an order or decree, then the grant application may be submitted to the department at any time.~~

~~(b) — **Content.** The grant application must be completed on forms provided by the department and include the following:~~

~~(i) — Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;~~

~~(ii) — A description of the history of the site, the current status of the site, the threat posed by the site to the public water system, and the remedial actions to be performed at the site to address that threat;~~

~~(iii) — A description of the environmental benefits of the project;~~

~~(iv) — A copy of the order or decree, if applicable;~~

~~(v) — A copy of the scope of work that specifies the remedial actions to be performed at the site to address the threat to the public water system;~~

~~(vi) — A budget for the scope of work;~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(vii) — A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims; and~~

~~(viii) — A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.~~

~~(4) — Application evaluation and prioritization.~~

~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~

~~(b) — When pending grant applications or anticipated demand for safe drinking water action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(i) — Relative risk to human health as jointly determined by the department of ecology, in accordance with WAC 173-340-330, and the department of health, in accordance with WAC 246-290-310. Sites with greater risk will receive higher funding priority;~~

~~(ii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work;~~

~~(iii) — Ownership of the water system to be extended or improved. Local government-owned systems will receive higher funding priority than other systems; and~~

~~(iv) — Number of people served by the water system and per capita cost of remediation.~~

**(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;**

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

(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;

(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 be approved by the department~~in order to be eligible for reimbursement~~ to be reimbursed.

**(a) Eligible costs.** Eligible costs for safe drinking water action grants include, but are not limited to, ~~the~~ reasonable costs for the following, if needed:

**(i)** Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- (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, ~~provided that property owners substantially participate in financing the cost of such connections;~~
- (x) Drinking water well ~~abandonment for wells identified by the department as an environmental safety or health hazard and decommissioned in accordance with~~ decommissioning under WAC 173-160-381;
- ~~(xi) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds;~~
- ~~(xii)~~ (xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards, ~~or by the coordinated water system plan as necessary to meet required standards; and.~~
- ~~(xiii) Other costs identified by the department as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination.~~

(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;
- ~~(i)~~ (iii) Retroactive costs, except as provided under subsection (6) of this section;
- ~~(ii) Oversight costs;~~
- (iv) The cost of oversizing or extending a water system for future development;

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

(v) The cost of individual service connections for undeveloped lots;

~~(iii)~~(vi) Operatingion and maintenance costs;

~~(iv)~~(vii) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

~~(v)~~(viii) Legal costs including, but not limited to, the costs of seeking client advice, the cost of pursuing contribution or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant recipient, the cost of defending actions taken against the applicant recipient, and any attorney fees incurred by the recipient; and

~~(vi)~~(ix) In-kind services contributions.

**(6) Retroactive cost eligibility.** ~~Retroactive costs are not eligible for reimbursement unless:~~

~~(a) — The department unreasonably delays the processing of the grant application;~~

~~(b) — The department provided only partial funding under a prior grant agreement because funds were not available; or~~

~~(c) — The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree.~~

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 ~~and reimbursement~~ of total eligible cost.**

~~(a) — **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding. If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(b) — **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible costs.~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- ~~(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of eligible costs.~~
- ~~(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~
- ~~(e) **Reimbursement of grant funds.** If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~
- (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.

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~WAC 173-322-110 — Methamphetamine lab site assessment and cleanup grants~~

- ~~(1) — **Purpose.** The purpose of the methamphetamine lab site assessment and cleanup grant program is to provide funding to local health districts and departments that assess and cleanup sites of methamphetamine production. The program is not intended to assist local health districts and departments in the initial containment of methamphetamine lab sites.~~
- ~~(2) — **Applicant eligibility.** To be eligible for a methamphetamine lab site assessment and cleanup grant, the applicant must meet the following requirements:~~
- ~~(a) — The applicant must be a local health district or department;~~
  - ~~(b) — The methamphetamine lab site must be located within the jurisdiction of the applicant;  
and~~
  - ~~(c) — The scope of work for the assessment or cleanup of a methamphetamine lab site must conform to chapter 246-205 WAC and applicable board of health and department of health guidelines. The scope of work for the methamphetamine lab site assessment must also conform to WAC 173-340-320 and applicable department of ecology guidelines.~~
- ~~(3) — **Application process.**~~
- ~~(a) — **Submittal.** The application for a methamphetamine lab site assessment and cleanup grant may be submitted to the department at any time.~~
  - ~~(b) — **Content.** The grant application must be completed on forms provided by the department and include the following:~~
    - ~~(i) — Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;~~
    - ~~(ii) — A description of the work completed under the prior grant agreement, if applicable;~~
    - ~~(iii) — A description of the anticipated work to be completed under the grant;~~
    - ~~(iv) — A budget for the anticipated work;~~
    - ~~(v) — A description of the environmental benefits of the project;~~
    - ~~(vi) — A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims; and~~
    - ~~(vii) — A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(4) — Application evaluation and prioritization.~~

- ~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~
- ~~(b) — When pending grant applications or anticipated demand for methamphetamine lab site assessment and cleanup grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:
  - ~~(i) — Potential public health or environmental threat from the methamphetamine lab sites;~~
  - ~~(ii) — Ownership of the methamphetamine lab sites. Publicly owned sites will receive priority over privately owned sites; and~~
  - ~~(iii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~~~

~~(5) — Cost eligibility. Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~

- ~~(a) — Eligible costs. Eligible costs for methamphetamine lab site assessment and cleanup grants include, but are not limited to, the reasonable costs for the following:
  - ~~(i) — Posting the property, as defined in WAC 246-205-010 and required under WAC 246-205-520;~~
  - ~~(ii) — Inspecting the property and determining whether the property is contaminated, as required under WAC 246-205-530;~~
  - ~~(iii) — Posting contaminated property, as defined in WAC 246-205-010 and required under WAC 246-205-560;~~
  - ~~(iv) — Notifying occupants, property owners, and other persons with an interest in the contaminated property, as required under WAC 246-205-560;~~
  - ~~(v) — Cleaning up contaminated publicly owned property, as required under WAC 246-205-570, including performing a precleanup site assessment, developing and implementing the cleanup work plan, performing a post-cleanup site assessment, and developing a cleanup report. Eligible costs include the costs incurred by an authorized contractor and the cost of overseeing the work performed by the contractor;~~~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

- ~~(vi) — Overseeing the cleanup of contaminated privately owned property, as required under WAC 246-205-570 and 246-205-580, including reviewing cleanup work plans and reports and inspecting the property during and subsequent to the cleanup;~~
- ~~(vii) — Disposal of contaminated property, as defined in WAC 246-205-010, if the property is publicly owned;~~
- ~~(viii) — Releasing the property for use, as required under WAC 246-205-580;~~
- ~~(ix) — County fees related to deed notification; and~~
- ~~(x) — Equipment and training, if approved by the department in advance.~~
- ~~(b) — **Ineligible costs.** Ineligible costs for methamphetamine lab site assessment and cleanup grants include, but are not limited to, the following:~~
  - ~~(i) — Retroactive costs, except as provided under subsection (6) of this section;~~
  - ~~(ii) — Initial containment of methamphetamine lab sites, as defined in WAC 173-322-020;~~
  - ~~(iii) — Restricting access to privately owned property, except as required under chapter 246-205 WAC;~~
  - ~~(iv) — Cleaning up privately owned contaminated property;~~
  - ~~(v) — Disposal of contaminated property, as defined in WAC 246-205-010, if the property is privately owned;~~
  - ~~(vi) — Disposal of property that is not contaminated, as defined in WAC 246-205-010;~~
  - ~~(vii) — Natural resource damage assessment costs and natural resource damages;~~
  - ~~(viii) — Legal costs including, but not limited to, the cost of pursuing contribution or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees;~~
  - ~~(ix) — Education and outreach activities; and~~
  - ~~(x) — In kind services.~~
- ~~(6) — **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:~~
  - ~~(a) — The department unreasonably delays the processing of the grant application; or~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~(b) — The department provided only partial funding under a prior grant agreement because funds were not available.~~

~~(7) — **Funding and reimbursement.**~~

~~(a) — **Adjustment of eligible costs.** If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(b) — **Funding of eligible costs.** The applicant shall be eligible to receive funding for up to one hundred percent of eligible methamphetamine lab site assessment costs. Except as provided under (c) of this subsection, the applicant shall also be eligible to receive funding for up to fifty percent of eligible methamphetamine lab site cleanup costs.~~

~~(c) — **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy five percent of eligible methamphetamine lab site cleanup costs.~~

~~(d) — **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~

~~(e) — **Reimbursement of grant funds.** If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~WAC 173-322-120 — Derelict vessel remedial action grants~~

~~(1) — Purpose.~~ The purpose of the derelict vessel remedial action grant program is to provide funding to local governments that clean up and dispose of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment.

~~(2) — Applicant eligibility.~~ To be eligible for a derelict vessel remedial action grant, the applicant must meet the following requirements:

~~(a) —~~ The applicant must be a local government, as defined in WAC 173-322-020;

~~(b) —~~ The vessel must be an abandoned or derelict vessel, as defined in WAC 173-322-020; and

~~(c) —~~ The applicant must be the owner of the abandoned or derelict vessel.

~~(3) — Application process.~~

~~(a) — Submittal.~~ The application for a derelict vessel remedial action grant may be submitted to the department at any time.

~~(b) — Content.~~ The grant application must be completed on forms provided by the department and include the following:

~~(i) —~~ Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;

~~(ii) —~~ A description of the vessel, the types and quantities of hazardous substances located within the vessel, the threat posed by the vessel to human health and the environment, the remedial actions to be performed to address that threat, and the authority under which the remedial action will be performed;

~~(iii) —~~ A copy of the scope of work that specifies the remedial actions to be performed to address the threat;

~~(iv) —~~ A description of the environmental benefits of the project;

~~(v) —~~ A budget for the scope of work;

~~(vi) —~~ A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims; and

~~(vii) —~~ A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

~~(4) — Application evaluation and prioritization.~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

- ~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~
- ~~(b) — When pending grant applications or anticipated demand for derelict vessel remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:
  - ~~(i) — Relative risk to human health and the environment;~~
  - ~~(ii) — Evidence that the grant will expedite cleanup; and~~
  - ~~(iii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~~~
- ~~(5) — **Cost eligibility.** Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~
- ~~(a) — **Eligible costs.** Eligible costs for a derelict vessel remedial action grant include, but are not limited to, the reasonable costs for the following:
  - ~~(i) — Remedial investigation of the vessel, including sampling and analysis; and~~
  - ~~(ii) — Removal and disposal of hazardous substances and materials designated as dangerous wastes under chapter 173-303 WAC.~~~~
- ~~(b) — **Ineligible costs.** Ineligible costs for a derelict vessel remedial action grant include, but are not limited to, the following:
  - ~~(i) — Retroactive costs, except as provided in subsection (6) of this section;~~
  - ~~(ii) — Administrative cost of taking ownership of the vessel;~~
  - ~~(iii) — Removal and disposal of materials that are not hazardous substances or designated as dangerous wastes under chapter 173-303 WAC;~~
  - ~~(iv) — Disposal of the vessel at a landfill, including transport of the vessel;~~
  - ~~(v) — Disposal of the vessel at sea;~~
  - ~~(vi) — Natural resource damage assessment costs and natural resource damages;~~
  - ~~(vii) — Legal costs including, but not limited to, the cost of pursuing contribution or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties~~~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

~~incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and~~

~~(viii) In-kind services.~~

~~(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:~~

~~(a) The department unreasonably delays the processing of the grant application; or~~

~~(b) The department provided only partial funding under a prior grant agreement because funds were not available.~~

~~(7) **Funding and reimbursement.**~~

~~(a) **Adjustment of eligible costs.** If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

~~(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible costs, not to exceed twenty five thousand dollars.~~

~~(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy five percent of eligible costs, not to exceed twenty five thousand dollars.~~

~~(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~

~~(e) **Reimbursement of grant funds.** If the applicant receives proceeds from a contribution claim after the effective date of the grant agreement, then the applicant shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.~~

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

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

- (1) **Purpose.** ~~This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans~~ 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 ~~intent of the loan program is~~ 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.** ~~The loan program includes~~ 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) ~~Applicant~~ 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, ~~the applicant~~ a project must meet the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
- (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; ;

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

- (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) — Application process.~~

- ~~(a) — Submittal. The loan application must be submitted to the department at the same time as the associated oversight remedial action grant application.~~
- ~~(b) — Content. The loan application must be completed on forms provided by the department and include the following:
  - ~~(i) — Sufficient evidence to demonstrate the following:
    - ~~(A) — For a standard loan, the applicant's financial need for the loan, ability to repay the loan, and inability to obtain matching funds from any other source;~~
    - ~~(B) — For an extraordinary financial hardship loan, the applicant's 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;~~~~
  - ~~(ii) — Sufficient evidence that the hazardous waste site presents an immediate danger to human health and the environment;~~
  - ~~(iii) — Sufficient evidence that 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; and~~
  - ~~(iv) — A copy of the applicant's most recent Comprehensive Annual Financial Report.~~~~

~~(5) — Application evaluation and prioritization.~~

- ~~(a) — The department will evaluate the loan application together with the associated oversight remedial action grant application. The grant and loan applications will be evaluated by the department for completeness and adequacy. After the grant and loan applications have been completed, the department and the applicant will negotiate a scope of work and budget for the grant and loan. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant and loan.~~
- ~~(b) — If the department determines that the applicant meets eligibility requirements for an extraordinary financial hardship loan in subsection (3) of this section, then the~~

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

~~department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan.~~

~~(c) — The department will fund the loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds allocated for oversight remedial action grants and loans exceeds the amount of funds available, the department will prioritize the associated grant and loan applications together using the criteria set forth in WAC 173-322-070(5).~~

**(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**

**Chapter 173-322 WAC  
Remedial Action Grants and Loans**

(iv) Availability of state funds and other funding sources.

- (6) **Cost eligibility.** The eligible costs for ~~the loan program~~ oversight remedial action loans shall be the same as the eligible costs for ~~the oversight remedial action grants program~~ set forth in WAC 173-322-070 ~~(6)~~ (5).
- (7) **Retroactive cost eligibility.** The eligibility of retroactive costs for ~~the loan program~~ oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants ~~program~~ set forth in WAC 173-322-070 ~~(7)~~ (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 ~~(8)~~ (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 ~~services~~ 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.

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

**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

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

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;

**Chapter 173-322 WAC**  
**Remedial Action Grants and Loans**

(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.