

Remedial Action Grants and Loans Program Guidelines 2007 – 2009



**Solid Waste and Financial Assistance Program
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Abstract: These guidelines detail the funding levels, eligibility requirements, and application process for the Department of Ecology's Remedial Action Grants and Loan Program. This program helps local governments with the costs of cleaning up hazardous waste sites.

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Introduction

Purpose

These guidelines will help you understand the administrative policies and procedures of the 2007-2009 Remedial Action Grant/Loan Program. You can read the grant and loan program's governing rule, Chapter 173-322 WAC, Remedial Action Grants, in Appendix 4. You can also visit our Web site at <http://www.ecy.wa.gov/programs/swfa/grants/>.

When local governments have to investigate or clean up hazardous sites, the state of Washington can help. Through the Department of Ecology (Ecology), the state offers remedial action grants and loans to encourage and expedite cleanup activity. "Local government" means any political subdivision, regional-government unit, district, or municipal or public corporation, including cities, towns, and counties.

The grants and loans lessen the impact of the cost to rate payers and taxpayers and remove harmful substances from the environment.

Categories of Grants

- **Oversight Remedial Action Grants** - These grants help local governments study and clean up hazardous waste sites. *See page 9 for a detailed explanation of oversight remedial action grants.*
- **Site Hazard Assessment (SHA) Grants** - These grants help local health departments or districts in assessing the degree of contamination at suspected hazardous waste sites within their jurisdictions. *See page 15 for a detailed explanation of SHA grants.*
- **Integrated Planning Grants** – These grants provide opportunities for local governments to develop integrated project plans for the cleanup and reuse of a contaminated site. These are opportunities that would not occur if funding was not available. *See page 19 for a detailed explanation of the Integrated Planning Grants.*
- **Safe Drinking Water Action Grants** - These grants help local governments to provide safe drinking water to areas where a hazardous substance has contaminated drinking water. For this type of grant, a local government can apply on behalf of a purveyor. *See page 22 for a detailed explanation of safe drinking water grants.*
- **Area-Wide Ground Water Remedial Action Grants** – These grants enable local governments to assist with the cleanup and redevelopment of property within their jurisdictions where ground water has been contaminated by hazardous substances from multiple sources. *See page 26 for a detailed explanation of area-wide ground water contamination grants.*

- **Independent Remedial Action Grants** – These grants help to offset some of the expense involved in an independent cleanup when a local government enters into the agency’s Voluntary Cleanup Program (VCP). *See page 29 for a detailed explanation of independent remedial action grants. Please note there are some new submittal requirements beginning with the 2007-2009 biennium.*
- **Methamphetamine Lab Assessment and Cleanup Action Grants** – These grants aid local governments in the initial investigation and assessment of suspected methamphetamine (meth) labs and the oversight of meth lab cleanup activities within their jurisdiction. *See page 32 for a detailed explanation of meth labs assessment & cleanup grants.*
- **Derelict Vessel Remedial Action Grants** - These grants assist local governments with the costs of hazardous substance removal and disposal from derelict and abandoned vessels. *See page 36 for a detailed explanation of derelict ship grants.*

Loans

The loan program provides loans to local governments to supplement funding to meet the match requirements for oversight remedial action grants. *See page 39 for more information about the loan program.*

Program History

In 1988, Washington voters passed Initiative 97, known as the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. The Model Toxics Control Act authorized a remedial action grant/loan program and designated it as the top priority among Ecology’s waste grant programs. Earlier, Ecology has also issued remedial action grants under the authority of the 1987 Hazardous Waste Cleanup Act, Chapter 70.105B RCW, which the 1988 law superseded.

Funds for grants and loans come from a tax on the first possession in Washington of certain hazardous substances. The act directs 53 percent of the revenue from the tax be deposited in the Local Toxics Control Account for these grants. The act also directs Ecology to “adopt rules for grant issuance and performance.”

In May 1990, the state adopted Chapter 173-322 WAC, Remedial Action Grants. This rule created the program described in these guidelines. Ecology amended the rule in 1993, to provide safe drinking water action grants. Another rule amendment was adopted in April 2005 to carry out new grant and loan programs and to improve the operation of existing grant programs. The purpose of the latest rule amendment (2007) is to improve the clarity and usability of the loan program. *You will find more information about the loan program on page 39.*

Recent Changes in Conditions for Remedial Action Grants

The 2007 Legislature passed House Bill 1761. This bill has added new strategies to clean up sites quickly and encourage revitalizing properties where contamination has hindered reuse and where reuse would not otherwise occur. Also, these added strategies encourage partnering with local communities and liable parties for cleanup and property reuse. Where used, these strategies will help ensure a healthful environment and vibrant communities for future generations.

Specifically, the Director of the Department of Ecology or his/her designee, may alter grant-matching requirements to create incentives for local governments to expedite cleanups under the following conditions:

- Funding would prevent or reduce unfair economic hardships imposed by the cleanup liability.
- Funding would create opportunities for new substantial economic development, public recreation, or habitat restoration that would not otherwise occur.
- Funding would create an opportunity that otherwise would not occur for acquiring and redeveloping vacant, orphaned, or abandoned property under RCW 70.105.D.040(5).

Additional strategies that may be used are:

- The use of outside contracts to conduct necessary studies.
- The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

Remedial action cost-cap insurance

Environmental insurance can be an important tool to limit liability and risk associated with the discovery and cleanup of contamination. Insurance policies may be an eligible expense if necessary to help acquire property for planned cleanup and reuse. Policies such as Cleanup Cost Cap and Pollution Legal Liability, or a combined policy of the above, may be eligible.

RCW 70.105D.040(5)

In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

- (i) The settlement will yield substantial new resources to facilitate cleanup;
- (ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and
- (iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

For the purposes of carrying out provisions of House Bill 1761, the following definitions apply:

“New substantial economic development” means reuse of cleaned up property results in a 10 percent net increase in local government revenue or job creation. Cleanup actions could include habitat restoration, demolition, debris removal, excavating, and grading for public reuse. On a case-by-case basis, recipients may negotiate cost sharing for installing utility infrastructure if it will result in net construction savings at build out. Cleanup activities must be linked to the specific site or adjacent areas the site negatively affected.

“Habitat Restoration” means restoring an area to conditions that support a functioning ecosystem. After contamination has been removed, local governments may restore the area in a manner consistent with healthy habitat functions and values. This includes addressing sources of contamination that could recontaminate the cleaned-up area or adjacent ecosystems. This also includes habitat restoration that is separate from Natural Resource Damage actions and liability. Grants for habitat restoration must be consistent with regional habitat and ecosystem strategies such as Marine Resources Plans and Programs, Watershed Plans, Salmon Recovery Plans, or Source Control Plans. If necessary, the applicant and Ecology will consult with the appropriate natural resource agencies.

“Public Recreational” means cleanup of a contaminated site and subsequent reuse will provide an opportunity for public recreation activities. Cleanup actions could include land restoration, demolition, debris removal, excavating, and grading for public reuse. Cleanup activities must be linked to the specific site or adjacent areas the site negatively affected. Grants for cleanup that facilitate public recreational opportunities must be consistent with community-wide strategies. Funding of public recreational development may be available through grant opportunities at the Recreation and Conservation Office (formerly the Interagency Committee for Outdoor Recreation).

Governor’s Executive Order 05-05

This order requires the review of certain capital construction projects and land acquisitions for the purpose of a capital construction project. The projects involved are those not undergoing Section 106 review (under the National Historic Preservation Act of 1966), with the Department of Archaeology and Historic Preservation and affected Tribes. The review’s purpose is to determine potential impacts to cultural resources. The order can be viewed at:

www.governor.wa.gov/execorders/eo_05-05.pdf.

“Opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property” (as defined under RCW 70.105D.040(5)) means acquiring the property will expedite the cleanup. Property is vacant or unoccupied if the owner or operators have ceased operation or given up interest or ownership in the property. Acquiring vacant, orphaned, or abandoned property may become necessary to move forward with cleanup and redevelopment activities.

Integrated Site Activities

New strategies provide opportunities to integrate cleanups with restoration, recreation, and new substantial economic development. Integrating cleanup planning with future or potential land use planning can provide a more efficient use of resources. Ecology encourages coordination within the community during the design and planning for a site before, during, and after cleanup activities. Ecology also encourages the use of strategic investments in the development of a cleanup and land restoration project.

You will find more information about these new strategies in the “Oversight Remedial Action Grants,” “Grants to Economically Disadvantaged Counties,” and the “Integrated Planning Grants” sections. You will also notice a few additions to the Remedial Action Grant application form. You will be able to provide a summary of your plan and indicate if you are using any of the new strategies.

Environmental Equity

Environmental equity is important to Ecology and the State of Washington. Ecology defines environmental equity as:

"The proportionate and equitable distribution of environmental benefits and risks among diverse economic and cultural communities. It ensures that the policies, activities and the responses of government do not differently impact diverse social and economic groups. Environmental equity promotes a safe and healthy environment for all people."

Applicants are encouraged to include eligible projects that address environmental equity issues or that will have a positive environmental impact on diverse communities. Local community groups cannot receive remedial action grants directly for environmental equity projects. Possible funding may be available through the Public Participation Grant Program. Visit our Web site at <http://www.ecy.wa.gov/programs/swfa/grants/ppg.html>. Only local governments are eligible for remedial action grants.

For additional information on low-income areas and communities visit our Web site at http://ecy-hqapp10/Sustainability/EJ/EJ_Maps.htm and view over 50 new demographic maps for the state, tribes, counties, and cities.

Program Funding

Ecology has allocated approximately \$84 million for remedial action grants in the 2007-2009 biennium. This includes funding for:

- Oversight remedial action grants.
- Site hazard assessments.
- Methamphetamine lab investigation and cleanup.
- Independent Remedial Actions.
- Derelict ship removal in the Puget Sound.
- One-time retroactive funding for cleanups that were conducted under federal orders or decrees.

Ecology has asked for more funding under the supplement budget request to the Legislature (fall 2007) to carry out House Bill 1761 and to address additional oversight remedial actions.

Investments in Environmental Benefits

In accordance with the investment model developed by the Joint Legislative Audit and Review Committee, Ecology modified the grant/loan application. The application requires a recipient's project to meet the following three eligibility criteria:

1. It will restore or protect designated beneficial uses.
2. It will eliminate a public health emergency.
3. It will achieve regulatory compliance to address a cleanup order or decree from the state or federal government.

Ecology will use baseline measurements to compile output and outcome measures that directly relate to the program's investments. *See Appendix 5 for an illustration of grant/loan categories and corresponding environmental benefits.*

Site Cleanup Process Overview

A key goal of the Model Toxics Control Act is to encourage interested parties to cooperate in identifying and cleaning up contaminated sites.

Phases of the Cleanup Process

Site Discovery

Those who discover contaminated sites must report them to Ecology's Toxics Cleanup Program within 90 days. At this point, potentially liable persons may choose to conduct an independent cleanup without Ecology's help. They must, however, report cleanup results to Ecology. Potentially liable persons do independent cleanups at their own risk. Ecology may require additional cleanup actions at any time to bring these sites into compliance with state standards.

Initial Investigation

Ecology or a jurisdictional health department conducts an initial investigation of the site within 90 days of receiving a site discovery report. Based on information obtained about this site, a decision must be made within 30 days to determine if the site requires additional investigation, emergency cleanup, or no further action. If further action is needed, a local health department might conduct a more in-depth site hazard assessment (SHA) at the site.

Site Hazard Assessment

If a site needs additional investigation after the initial investigation, Ecology or a jurisdictional health department conducts a SHA. The SHA will confirm the presence of hazardous substances and determine the relative risk the site poses to human health and the environment. Only local health departments or districts may do this work for Ecology and receive SHA grants. The purpose of the SHA is to rank the site's risk relative to other sites Ecology has investigated. *See page 15 for details on SHA grants.*

Hazard Ranking

The Model Toxics Control Act requires that Ecology rank the sites according to the relative health and environmental risk each site poses. Ecology worked with the Science Advisory Board to create the Washington Ranking Method, which categorizes sites using data from the site hazard assessments. Sites are ranked on a scale of one to five. A score of one represents the highest level of risk relative to the other sites on the list; a score of five represents the lowest relative risk. Ranked sites are placed on the state Hazardous Sites List.

Remedial Investigation/Feasibility Study

A remedial investigation and feasibility study is needed to define the extent and magnitude of contamination at a site. The study also evaluates all potential impacts on human health and the environment and considers alternative cleanup technologies. The reports completed in this phase are subject to a public review and comment period.

Selection of Cleanup Action

Using information gathered during the remedial investigation and feasibility study, the responsible party selects a preferred cleanup plan from the alternatives developed. The plan identifies the selected cleanup methods and specifies cleanup standards and other requirements the site must meet. Before the parties involved can carry out the selected remedy, it is subject to a public review and comment period.

Site Cleanup

Putting the cleanup action plan into play begins with design of the action. Following that come construction, operation, and monitoring. After cleanup is complete and Ecology determines cleanup standards have been met, it may take a site off the Hazardous Sites List. Some sites require long-term monitoring to determine the effectiveness of the cleanup. It may take as little as six months or any number of years to establish that a site is “clean.”

Cleanups Conducted Under Federal Law

For more information on cleanup requirements conducted under the U.S. Environmental Protection Agency/Comprehensive Environmental Response, Compensation, and Liability Act, please refer to 40 C.F.R. Part 300.

Oversight Remedial Action Grants

Who Can Receive an Oversight Remedial Action Grant?

To receive an oversight remedial action grant, the applicant must be a local government that is a potentially liable person (PLP), a potentially responsible party (PRP) at a hazardous waste site, or the owner of a site but not a PLP or PRP. **One of the following standards must also be met:**

- 1) Ecology requires the applicant to conduct remedial action under an order or decree issued under chapter 70.105D RCW.
- 2) The U.S. Environmental Protection Agency (EPA) requires the applicant to conduct remedial action under an order or decree issued under the federal cleanup law. In such a case, Ecology must also sign the order or decree or acknowledge in writing that it is a sufficient basis for remedial action grant funding.
- 3) 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. In this case, the applicant must also have 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. The reimbursement is for the sole purpose of providing relief to ratepayers and/or taxpayers from remedial action costs.

"Local government" means any political subdivision, regional governmental unit, district, or municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county. WAC 173-340-020.

What Activities Do Oversight Remedial Action Grants Cover?

Oversight remedial action grants provide funds to help local government conduct remedial investigations and cleanup actions. The remedial action grants now also include funds for integrated project enhancements linked directly to the cleanup.

Eligible Oversight Remedial Action Grant Costs

Eligible costs for the oversight remedial action grants are documented costs that include, but are not limited to, reasonable costs, including sales tax. A recipient incurs eligible costs in performing the following activities:

- Remedial investigations.
- Feasibility studies.
- Remedial designs.

- Pilot studies.
- Interim actions.
- Cleanup actions.
- Cleanup action plans.
- 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.
- Capital costs of long-term monitoring systems.
- Operating costs and maintenance costs incurred during the first year of cleanup after the facilities and equipment have been installed or constructed.
- Certain retroactive costs (costs incurred prior to the execution date of the grant agreement) as allowed under WAC 173-322-070 (7).

Under House Bill 1761, Ecology is also allowing the following additional costs:

- The use of outside contracts to conduct necessary studies.
- The purchase of remedial action cost-cap insurance when necessary to expedite multiparty cleanup efforts.

Ineligible Oversight Remedial Action Costs

Ineligible costs include, but are not limited to:

- Retroactive costs except as provided in WAC 173-322-070 (7).
- Ecology or EPA oversight costs.
- Operating and maintenance costs incurred after the first year of accomplishing the cleanup action.
- Operating and maintenance costs of long-term monitoring.
- Natural resource damage assessments costs and natural resource damages.
- Legal costs including, but not limited to:
 - The cost of pursuing private right of action 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.
 - The cost of negotiating initial stakeholder agreements.
 - Legal fees associated with due diligence.
 - Attorneys fees.
- In-kind services.
- Recreational costs such as, but not limited to, trash and recycle bins, sidewalks, benches, lighting, turf, picnic tables, and drinking fountains.
- Undocumented costs.

All costs must be substantiated and approved by Ecology in order to be eligible for reimbursement.

How to Apply for an Oversight Remedial Action Grant

There is no set application period for oversight remedial action grants. Once an order or decree has been issued to a local government, it has 60 days to apply for a grant. *See Appendix 1 for the application form and instructions.*

Address all inquiries about oversight remedial action grants to:

**Diane Singer, 360-407-6067, email: dire461@ecv.wa.gov or
Lydia Lindwall, 360-407-6067, email: llin461@ecv.wa.gov
Solid Waste and Financial Assistance Program
Remedial Action Grants and Loans
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600**

Financial Match Requirements for Oversight Remedial Action Grants

Typical oversight remedial action grants require a 50 percent match. A local government in a county that is defined as **economically disadvantaged** may receive **25 percent additional** funding. In addition, an economically disadvantaged community within a non-economically disadvantaged county may also receive 25 percent additional funding. To qualify for this reduced match, the local government must provide satisfactory demonstration of financial need. *See page 43 for the criteria and current list of economically disadvantaged counties and communities.*

Local governments using innovative technology as part or all of the cleanup action may be eligible for an additional 15 percent funding. This additional funding is a match reduction and only applies to situations where oversight remedial actions have eligible costs of over \$400,000. (In other words, this does not apply to independent remedial actions or reduced match grants under House Bill 1761.) To receive an innovative technology match reduction, the applicant must include justification for the innovative technology claim in the grant application.

“**Innovative technology**” means new technologies shown to be technically feasible under certain site conditions but not widely used under different site conditions. Innovative technology also means the innovative use of existing technologies that have served under certain site conditions different from those at the site for which this grant is sought. Innovative technology has limited performance and cost data available.

Financial Match Reduction Under House Bill 1761

Under certain conditions, the Director of the Department of Ecology, or his/her designee, may alter grant-matching requirements to create incentives for local governments to expedite cleanups. Match requirements for those conditions may differ from requirements for typical oversight remedial actions. Local governments conducting some kinds of cleanups may be eligible for incremental match increase of up to 90 percent. These would be cleanups that include:

- Additional strategies to integrate new substantial economic development, habitat restoration, and public recreation.
- Acquiring vacant, abandoned or orphaned property under RCW 70.105D.040(5).

For example, a local government conducting a cleanup with a standard 50 percent match plans to integrate new substantial economic development, habitat restoration, and public recreation benefits. This government may receive an additional percentage match for each element up to a total of 90 percent match. Eligibility and match award will be negotiated on a case-by-case basis.

Loans

Ecology will consider offering loans to local governments to encourage and expedite oversight remedial action projects. Loans will be considered on a case-by-case basis depending on the financial need of the local government and its ability to pay over a period of time. *See page 39 for further information on loans.*

Settlements with PLP/PRPs and Insurance Companies

In general, Ecology encourages interested parties to cooperate. Involving an optimum level of private and public resources will expedite a cleanup. The intent of remedial action grants is to “jump-start” cleanups by providing financing up front. This reduces the impact on the taxpayer of public cleanups. It also attracts other private and public dollars to facilitate cleanup.

During budget and application development, the local government must identify all the potential sources of public and private cleanup financing. These sources include:

- Grants.
- Matching funds.
- Other types of public financing.
- Current and future anticipated settlements with other potentially liable persons or potentially responsible parties.
- Insurance companies.

Grant applications require the name and phone number of a contact person in the applicant organization with whom Ecology can coordinate the reimbursement of settlement payments.

Additionally, quarterly progress reports shall include a section addressing the status of local government activities to obtain settlement contributions.

Settlements with PLP/PRPs

PLP and PRPs bear financial responsibility for remedial action costs. If a decree or order requires a PLP or PRP other than the local government to conduct remedial action, the financial contribution of that PLP or PRP will be deducted from the amount eligible for grant funding. The grant-eligible project cost will be the remaining cost of the remedial action project after deducting the contributions of any other PLP or PRPs. Ecology will adjust the grant if settlements with other PLP or PRPs are reached while cleanup activities are in progress.

A local government might successfully pursue a private right of action against a PLP or PRP after the cleanup is completed. In such a case, the local government shall reimburse Ecology for a proportionate share of the moneys received, after deducting the local government's legal fees for pursuing the action.

Settlements with Insurance Companies

A local government may receive proceeds from an insurance claim for a cleanup. If the insurance proceeds cover the costs that are eligible for grant funding and are within the grant scope of work, the local government may use the proceeds as local match, up to the amount of the total match requirement. If the proceeds are more than the required match, Ecology will provide grant funding only for the difference between the insurance proceeds and the total remedial action costs. To be able to use the proceeds as match, the local government must have been the entity who paid the insurance premium and owned the policy.

This holds true even if the insurance settlement comes after the grant has been issued. A local government might receive a grant and then subsequently receive the proceeds from an insurance claim. If these proceeds are less than the difference between the total remedial action cost and Ecology's grant, then the local government may retain all of the proceeds. However, the insurance proceeds could be greater than the difference between the total remedial action cost and Ecology's grant. In this case, the local government may have to reimburse Ecology for any project expenditures already funded by the grant that were also covered by the insurance proceeds.

Establishing a Cleanup Budget

After the remedial investigation and feasibility study have been completed and a final cleanup action plan has been developed, Ecology and the applicant will establish a final cleanup budget. They will also negotiate a grant agreement that will allow the recipient to implement the scope of work for the project. Depending upon the availability of funding, the project may have to be conducted over multiple biennia. This will require amending the grant over time as new monies become available. It will also require completing the work incrementally in planned phases.

Grant Application - Prioritization and Evaluation

Grant applications are evaluated for completeness and adequacy. When pending grant applications or anticipated demand exceed the amount of funds available, Ecology may prioritize applications or limit grant awards based on the following criteria:

- Relative hazard ranking. Ecology determines rankings in accordance with the Model Toxics Control Act Cleanup Regulation (WAC 173-340-330) or the U.S. EPA National Priorities List ranking. Higher ranking sites will receive higher funding priority.
- Evidence that the grant is necessary to expedite cleanup.
- Relative readiness of the applicant to proceed promptly with the project.

In addition to using the priority list from the regulation, Ecology has developed internal guiding principles to assist in making awards. Those principles are:

- Focus on worst first – To determine what is worst, Ecology considers relative hazard ranking, threat to ground water and drinking water, threat to human health and the environment, readiness to proceed, and emergency actions.
- Closing and continuing projects – These are ongoing projects that are currently under grant agreement and continue to need some level of funding in order to complete the cleanup. To the extent possible, priority may be given to fund projects in this category.
- Cover as many sites as possible – Sometimes demand exceeds the funds available. Ecology will strive to provide funding amounts to as many sites as possible without impeding the cleanups. Cleanup projects may get funding in phases over time, rather than one initial award for the entire cleanup.
- Ability to pay / need – Ecology will evaluate applications in two ways. One will be the ability of the local government to fund the cleanup site without grant funding. The other will be the impact that a lack of grant funding would have on the cleanup site.
- Strategic investments through the coordination and acquisition of multiple funding sources.
- Coordination within the community during the design of plans for a site before, during, and after cleanup activities.
- Local governments that have not received a Remedial Action Grant will be given higher priority for additional strategies.
- Integrative project planning – Projects that clearly show the progression from remedial actions to restoration, recreation, and new substantial economic development. Projects with a clear vision are often more successful and cleaned up more quickly than site cleanups without pre-planning of future use.

Site Hazard Assessment Grants

Ecology maintains a list of all sites in the state that are presumed contaminated based on a short review called an “initial investigation.” The next step, called the “site hazard assessment” (SHA), is a more intensive confirmation of the type and level of contaminants present. Ecology uses the results of the SHA to rank the sites in order of hazard or risk compared to other sites Ecology knows about. This ranking helps Ecology set program priorities.

Who Can Receive an SHA Grant?

To receive an SHA grant, the applicant must be a local health department or district. It must not be suspected of contributing to the release of a hazardous substance at the sites being assessed. Also, no other conflict of interest can exist.

What Activities Do SHA Grants Cover?

SHA grants supplement Ecology’s effort to:

- Rank hazardous waste sites.
- Set program work priorities.
- Encourage local government initiative in cleaning up hazardous waste sites.
- Expedite cleanup actions.

SHA grants may be used to investigate public or private sites, with priority given to public sites. For economy and efficiency, most grants should be written to cover several local sites. Neither Ecology nor the U.S. Environmental Protection Agency can have previously assessed the sites. Ecology and the local health department or district will negotiate an agreed-upon list of sites to be assessed, with Ecology having final approval.

Eligible activities for SHA grants include the costs of any tasks that enable the local health department or district to take part in Ecology’s site-ranking and priority-setting process. The activities must be pursuant to the SHA section of the Model Toxics Control Act Cleanup Regulation (WAC 173-340-320). Examples of these activities include:

- Identifying the hazardous substances, including what was released or is threatened to be released. Also, identifying (if known) what products of decomposition, recombination, or chemical reaction are currently present on site and estimating their quantities and concentrations.
- Gathering evidence confirming a release or threatened release of hazardous substances.
- Describing the facilities containing the releases and their condition.
- Identifying the location of all areas where a hazardous substance is known or suspected.

- Considering surface water run-on and run-off and the hazardous substance's leaching potential.
- Making preliminary characterizations of the subsurface and ground water the release actually affects or could potentially affect.
- Identifying the preliminary evaluation of receptors at the site, including distances to these receptors.
- Acknowledging any other physical factors that may be significant in estimating the potential or current exposure to sensitive biota.

Eligible SHA Costs

Eligible costs for SHA grants include reasonable and documented costs, including sales tax, for the following:

- Salaries and benefits.
- Equipment (with prior written approval from Ecology's Grant Manager).
- Training (with prior written approval from Ecology's Grant Manager).
- Notification process.
- Administration consistent with *Administrative Requirements for Ecology Grants and Loans*, Publication Number 91-18.
- Sampling and analysis.
- Laboratory costs.
- Scoring costs (ranking).

Ineligible SHA Costs

Ineligible costs include:

- Retroactive costs.
- Legal fees and penalties.
- Court costs.
- Administration proceedings.
- Capital purchases not directly related.
- In-kind services.
- Undocumented Costs.

SHA Work Plans

All grant costs must be approved by Ecology to be eligible for reimbursement. Ecology will negotiate with the local health department or district on a scope of work (including specific sites needing assessments) and budget to be included in the SHA grant agreement.

Ecology retains the authority to review and verify the results of SHAs. A grant for an SHA does not obligate Ecology to provide further funding for study or cleanup at the site, or to initiate enforcement action.

Work plans for SHAs must conform to the SHA section of the Model Toxics Control Act Cleanup Regulation. Ecology's publication, *Site Hazard Assessment and Guidance Procedures for Washington Ranking Method* (Ecology Publication #91-73), can assist you in preparing a work plan. Call Michael Spencer at (360) 407-7195 for copies. Please refer any SHA questions or issues that are **not related to the grant** to Mr. Spencer or your regional contact.

Regional SHA Contacts:

Northwest Regional Office

Louise Bardy – (Island, Snohomish, King, Skagit, Whatcom, Kitsap, and San Juan counties) 425-649-7209

Southwest Regional Office

Chris Matthews – (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties) 360-407-6388

Eastern Regional Office

Patti Carter – (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties) 509-329-3522

Central Regional Office

Don Abbott - (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties) 509-454-7838

Site Hazard Assessment Coordinator – Headquarters

Michael Spencer – (360) 407-7195

How to Apply for an SHA Grant

Local health departments or districts can submit applications for SHA grants at any time. See Appendix 1 for application forms and instructions.

Address all inquiries about SHA grants to:

**Randy Martin, Grant Manager
Site Hazard Assessment Grants
Department of Ecology
P.O Box 47600
Olympia, WA 98504-7600
Telephone: (360) 407-6136**

Financial Match Requirements for SHA Grants

Ecology will consider eligible costs for SHAs for grant funding of up to **100 percent**.

Ecology will negotiate with the local health department or district on the amount of grant funds to be awarded based on the scope of work.

Prioritization and Evaluation

When pending grant applications exceed the amount of funds available, Ecology may prioritize applications based on the following criteria:

- Potential public health or environmental threat from the sites.
- Ownership of the site, with publicly owned sites receiving funding priority over privately owned sites.
- The relative readiness of the applicant to proceed promptly in accomplishing the proposed scope of work.

Integrated Planning Grants

House Bill 1761 created opportunities for local governments to develop integrated project plans for the cleanup and reuse of a contaminated site. These are opportunities that would not occur if funding was not available. The additional strategies by this bill are to expedite cleanups and land revitalization. Local governments considering the acquisition of vacant abandoned or orphaned property may be eligible for grants to develop integrated project plans and conduct studies necessary to such plans. These grants provide funding to conduct the necessary studies for acquiring and redeveloping vacant, orphaned, or abandoned property. The grants also provide funding for new substantial economic development, public recreation, or habitat restoration opportunities that would not otherwise occur.

An integrated project plan is an early planning process that incorporates cleanup activities with the reuse of the property. This plan should outline a strategy to solve multiple problems that stem from contamination. The plan may address habitat restoration, site work for recreational use, and infrastructure development as part of the overall cleanup process. The plan would also include funding strategies that leverage multiple grant and loan opportunities to carry a project through to completion. The plan will describe significant project development milestones as a means to evaluate progress.

The proposal for an integrated project must be reviewed and approved by Ecology's appropriate Toxics Cleanup Regional Manager or his/her designee, and must have Ecology's oversight or approval.

Who Can Receive an Integrated Planning Grant

The grant applicant must be a local government. Priority and preference will be given to local governments that have not received an earlier remedial action grant or that meets the disadvantaged communities criteria listed on page 43.

The application (proposal) and scope of work has to be reviewed and approved by the Toxics Cleanup Regional Manager or his/her designee and the Grant Manager before the work begins. Ecology will not be responsible for any costs incurred prior to this approval.

Available Funding

Integrated Planning Grants may pay eligible costs of up to \$200,000 at 100 percent funding.

What Activities Do Integrated Planning Grants Cover?

Grants for integrated project plans provide funds to local governments for the development of overall project scope, budget and financial planning, conceptual design, initial stakeholder agreements, boundary survey, title reports, cultural review, habitat assessment and surveys, and Phase I and Phase II Environmental Assessments.

Eligible Integrated Planning Grant Costs

Eligible costs for Integrated Planning Grants include reasonable and documented costs for the following activities:

- Administration and project management fees.
- Scope development.
- Budget and financial planning.
- Conceptual site design.
- Initial stakeholder agreements (other than legal fees).
- Boundary survey.
- Title reports.
- Cultural review (Executive Order #05-05).
- American Society of Testing and Materials (ASTM E 1527-00) Phase I Environmental Assessment.
- American Society of Testing and Materials (ASTM E 1527-00) Phase II Environmental Assessment.
- Contractor fees.
- Habitat assessment and survey.
- Sampling and analysis.

Ineligible Integrated Planning Grant Costs

Ineligible costs for environmental assessment activities include:

- Legal fees and penalties, including those associated with due diligence.
- In-kind services.
- Undocumented costs.

How to Develop an Integrated Project Plan

For questions about how to develop an Integrated Planning Project or an Integrated Project Plan contact:

**John Means, 360-407-7188, email jmea461@ecy.wa.gov
Toxics Cleanup Program
Department of Ecology
P. O. Box 47600
Olympia, WA 98504-7600**

How to Apply for an Integrated Planning Grant

There is no set application period for Integrated Planning Grants. You may apply at any time. *See Appendix 1 for application forms and instructions.*

Address Applications for Integrated Planning Grants to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
Lydia Lindwall, 360-407-6067, email: llin461@ecy.wa.gov
Solid Waste and Financial Assistance Program
Remedial Action Grants & Loans
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600**

Reporting Requirements for Integrated Planning Grants

Grant recipients must submit progress reports with each payment request. Payment requests may be submitted no more frequently than monthly and no less frequently than quarterly. Progress reports describe actions and accomplishments in meeting project milestones and shall include a budget report that details project expenditures. All progress reports and payment requests must be submitted on Ecology-approved forms. Please refer to Appendix 2 for copies of the payment request forms and Appendix 3 for copies of the Progress Report Form.

Upon completion of the project, you must submit a final project report summarizing the project development and accomplishments. Copies of all final reports, plans, drawings, and specifications will be required as attachments for review and approval. The final project billing must include a progress report for the activities performed under the billing period as well as the final project report. The Final Project Report Form is available in Appendix 3.

Prioritization and Evaluation of Grant Applications

Ecology evaluates grant applications for completeness and adequacy. When pending grant applications exceed the funds available, Ecology may prioritize applications, giving higher priority to projects that meet the following criteria:

- Relative hazard ranking as determined by Ecology in accordance with the Model Toxics Control Act Cleanup Regulation (WAC 173-340-330) or the U.S. EPA National Priorities List ranking.
- Evidence that the grant is necessary to expedite cleanup.
- Relative readiness of the applicant to proceed promptly with the project.
- Strategic investments through the coordination and acquisition of multiple funding sources.
- Coordination within the community during the design of plans for a site before, during, and after cleanup activities.
- Local governments that have not received a Remedial Action Grant will receive higher priority for additional strategies.
- Projects that clearly show the progression from remedial actions to restoration, recreation, or new substantial economic development.

Safe Drinking Water Action Grants

The Washington State Department of Health and Ecology both have roles regarding safe drinking water action grants. Ecology provides funding through the Remedial Action Grant and Loan Program and administers the grant so that remedial action goals are met. The Department of Health identifies sites and provides technical oversight to ensure that state drinking water regulations are met.

Who Can Receive a Safe Drinking Water Action Grant?

To receive a safe drinking water action grant, the applicant must be a local government that owns or operates a public drinking water system, or a local government applying on behalf of an entity that owns or operates a public drinking water system. The applicant must also meet the following additional standards:

- Ecology has determined that the subject water system is in an area that is a hazardous waste site or that a hazardous waste site threatens to contaminate.
- The Department of Health has determined that the applicant is in substantial compliance with applicable rules of the Washington State Board of Health or the Department of Health, as contained in the following:
 - Public water supplies (Chapter 246-290 WAC)
 - Water works operator certification (Chapter 246-292 WAC)
 - Water System Coordination Act (Chapter 246-293 WAC)
 - Drinking water operating permits (Chapter 246-294 WAC)
- The water system must show maximum contaminant levels (MCL's) exceeding one of the following:
 - The standards for public water supplies (WAC 246-290-310).
 - EPA standards as determined by the state Department of Health,
 - Ecology's standards set by the Model Toxics Control Act cleanup regulation (WAC 173-340-700 through 173-340-760).

The Department of Health must certify that a contaminant threatens the safety and reliability of a public water system and that the threat cannot be remedied solely by operational solutions.

The contaminants must include at least one hazardous substance. If the contaminant is a nitrate or a trihalomethane, it must be determined to have originated from a hazardous waste site.

An order or decree must be issued to any identified potentially liable persons (PLPs). The order or decree must require that safe drinking water be provided to the contaminated area as a remedial action. To protect public health, Ecology may waive this requirement for an order or decree to be in place prior to providing funding for safe drinking water.

What Activities Do Safe Drinking Water Action Grants Cover?

Safe drinking water action grants supplement local government efforts to provide safe drinking water to residents living in an area where a hazardous waste site has contaminated a public water system.

Eligible Safe Drinking Water Action Costs

Eligible costs for safe drinking water action grants include reasonable and documented costs, including sales tax, for the following:

- Treatment equipment and facilities, including air stripping towers, package treatment plants, point-of-use treatment systems, and similar approaches.
- Costs identified by Ecology as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination.
- Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable accessories.
- Transmission lines between major systems components, including interconnections with other water systems.
- Distribution lines from major system components to system customers or service connections.
- Fire hydrants.
- Service meters.
- Project inspection, engineering, and administration.
- 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.
- Individual service connections, including any fees and charges, provided that property owners substantially participate in financing the cost of such connections.
- Development of any remediation well, resource protection well or monitoring well under WAC 173-160-420, General Construction Requirements for Resource Protection Wells.
- Development of any direct push resource protection well under WAC 173-160-451, minimum standards for direct push resource protection wells.
- Interim financing where necessary as a prerequisite to local government issuance of revenue bonds.

Ineligible Safe Drinking Water Action Costs

Ineligible costs for safe drinking water action grants include:

- Legal fees and penalties.
- Ecology oversight costs.
- Operating and maintenance costs.
- Retroactive costs, except for those specified in WAC 173-322-100 (6).

- Natural resource damage assessment costs and natural resource damages.
- In-kind services.
- Undocumented Costs.

Alternative Solutions for Water Contamination

The purpose of safe drinking water action grants is to remedy water contamination problems caused by hazardous substances. Generally, the solutions fall into three categories: treatment, extension of an existing water system, or providing a new water source. Unless it is clearly demonstrated to the contrary, the solution preferred for funding is treating the water and eliminating the source of contamination. There are four reasons for this preference:

- 1) The authority for the grant program is the Model Toxics Control Act. The purpose of this act is to clean up hazardous waste sites rather than provide water supply infrastructures.
- 2) Increasing pressure on the state's water resources means that conservation of clean, unused water supplies is important. Cleansing or treating an otherwise adequate water supply is preferable to abandoning it and tapping into a new aquifer. In some cases, however, technologically and economically sound treatment approaches don't exist for the particular contaminants.
- 3) Treatment systems can be faster and cheaper solutions to health concerns than extending water lines or providing new water sources.
- 4) Treatment systems can be solutions to identified water contamination problems without triggering water system charges, growth management issues, or annexation concerns.

How to Apply for a Safe Drinking Water Action Grant

Local governments may submit applications for safe drinking water action grants at any time. If an order or decree has been issued to a local government, application for the grant must be made within 60 days after the effective date of the order or decree. *See Appendix 1 for the application form and instructions.*

Address all inquiries and applications for safe drinking water action grants to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
 Lydia Lindwall, 360-407-6067, email: llin461@ecy.wa.gov
 Solid Waste and Financial Assistance Program
 Remedial Action Grants & Loans
 Department of Ecology
 P.O. Box 47600
 Olympia, WA 98504-7600**

Financial Match Requirements for Safe Drinking Water Action Grants

Ecology will consider safe drinking water action projects for funding at up to **50 percent** of eligible project costs. A local government in a county considered economically disadvantaged may receive up to **25 percent** of total eligible project costs as additional funding. The local government must also provide satisfactory demonstration of extraordinary financial need. *See page 43 for the definition and current list of such counties.*

Ecology may make grant offers below the maximum percentage share and may fund all or part of eligible grant activities.

Prioritization and Evaluation

Grant applications are evaluated for completeness and adequacy. When pending grant applications exceed the funds available, Ecology may prioritize applications, based on the following criteria:

- Relative risk to human health as jointly determined by Ecology and the state Department of Health, in accordance with the regulations for Model Toxics Control Act Cleanup (WAC 173-340-330) and Public Water Supplies (WAC 246-290-310). Sites with greater risk will receive a higher funding priority.
- Relative readiness of the applicant to proceed promptly with the project.
- Ownership of the water system to be extended or improved. Systems owned by local governments will receive higher funding priority than other systems.
- Number of people the water system serves and per capita cost of remediation.

Area-Wide Ground Water Remedial Action Grants

The purpose of the area-wide ground water remediation grants is to address ground water contamination from multiple sources. The grants enable local governments to assist the cleanup and redevelopment of property involved in such contamination within their jurisdictions. The goal is to develop area-wide solutions, including investigation work plans, model remedies, or area-wide determinations on whether ground water is drinkable.

Who Can Receive an Area-Wide Ground Water Remedial Action Grant?

Only a local government eligible for financial assistance may apply for the area-wide ground water remediation grants. The local government may be a potentially liable person at a site or may own or have ownership interest in a site without being liable for contamination. It is also possible that the local government may not own a site but applies for a grant to help the cleanup of contaminated ground water at a site in its jurisdiction. The local government must agree to administer or manage the grant and to act as the project lead or sponsor. Ecology will negotiate with local government on a scope of work to be included in the grant agreement.

The area-wide ground water action must be required under an order or decree or be approved by Ecology. If the action is required under an order or decree issued under the federal cleanup law, then Ecology must have signed or acknowledged in writing that the order or decree is a sufficient basis for remedial action grant funding.

What Is the Definition of Area-wide Ground Water Contamination?

WAC 173-322-020 defines area-wide ground water contamination as “multiple adjacent properties with different ownerships affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.”

What Activities Do Area-wide Ground Water Remedial Action Grants Cover?

Eligible remedial activities are those that identify, eliminate, or minimize a threat or potential threat posed by hazardous substances to human health or the environment.

Eligible Area-wide Ground Water Remedial Action Costs

Eligible expenses include, but are not limited to, reasonable and documented costs incurred in performing the following activities:

- Remedial investigations.
- Feasibility studies.

- Remedial designs.
- Pilot studies.
- Interim actions.
- Cleanup actions.
- Capital costs of long-term monitoring systems.
- Operation and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

Ineligible Area-wide Ground Water Contamination Costs

Ineligible costs include:

- Legal fees and penalties.
- Ecology oversight costs.
- Operation and maintenance costs after the first year of accomplishing the remedial action.
- Costs of long-term monitoring.
- Natural resource damage assessment and natural resource damages
- Retroactive costs, except as limited by WAC 173-322-090 (6).
- In-kind donations and services.
- Undocumented Costs.

How to Apply for an Area-wide Ground Water Remedial Action Grant

Local governments may submit an application for an area-wide ground water remediation grant at any time. See Appendix 1 for application forms and instructions. In addition to the information required on the application form, the local government must also submit the following:

- A copy of the reimbursement agreement with affected property owners.
- A commitment by the applicant to partially reimburse Ecology from funds obtained from affected property owners.

Address all inquiries and applications for area-wide ground water remediation grants to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
 Lydia Lindwall, 360-407-6067, email: lin461@ecy.wa.gov
 Solid Waste and Financial Assistance Program
 Remedial Action Grants & Loans
 Department of Ecology
 P.O. Box 47600
 Olympia, WA 98504-7600**

Financial Match Requirements for Area-Wide Ground Water Remedial Action Grants

Ecology will consider area-wide ground water projects for funding up to 100 percent of eligible project costs. Requirements for a local government to financially match grant amounts can range between 0 to 50 percent. Disadvantaged counties may be eligible for 25 percent additional funding. *See Grants to Economically Disadvantaged Counties on page 43.*

Repayment of Grant Funds

If Ecology provides grant funds to a local government for an area-wide ground water contamination project on privately owned property, the grant amount shall be partially repaid to Ecology. Local governments will have to obtain partial reimbursement from the property owners or other potentially liable parties. The grant agreement between the local government and Ecology will include terms and amount of repayment.

Prioritization and Evaluation of Grant Applications

Grant applications are evaluated for completeness and adequacy. When pending grant applications exceed the funds available, Ecology may give higher priority to applications based on the following criteria:

- Relative hazard ranking as determined by Ecology in accordance with the Model Toxics Control Act Cleanup Regulation (WAC 173-340-330) or the U.S. EPA National Priorities List ranking. Higher ranking sites will receive higher funding priority.
- Evidence that the grant is necessary to expedite cleanup.
- Relative readiness of the applicant to proceed promptly with the project.

In addition to using the priority list from the WAC, internal guiding principles have been developed to assist in making awards. Those principles are:

- Focus on worst first – To determine what is worst, Ecology considers relative hazard ranking, threat to groundwater and drinking water, threat to human health and environment, readiness to proceed, and emergency actions.
- Closing and continuing projects – These are ongoing projects that are currently under grant agreement and continue to need some level of funding in order to complete the remediation. To the extent possible, priority may be given to fund projects in this category.
- Cover as many sites as possible – Sometimes demand exceeds the funds available. Ecology will strive to provide funding to as many sites as possible without impeding the cleanup. Cleanup projects may get funding in phases over time, rather than one initial award for the entire cleanup.
- Ability of PLP(s) to pay – Ecology will evaluate applications in two ways. One will be the ability of the local government to fund the cleanup site without grant funding. The other will be the impact that a lack of grant funding would have on the cleanup site.

Independent Remedial Action Grants

An independent remedial action is a cleanup action completed voluntarily, without Ecology's oversight or approval. Such an action may gain Ecology's informal advice and assistance through the Voluntary Cleanup Program. Independent remedial action grants are available to help local governments defray the costs of cleaning up sites independently.

Who Can Receive an Independent Remedial Action Grant?

Local governments that own contaminated property can receive an independent remedial action grant. They can also receive one if they are potentially liable for contamination at a site they do not own.

The applicant must have entered into the Voluntary Cleanup Program and received a written determination of no further action issued by Ecology under WAC 173-340-515(5)(b). A copy of Ecology's determination must be submitted with the grant application to be eligible for grant funding. **A local government must apply within 60 days after the receipt of a no further action determination to be eligible for a grant.**

What Activities Do Independent Remedial Action Grants Cover?

Most costs associated with the activities needed to investigate and clean up a site are eligible for reimbursement under these grants. The lists that follow identify eligible and ineligible grant activities and costs. If you are not certain if an activity or cost will be eligible, please contact your grant manager before you incur any costs. Eligible project costs for independent remedial action grants cannot exceed \$400,000.

Eligible Activities for Independent Remedial Action Grants

To be eligible, a cost must be reasonable and necessary to complete a grant activity and must be properly documented.

- Remedial investigations.
- Feasibility studies.
- Remedial designs.
- Pilot studies.
- Interim actions.
- Cleanup actions.
- Capital costs of long-term monitoring systems.
- Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment has been installed.

Ineligible Activities for Independent Remedial Action Grants

- Retroactive costs except as provided in WAC 173-322-080(6).
- Technical consultations Ecology provided under the Voluntary Cleanup Program, WAC 173-340-515(5), including any deposit for such consultations.
- Operating and maintenance costs of long-term monitoring systems.
- Operating and maintenance costs incurred after the first year of accomplishing the cleanup action.
- Natural resource damage assessment costs and natural resource damages.
- Legal costs.
- In-kind services.
- Undocumented Costs.

Adjustment of Eligible Costs

A local government might receive settlement proceeds from a contribution claim before the effective date of the grant agreement. If this is the case, then Ecology shall deduct the amount of the settlement proceeds from the amount eligible for grant funding. Before deducting the proceeds from the eligible costs, Ecology will deduct the legal costs incurred by the applicant in pursuing the claim for contribution.

Financial Match Requirements for Independent Remedial Action Grants

Independent remedial action grants are available only for projects with eligible costs of up to \$400,000. This equates to a funding cap of \$200,000 (or \$300,000 if the local government qualifies as economically disadvantaged).

Independent remedial action grant grants will usually be considered for funding up to **50 percent** of eligible project costs. However, A local government in a county or community that is defined as **economically disadvantaged** may receive up to **25 percent additional funding**. The local government must provide satisfactory demonstration of financial need. *See page 43 for the definition and current list of such counties and communities.*

Note: The additional 15 percent funding for innovative treatment technology does not apply to voluntary cleanups.

Retroactive Costs for Independent Remedial Action Grants

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 considered eligible for reimbursement.

How to Apply for Independent Remedial Action Grants

There is no set application period for independent remedial action grants. However, if a “no further action” determination letter has been issued to a local government, the application for a grant must be made within 60 days. *See Appendix 1 for the application form and instructions.*

In addition to the information required on the application form, the applicant must submit the following for a complete application package:

- A copy of the “no further action” determination letter.
- A copy of the independent remedial action report.
- A completed set of payment request forms: A-19, B2, and C2.

Independent remedial action grants are awarded after the work has been completed. Therefore, Ecology has found it more efficient to review the payment request with supporting documentation and draft the grant award at the same time. Once a recipient has signed and returned their grant offer, Ecology will process the payment request. This will save a duplication of effort during grant development and payment processing. It will also speed up the invoicing process for the recipient. *The financial forms, A-19, B2, and C2, can be found in Appendix 2* and are available on the grants Web site at <http://www.ecy.wa.gov/programs/swfa/grants/rag.html>.

Address all inquiries and applications for Independent Remedial Action Grants to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
Lydia Lindwall, 360-407-6067, email: lin461@ecy.wa.gov
Solid Waste and Financial Assistance Program
Remedial Action Grants & Loans
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600**

Voluntary Cleanup Program (VCP) Contacts in the Toxics Cleanup Program

To contact the VCP coordinator at the Ecology regional office where your site is located:

For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima) the coordinator is Valerie Bound at (509) 454-7886 or email at vdre461@ecy.wa.gov.

For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the coordinator is Keith Holliday at (509) 329-3431 or email at khol461@ecy.wa.gov.

For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the coordinator is Joe Hickey at (425) 649-7202 or email at jhic461@ecy.wa.gov.

For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the Coordinator is Bob Warren at (360) 407-6361 or email at rwar461@ecy.wa.gov.

Methamphetamine Lab Site Assessment and Cleanup Grants

RCW 70.105D.070 provides funds to state and local governments to clean up hazardous substances. A number of activities are listed as being eligible for grant funds. One activity listed is “to assist local government in the assessment and cleanup of sites of methamphetamine [meth] production activities, but not to be used for the initial containment of such sites.”

Meth Lab Site Assessment and Cleanup Grant Program Definitions

These following definitions apply to this grant program only.

Assessment: “Actions that are taken by a local health department or district to determine if a site is contaminated, identification and levels of the contaminants present, actions taken to post the site, and notification to the site owner.”

Cleanup action: “Any remedial action, except interim actions (see definition in Chapter 173-322), taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup standards, utilizes permanent solutions to the maximum extent practicable, and includes adequate monitoring to ensure the effectiveness of the cleanup action.”

Site: “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.” (Also refer to definition of facility in WAC 173-340-200.)

Initial site containment: “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.”

Who Can Receive a Meth Lab Site Assessment and Cleanup Grant?

To receive a methamphetamine lab site assessment and cleanup grant, the application must be a local health department or district that is not a potentially liable person (PLP) at the site(s) being assessed.

The local health department or district must demonstrate substantial effort has been made to provide for handling and disposal of drug lab waste at local moderate risk waste facilities. This is especially true if the moderate risk waste facility has received state funding for construction, maintenance, or operation.

What Meth Lab Site Assessment and Cleanup Activity Costs Are Eligible?

Methamphetamine lab grants may be used to investigate meth production sites, with a priority given to publicly owned sites.

Eligible costs for a meth lab grant include any task that enables local health departments or districts to assess and, if necessary, oversee the cleanup of illegal meth production sites. The activities must be consistent with the site hazard assessment section of the Model Local Toxics Control regulation (WAC173-340-320).

Eligible Meth Lab Site Assessment and Cleanup Costs

Eligible costs for the meth lab grant include reasonable and documented costs for the following:

- Inspection of the property.
- Determination (assessment) of contamination, sampling and analysis costs.
- Contractor fees for public sites only.
- Assessor fees (specific circumstances with prior approval).
- Disposal fees (specific circumstances with prior approval).
- Equipment (need approval prior to purchase or approval of equipment list).
- Training (need approval of training plan).
- Posting site.
- Notification of property owners and those with a legal interest in the property.
- Notification of contamination on property title.
- Site-specific public notification activities to immediate surrounding property owners, when appropriate.
- Overseeing property cleanup with limitations prescribed in the Department of Health guidance.
- Reviewing and approving site cleanup plan.
- Inspections during cleanup.
- Approving completion of cleanup plan.
- Releasing property to allow reoccupation.
- Administrative expenses consistent with *Administrative Requirements for Ecology Grants and Loans*, Publication No. 91-18.

Ineligible Meth Lab Site Assessment and Cleanup Costs

Ineligible costs include:

- Initial site containment.

- Retroactive costs.
- Legal fees.
- Any activity that provides a gain to a private party.
- Boarding up or otherwise restricting access to privately owned sites other than posting the site and notifying the property owner.
- Destruction or landfill materials.
- Non-site specific education and information costs.
- Costs associated with assessing fines and penalties.
- Administrative proceedings.
- Other activities not consistent with the Model Toxics Control Act, rules, or guidelines.
- In-kind services.
- Undocumented Costs.

Financial Match Requirements for Meth Lab Site Assessment and Cleanup Grants

Ecology will consider funding up to 100 percent of eligible costs for meth lab *assessment* activities.

Meth production *cleanup action* activities on public sites will be considered for funding at up to 50 percent of eligible project costs. A local health department or district in a county that is considered economically disadvantaged may receive up to 25 percent additional funding. The local health department or district must also provide satisfactory demonstration of financial need. **Meth production sites located on private property are ineligible for cleanup funding under this grant program.**

Grant funding will be prioritized by level of the existing problem within the health department or district jurisdiction.

How to Apply for a Meth Lab Site Assessment and Cleanup Grant

The local health department or district may submit applications for meth lab site assessment and cleanup grants at any time.

Address all inquiries about Meth Lab Site Assessment and Cleanup Grants to:

**Randy Martin, Grant Manager
Solid Waste and Financial Assistance Program
Meth Lab Grants
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Telephone: (360) 407-6136**

For ease of administration and application, meth lab site assessment and cleanup grant applications can be combined with site hazard assessment applications. Please provide separate budget sheets for each program. Meth lab site assessment and cleanup grant programs and site hazard assessment grant programs are considered separate and distinct programs. The meth lab site assessment and cleanup reporting form can be found in Appendix 3.

NOTE: Grant agreements can also be written combining the two separate grant programs into one grant agreement. However, grants funds will be awarded separately according to the scope of work and budget for each individual program. The grant agreement will have two separate budget groups, and funds cannot be transferred from one to another. In other words, site hazard assessment funding cannot be transferred to meth lab site assessment and cleanup funding and vice versa.

Each grant program's administrative costs will be kept separate and not combined into one task for both programs.

Derelict Vessel Remedial Action Grants

House Bill 1349 added dealing with abandoned or derelict vessels to the list of eligible activities under the Remedial Action Grant Program. These grants assist local governments with the costs of removing and disposing of hazardous substances from abandoned or derelict vessels that pose a threat or potential threat to human health or the environment.

Other Funding Programs for Derelict Vessels:

The Department of Natural Resources has a derelict vessel removal and disposal grant program. This program can provide funding for derelict vessel(s) beyond the costs of hazardous substance removal and disposal. For more information on the Department of Natural Resource Derelict Vessel Removal Program, visit www.dnr.wa.gov/htdocs/aqr/derelict_vessels or call (360) 902-1075.

What Is the Definition of an Abandoned or Derelict Vessel?

According to law, “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. For the purpose of this grant program, eligible vessels can be either recreational or commercial.

Who Can Receive a Derelict Vessel Remedial Action Grant?

Local governments that meet the eligibility requirements may apply for these grants. “Local government” is defined as any political subdivision, regional governmental unit, district, or municipal or public corporation, including cities, towns, and counties.

Available Funding

There is a limit of \$25,000 per vessel. The grant recipient must provide a local match of cash expenditures, from 25 to 50 percent of the total eligible costs depending on economic status. In-kind contributions will not count as part of the required match.

What Activities Do Derelict Vessel Remedial Action Grants Cover?

Eligibility requirements include demonstration that the vessels meet the definition of “abandoned or derelict vessel” and that the local government can prove ownership of the vessel.

Eligible Derelict Vessel Remedial Action Costs

Eligible costs for a derelict vessel grant include reasonable and documented costs for:

- Remedial investigation of the vessel, including sampling and analysis.
- Removal and disposal of hazardous substances and materials designated as dangerous wastes under chapter 173-303 WAC.

Ineligible Derelict Vessel Remedial Action Costs

Ineligible costs for a derelict vessel grant include:

- Retroactive costs, except as provided in WAC 173-322-120(6).
- Administrative cost of taking ownership of the vessel.
- Removal and disposal of materials that are hazardous substances or designated as dangerous wastes under chapter 173-303 WAC.
- Disposal of the vessel at a landfill, including transport of the vessel.
- Disposal of the vessel at sea.
- Natural resource damage assessment costs and natural resource damages.
- Legal costs including, but not limited to, the cost of pursuing private right of action 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.
- In-kind services.
- Undocumented Costs.

Financial Match Requirements for Derelict Vessel Remedial Action Grants

Usually, Ecology will consider funding derelict vessel remedial action grants for up to 50 percent of eligible project costs. A local government in a county or community that is defined as economically disadvantaged may receive up to 25 percent additional funding. *See page 43 for the definition and current list of such counties and communities.* Derelict vessel grants are available only for projects with eligible costs of up to \$25,000 per vessel.

How to Apply for a Derelict Vessel Remedial Action Grant

Local governments may submit applications for derelict vessel grants at any time. *See Appendix I for the application form and instructions.* In the narrative statement required in the grant application, please include information addressing the following:

- Describe the environmental problem (potential threat to human and environmental health) and indicate how the proposed action will improve the environment in the area.
- Describe the vessel(s) and how the cleanup will be conducted.
- Describe the types and quantities of any hazardous substances (known or suspected) to be removed from the vessel(s).
- Describe how you have determined that the vessel(s) has little or no value.
- Indicate if there was an identified original owner and if that owner lacked the financial resources to care for the vessel.
- Provide proof of ownership of the vessel(s) and/or describe how you have established that you have legal possession of the vessel. Describe what authority allows you to conduct the cleanup (such as municipal code, statute, etc.). Please attach a copy of the authority to your application.

Address all inquiries or applications for Derelict Vessel grants to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
Lydia Lindwall, 360-407-6067, email: lin461@ecy.wa.gov
Solid Waste and Financial Assistance Program
Remedial Action Grants & Loans
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600**

The Model Toxic Control Act (MTCA), RCW 70.05D.070, authorizes Ecology to offer loans to local governments for oversight remedial action projects. The intent of the loan program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

Types of Loans

The loan program includes two different types of loans:

- 1) **A standard loan.** A standard loan includes the terms and conditions for repaying the loan.
- 2) **Extraordinary financial hardship loan.** An extraordinary financial hardship loan includes deferred terms and conditions for repayment. The deferred terms and conditions may not be indefinite and **the loan must be approved by the Director of the Department of Ecology.**

Who Can Receive A Loan?

Eligibility requirements for a loan consist of the following:

- The loan applicant must be a local government and meet the eligibility requires as listed under the chapter on oversight remedial actions (see page 9) and defined in WAC 173-322-020.
- The loan applicant must also meet the eligibility requirements for an oversight remedial action grant and as set forth in WAC 173-322-070(2).
- In order to establish eligibility for a loan, local governments must undergo a thorough third-party financial review to establish their financial need for the loan, their ability to repay the loan, and their inability to obtain funds from any other source.
- The site being studied or remediated must present an immediate danger to human health and the environment.

Based on the financial review, the local government must demonstrate financial need for a standard loan, ability to repay the loan, and inability to obtain funds from any other source.

For an extraordinary financial hardship loan, the local government must demonstrate its financial need, 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.

What Are Loans Used For?

The loan program provides loans to supplement other funding sources to meet the match requirements for oversight remedial action grants. In addition, loans are intended to aid local governments where an inability to obtain funding would significantly delay the cleanup and subsequent use, sale, or redevelopment of the properties affected by a hazardous waste site.

Repayment of Loan

The terms and conditions for repayment of the loan shall be based on the local government's ability to repay the loan, as determined by the independent third-party financial review outcome.

For the extraordinary financial hardship loans, the repayment terms and conditions may be deferred; however, they cannot be indefinite. Deferred terms are dependent on periodic review of the local government's ability to pay.

How Much Money Is Available?

There is no specific amount of funding set aside for loans. Any loan amount must come from the same allocation used to fund the oversight remedial action grants and is subject to the same prioritization process.

Eligible and Ineligible Costs

Eligible and ineligible costs are the same as listed for oversight remedial action grants (see pages 9 and 10).

Financial Information

Since local governments can use loans to provide match for oversight remedial action grants, the local government may be considered for up to 50 percent of eligible project costs in match.

A local government in a county that is defined as economically disadvantaged and meets the eligibility requirements under the independent financial review may be considered for a loan for the match up to 25 percent of eligible project costs. *Please refer to page 43 for a list of counties and communities that qualify for the reduced match.*

How to Apply for a Loan

There is no set application period for loans. If an order or decree has been issued to a local government, the application for a loan must be made within 60 days.

Address all loan-related inquiries and applications to:

**Diane Singer, 360-407-6062, email: dire461@ecy.wa.gov or
Lydia Lindwall, 360-407-6067, email: llin461@ecy.wa.gov
Solid Waste and Financial Assistance Program
Remedial Action Grants & Loans
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600**

Payment Requests and Documentation Requirements

Remedial action grants and loans are provided on a cost-reimbursement basis. This means a cost or obligation must be incurred before it is eligible for reimbursement under the Remedial Action Grant/Loan Program.

The Administrative Requirements for Ecology Grants and Loans (Ecology Publication #91-18, Revised September, 2005) establishes the administrative requirements for all grants and loans administered through Ecology. The document describes requirements for financial management, reporting expenditures and income, contracting, procurement, and retaining records.

The General Terms and Conditions for Ecology grants and loans is an addendum to each grant issued by the Department. Recipients typically have questions about sections H, I, and J of the General Terms and Conditions. You can find the General Terms and Conditions in Appendix 6. If this document is amended during the biennium, the version in effect on the date your agreement is signed will apply.

Required Payment Request Forms

- All payment requests must be submitted on agency-approved forms, the A-19, B2, and C2. (These forms can be found in Appendix 2)
- Each payment request must include a project progress report. (A template for your Progress Report is found in Appendix 3)
- Section IV of the *Administrative Requirements for Ecology Grants and Loans* (Ecology Publication #91-18, Revised September, 2005) provides some additional information about financial requirements for payment requests.

Documentation Requirements

- All costs must be properly documented to be considered eligible for reimbursement. *Please refer to page 39 of the Administrative Requirements for Ecology Grants and Loans* (Ecology Publication #91-18, Revised September, 2005).
- All costs must be supported with appropriate backup documentation and submitted with each payment request. Documentation includes receipts, invoices, mileage logs, printing and mailing logs, phone bills, time sheets, etc.
- Backup documentation must be organized or marked up in a manner that makes it possible for the grant manager to determine which expense the backup relates to.

- Backup documentation includes backup on subcontractor billings.
For example: Your prime contractor subcontracts out a portion of the work, and the subcontractor rents a piece of equipment to excavate a pit. If you wish to receive reimbursement for the rental, you must submit the rental invoice. If the subcontractor purchases supplies, you must have the itemized receipt for the supplies. *Please refer to page 39 of the Requirements for Ecology Grants and Loans* (Ecology Publication #91-18), part IV – Financial Requirements. It states that you must “Maintain appropriate supporting documentation. This includes canceled checks, invoices, purchase receipts, payrolls, time and attendance records, contract award documents, and vouchers sent to Ecology.”
- You must indicate the grant element or task an expense relates to.
 - The C2 form is where you list your line item expenses. Organize these by grant element.
 - The B2 form is where these expenses are rolled up by grant element.
 - To make it easier for the grant manager to approve the charges to the grant, you should write the grant element number on backup documentation. If an invoice contains charges for multiple grant elements, write the related grant element number next to the associated cost.
- Please refer to the General Terms and Conditions, and any Special Terms and Conditions your grant, and the *Requirements for Ecology Grants and Loans* (Ecology Publication #91-18) for more information about reporting requirements.
- Ecology will not make payments for amounts withheld from contractors as retainage. Costs incurred for the satisfactory completion of work will be eligible for reimbursement.

Limits on Funding

Grants are contingent on the availability of appropriated funding. The fact that a local government is eligible or has received funding for initial phases of remedial action is no guarantee of continued funding. Separate grant agreements will be written for each major phase of remedial action and for discrete tasks and near-future time frames.

Ecology reserves the right to reject costs as excessive, even when work is fully approved from a technical standpoint. As a result, some tasks may be reimbursed at less than the allowable percentages. Do not assume that grant amendments will automatically follow cost increases.

After the grant budget is set, Ecology will maintain that budget total. Ecology will consider grant amendments to change the length of the agreement or reorganize the budget. Ecology will consider requests for increases in the total grant funding to that site, if the cost of remedial action increases. However, Ecology does not promise or guarantee such amendments.

Retroactive Funding

Retroactive funding of costs incurred prior to the date of the grant agreement is allowed only under certain circumstances. First the recipient must have an order or decree with Ecology signed after March 1, 1989. In addition, one or more of the following circumstances must apply:

- (a) The grant application period is closed when the order or decree becomes effective.
- (b) Ecology unreasonably delays the processing of the grant application.
- (c) There are inadequate funds in the Local Toxics Control Account to cover the entire scope of work required by the decree or order.
- (d) If the recipient has undertaken remedial actions not required by the decree or order, grants for this work may be made if Ecology later formally includes such work items in a decree or order.

Grants to Economically Disadvantaged Counties and Communities

While most identified hazardous waste sites are in large urbanized counties, some are located in counties or communities that are commonly judged less able to pay for costly projects. For that reason, they are often given special treatment in state financial assistance programs. A similar approach has been adopted for the Remedial Action Grants/Loan Program. Local governments in economically disadvantaged areas may be eligible for larger grants, or grants that require less matching funds.

Economically disadvantaged areas are identified as a county or any jurisdiction within a county where the most recent Office of Financial Management and Employment Security data indicate that:

- The county ranks in the bottom 20 statewide in per capita income.
- The county is ranked “economically distressed” as defined by the law for Community Revitalization Team -- Assistance to Distressed Areas (Chapter 43.165 RCW) and computed by the Employment Security Department. To receive designation, a county must have had an unemployment rate 20 percent above the statewide average for the previous three years.

The Solid Waste and Financial Assistance Program updates the list every two years. The following counties are deemed disadvantaged based on current data.

Adams	Okanogan
Columbia	Pacific
Ferry	Pend Oreille
Grant	Skamania
Grays Harbor	Stevens
Klickitat	Wahkiakum
Lewis	Yakima

In addition, local jurisdictions in economically distressed communities, even though located in counties that are not economically distressed, will also be considered for similar preferential treatment where:

- The local jurisdiction ranks in the bottom 20 statewide in per capita income, and
- The local jurisdiction county has an unemployment rate 20 percent above the statewide average.

The following local governments are deemed disadvantaged based on the current 2000 U.S. Census data (www.gov/census2000/dp58/default.asp).

Airway Heights	Cle Elum	Kittitas	Rockford
Almira	College Place	Lamont	Sedro-Woolley
Bremerton	Concrete	Lyman	Shelton
Benton City	Connell	Millwood	Tenino
Bridgeport	Creston	Mount Vernon	Walla Walla
Bucoda	Deer Park	Nooksack	Wilbur
Burlington	Ellensburg	Pacific	Woodland
Carbonado	Endicott	Pasco	Yacolt
Cashmere	Fairfield	Port Angeles	Yelm
Castle Rock	Farmington	Port Orchard	
Chelan	Forks	Pullman	
Cheney	Hamilton	Rainier	
Clarkston	Kelso	Rock Island	

Spending Plans

To track spending and efficiently monitor projected needs, Ecology requires all grant recipients to provide a spending plan showing expected needs by month or quarter. The recipient must update the spending plan quarterly if major changes become evident. Ecology will compare the spending plans to actual costs billed on a regular basis. This comparison will help the grant and site managers provide better oversight for the grant project and project funding needs.

The spending plan form is available on Ecology’s Web site at www.ecy.wa.gov/programs/swfa/grants.html.

Cash Management

To better manage cash flow and provide the most grant funds possible to recipients who are ready to proceed with cleanups, Ecology funds remedial action grants for each major phase of remedial action within a biennial time frame. Instead of a grant for the entire costs of a project that may go on for years, the grant will be negotiated to provide enough funds to cover expected expenses for a specific period of time. This time period is likely to be one year or one biennium. At the end of that time, actual spending will be reviewed and if all monies have been expended as planned, the grant may be amended to add funding, or a new grant agreement may be negotiated, for the next biennium.

This phased approach to funding cleanups makes more money available for awards each biennium by not committing funds to projects that are not making progress or are more than two years away from needing the funding.

Annual Financial Statement

The Ecology grant manager may request a copy of the recipient's annual financial statement. The grant manager may review this statement to provide Ecology with information to track potentially liable party contributions and insurance settlements that could affect grant funding.

Overhead Rate and Charges

The recipient may charge as overhead an amount equal to 25 percent of salaries and benefits of the recipient employees for time devoted specifically to the project. That amount should include all costs in the categories below, which generally are not direct billed:

- Office furnishings and operating supplies (office furnishings, stationery/supplies, forms, cleaning supplies).
- Fuel consumed to generate heat.
- Small tools and minor equipment for administrative use (calculators, fax machines, telephones, etc.).
- Professional services (auditors; management consultants; legal, custodial, janitorial, or messenger services, etc., shared by the project and other recipient activities).
- Communication (includes but is not limited to basic telephone, cell phone, pagers, internet connections, facsimile, and postage charges).
- Operating rentals and leases (rental costs for facilities or equipment—such as building or copy machines—that are shared by the project and other recipient activities).
- Insurance (fire, casualty, theft, bonds, liability, etc.).
- Utility services.
- Repairs and maintenance (labor and supplies to repair or maintain real or personal property).
- Miscellaneous (court costs, dues, subscriptions, memberships, laundry, information and credit services, printing and binding, judgments, damages, registration, tuition, etc.).
- Intergovernmental professional services (costs charged by other governmental entities for functions normally provided by governments and not by private businesses, such as police or fire protection).
- Capital outlays (costs of shared real property, equipment, easements, etc.).
- Intergovernmental interfund services (costs to other recipient departments for services rendered jointly to the project as well as to other recipient activities).

Securing and Managing Contracted Services

Using In-House Staff

Ecology strongly suggests using in-house staff to perform some remedial action grant project work, particularly site hazard assessments. Many health departments or districts have some sampling and research expertise already on staff. Grant moneys from this program can be used to hire such staff.

Site hazard assessment grants provide funding for local staff to allow them to address the most significant suspected local hazardous waste sites. If local governments do the work in-house, they don't need an outside consultant to perform the grant scope of work. This way, local governments also save the cost of going through the procurement process.

Contracting Out

Many remedial actions require contracting out for services because of the complex, large-scale, and specialized nature of the work. If you decide to contract out for services, you can help ensure you get the right consultant by asking questions and checking references about both the company and its staff. Also, ask about any subcontractors the consultant may propose to hire and how they will be used on the project. The firm you select must demonstrate not only that it is capable, but that it has qualified staff available.

Start by compiling any readily available information about the site. Include potential sources of contamination and company records on hazardous substances used or stored at the site. Prepare a brief written description of the historical use of the site, the current use, and the work you think needs to be done.

Questions to Ask a Contractor

These sample questions can help you in choosing a contractor:

- What is your firm's experience in this specific work and the subsequent work it might lead to? Request a list of similar completed projects, with references.
- Which portions of the work will the company subcontract? Are subcontractor activities competitively bid? Ask for names of subcontractors and check their experience.
- What is your firm's experience working with regulatory agency requirements? Request a list of completed projects, with references.
- Do the firm's estimates of the time the work requires include time for agency review and approval?
- Which staff will be assigned to my project? Ask for current résumés. Ask the firm to specify staff roles. Request references, at least for the project manager.
- Will the assigned staff be available over the life of the project? Ask if the firm will provide additional staff if needed to get the job done.

- Is the firm’s field staff trained in safety procedures required by the Washington Industrial Safety and Health Administration (WISHA)?
- How will you plan cost-effectively so that all short-term work will complement any potential long-term work? Ask the firm to prepare a proposal for the work to be conducted, a detailed cost estimate for the work proposed, and a “ball park” estimate for subsequent work required.
- Do the firm and its subcontractors have environmental liability insurance for this project? Should they?
- How will the investigation work affect activities at the site? (e.g., employees’ work schedules or customer and neighbor relations.) Ask the firm to briefly describe its recommended approach to the work.

Engineering Services

It is not legal in Washington to select engineering or architectural services on the basis of price or low bid. When procuring these services, government agencies must first choose the best-qualified firm and then negotiate the price (Contracts for Architectural and Engineering Services, Chapter 39.80 RCW).

To choose the best-qualified firm, use a Request for Qualifications (RFQ) solicitation. After selecting the best-qualified firm or firms, negotiate a price for the services in the scope of work contained in the consent decree or enforcement order.

If you cannot come to terms with the first-choice contractor, you are then free to negotiate with the second choice or second most qualified firm, then the third, and so on, until you can reach an agreement.

It’s a good idea to use a “hands-on” approach, such as a staff member assigned as a project manager to oversee the consultant’s work. Ask to have reports and contracts explained in everyday language. Make sure all work follows a detailed work plan subject to your review and approval.

Managing Costs

The project manager must seek to keep costs within bounds. Escalating costs do not obligate Ecology to increase grant amounts. Ecology reserves the right to reject costs as excessive. Consultants generally use two methods to charge for work performed: cost plus fixed fee and fixed price. The method you choose depends on the type and scope of your project.

Cost Reimbursement

The most common type of contract consultants use is the “cost plus fixed fee” contract. You will be charged for salaries and expenses plus a fixed fee you and the consultant determine. This method works well for projects where the scope of work is unclear, extensive investigation is needed, or experimental processes are used.

Fixed Price

You will be charged a firm sum for the entire project. This method is generally used for small projects or when the scope of work can be clearly defined. Whichever method is used, be sure to establish specific criteria by which to evaluate and compare estimates.

Some strategies that project managers may consider are:

- Checking with other clients of the consultant to evaluate actual performance relative to actual cost.
- Minimizing layers of management staff involved in consultant work. Make sure contracts focus on technical work your staff cannot do, rather than on administrative, coordinating, and public participation work that they can do more cheaply.
- Splitting remedial action work into design phases and drilling or construction phases. Because local governments must put construction projects out to bid, by splitting work you can avoid paying the design consultant to oversee and subcontract for the construction phase, which adds overhead costs.
- Proceeding to negotiate the cleanup settlement, rather than pursuing further costly investigations, when sufficient technical information has been gathered.

Minority and Women's Business Participation

Upon receiving grant funding, the recipient agrees to use Ecology's goals for minority- and women-owned business participation in all bid packages. Achieving the goals is encouraged; however, no contract award or rejection shall be made based on achieving or not achieving the goals.

Contracting for Goods and Services

Complete details about contracting for goods and services under an Ecology grant can be found in *Administrative Requirements for Ecology Grants and Loans*, Publication No. 91-18, revised September 2005. To request a copy contact your grant manager, Diane Singer, at (360) 407-6062 or visit our web site at www.ecy.wa.gov/biblio/91018.html.

Basic Contract Provisions:

All contracts or purchase orders shall be written. Oral contracts are not permitted. The contract or purchase order must contain provisions to define a sound and complete agreement. Additional requirements include but are not limited to:

- Name and address of the contractor or vendor, effective and expiration dates (for contracts), scope of work, and maximum cost.
- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, as well as such sanctions and penalties as may be appropriate.
- Suitable provisions for termination by the State of Washington or the recipient, including the manner by which it will be terminated and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default.
- Retention of all required records for three years after Ecology makes final payments and all other pending matters are closed. Providing the state access to such records.
- Equal opportunity employment and nondiscrimination.
- Notice of Ecology reporting requirements.

- Notice of Ecology patent rights and copyrights with respect to any discovery, invention, or rights in data that arises or is developed in the course of or under the contract.
- Mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- Designation of Ecology as an express third-party beneficiary.
- Compliance with the provisions of 40 U.S.C. 276a-276a-5 (Davis-Bacon) and state Prevailing Wage Laws (RCW 39.12), as appropriate.

NOTE: These requirements include a summary of statutory requirements. This summary is intended to provide grant recipients with an overview of contracting requirements only. Where these requirements do not conform to statute or regulation, the statute or regulation will apply. Recipients are referred to their procurement departments for further information.

General Practices

A recipient may contract to buy goods or services related to the project. In such cases, the recipient must follow procedures that ensure fair and open competition. Recipients must also provide written certification that they have followed their standard procurement procedures and/or applicable state law in awarding contracts. Recipients with no formal procurement procedures will have to certify that they have complied with the standards outlined below, as well as applicable state law. Recipients receiving funds from federal sources must also observe applicable federal laws and regulations.

The grant manager may disallow any costs incurred as a result of procurement practices not in compliance with these or the recipient's normal procedures.

In awarding and administering contracts, recipients are to:

- Use sound business judgment.

A recipient is to use sound business judgment and fair administrative procedures in procuring goods and services. This applies to invitations to bid, requests for proposals, solicitation of contractors or vendors, and awards of contracts or purchase agreements.

- Select responsible contractors.

Recipients are to make awards only to responsible contractors with the ability to perform successfully under the terms of the agreement. Recipients are to consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- Ensure contractor compliance.

Contractors are to adhere to the same terms and conditions as the recipient and they must perform in accordance with the terms and conditions of their agreement. The recipient is to ensure that contractors comply with all applicable federal, state, and local laws and regulations related to discrimination, labor and job safety, and environmental protection. Where the recipient permits deviation from those terms, the recipient bears responsibility for any extra costs and these costs will not qualify as match.

- Provide a written contract document.
Contracts must be written, enforceable, and legally sound, and include appropriate general terms and conditions.

- Maintain standards of ethical conduct.

Recipients are to maintain a code of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the recipient shall take part in the award or administration of a contract under a grant or loan if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, or his or her partner, has a financial or other interest in the firm selected. A conflict would also arise if an organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected.

The recipient's officers, employees, or agents must not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or other parties to contracts. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, the recipient's code of conduct will provide for penalties, sanctions, or other disciplinary actions. These actions would be for violations by the recipient's employees or agents, or by its contractor's employees or agents.

- Analyze purchases for cost-effectiveness.

Recipients are to avoid purchase of unnecessary or duplicate items, and are to consolidate or break out purchases as appropriate to obtain a more economical price. Where applicable, the recipient is to analyze lease versus purchase alternatives in determining the most economical approach.

To foster greater economy and efficiency, recipients are encouraged to enter into local intergovernmental agreements for procurement or use of common goods and services.

Recipients are encouraged to use federal or state excess and surplus property whenever such use is feasible and reduces project costs.

- Resolve disputes promptly and fairly

Recipients are responsible for the fair and just settlement of all contractual and administrative issues related to contracts for goods and services. Such issues include, but are not limited to, source evaluation, protests, disputes, and claims. This does not imply that the recipient is to be relieved of any contractual responsibilities under its contracts.

Ecology will not substitute its judgment for that of the recipient unless the matter is primarily an Ecology concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Recipients must have protest procedures for handling disputes relating to contracts and will disclose all information regarding protests to Ecology. A protestor must exhaust all administrative remedies with the recipient before pursuing a protest with Ecology. Ecology will limit its review of protests to violations of state law, regulations, or the standards set forth in this document, and to violations of the recipient's protest procedures in its failure to review a complaint. Ecology will refer all other protests to the recipient.

Minority- and Women-Owned Business Enterprises

The Office of Minority and Women's Business Enterprises (OMWBE) has established goals for the inclusion of minority- and women-owned businesses in procurements made with Ecology funds. In accordance with law, meeting these goals is voluntary. No contract award or rejection shall be made based on meeting or not meeting the goals. Ecology encourages the recipient to meet the goals. The recipient and all prospective bidders or persons submitting qualifications must take the affirmative steps set forth in the grant agreement in any procurement.

A recipient may use its OMWBE goals when they are greater than the goals specified in the grant agreement.

Any Ecology funds passed through grant or loan recipients to reimburse private entities are subject to OMWBE goals. The grant or loan agreement will specify the OMWBE goals relevant to the project. As a condition of the award, the recipient is to certify, by execution of the grant agreement, that it will ensure compliance with the affirmative steps set forth in the grant agreement. In addition, any contract awarded under a grant or loan must specify the percentage of total dollars, if any, awarded to a qualified minority- or women-owned businesses.

Soliciting Contractors for Public Works

Public works include all construction, other than ordinary maintenance, funded, in whole or in part, by state funds. Recipients must follow state statutes in procuring and administering contracts for public works. This section, together with the Standards for Competitive Solicitation below, sets out only a general overview of requirements for public works contracts. Recipients are referred to their own procurement procedures and to applicable state law for full and current requirements.

Applicable statutes include:

Chapter 35.01 RCW	<u>City Classifications</u>
Chapter 35.22 RCW	<u>First Class Cities, Public Works Procurement</u>
Chapter 35.23 RCW	<u>Second and Third Class Cities, Public Works Procurement</u>
Chapter 39.04 RCW	<u>Public Works</u>
Chapter 39.08 RCW	<u>Contractor's Bond</u>
Chapter 70.150 RCW	<u>Water Pollution Control Facilities</u>
Chapter 35.21 RCW	<u>Solid Waste Handling Facilities: Contracts for Vendors (Cities)</u>
Chapter 36.59 RCW	<u>Solid Waste Handling Facilities: Contracts for Vendors (Counties)</u>

Total Cost

The total cost of a public works contract is defined as the cost (including applicable sales tax) of materials, supplies, equipment, and labor on all phases of the project. Recipients are referred to Chapter 84.04 RCW for specific exemptions to the application of sales tax.

Soliciting Bids from Advertisements

Most public works contracts must be procured after advertising for sealed bids. The requirement for soliciting bids depends on the total cost of the project and the class of the municipality. Recipients are referred to Chapter 35.01 RCW for current definitions of classes of municipalities, and to RCW 35.22.620 and 35.23.352 for restrictions on the use of force account work.

Soliciting Bids from Bidder's Lists

For public works with a total cost of less than \$100,000, bids may be solicited from contractors on a pre-established small works roster. The number and kind of contractors from whom a bid must be solicited is established in RCW 35.22.620 and 35.23.352 according to the class of municipality. The award must be made to the contractor submitting the lowest responsive and responsible bid.

Bid Bond

Generally, a bid bond of not less than 5 percent must accompany the proposal. After award, bonds must be returned to all bidders, except that of the successful bidder. That deposit must be retained until a contract is entered into and a bond to perform the work furnished. The bidder must enter into the contract in accordance with his or her bid and furnish a performance bond within ten days of notification of the successful bid. If the bidder fails to meet this deadline, the amount of the bid bond is forfeited to the buyer.

Bid Contents

At a minimum, the bid must include:

- The name and license number of the contractor.
- The name and description of the project.
- A project budget and performance schedule.
- Any applicable specifications required by the program.
- The bidder's acknowledgement that she or he is familiar with the project and has received any and all information relevant to the project.

Selecting the Successful Bidder

Bids must be opened and read (usually publicly) as prescribed by local ordinance. Generally no negotiation with bidders can take place after the bids are opened. All bids must be rejected or the bid awarded to the lowest responsive and responsible bidder. The recipient, at her or his discretion, determines the lowest responsible bidder. However, the recipient must document and support any decision to award the contract to any but the lowest bidder. The award or rejection of any bid may need Ecology's approval.

Awarding Contracts

The recipient is to notify the successful bidder promptly by mail and inform the bidder of the time period required to execute the contract and obtain the performance bond.

Performance or Contract Bond

RCW 39.08.010 requires that a public works contractor post a performance bond (generally 100 percent of the contract price). The bond ensures that the contractor faithfully performs all provisions of the contract and pays all suppliers, laborers, and subcontractors for goods and services provided.

Administering Contracts

Contractors are generally reimbursed for actual costs incurred on a monthly basis, less any retainage stated in contract documents. Recipients can consult RCW 60.28.010 for regulations governing the retainage account. When the project is completed, the recipient must notify the Department of Revenue and include affidavits of wages paid submitted by all contractors and subcontractors. No payment may be made from retained funds until the Department of Revenue certifies that all taxes have been paid and no claims from suppliers of goods or services exist. Also, payment cannot be made until a period of 30 days has elapsed following unconditional acceptance of the project.

Change Orders

Make change orders with caution, since excessive change orders without new bids may be challenged as evasions of the bid law. Change orders are permitted without invalidating the contract if the changes increase or decrease the amount due the contractor or alter the performance schedule. Any change order requires Ecology's approval.

Maintenance Bond

Contractors may have to post a maintenance bond for a specified period to guarantee the material, workmanship, quality, and durability of the project.

Soliciting Contractors for Personal Services Contracts

Recipients will award contracts for personal services in a way that provides fair and open competition. They will have to certify that they have followed their standard procurement procedures and applicable state law in awarding any personal services contracts.

Recipients with no formal procurement procedures will have to certify that they have complied with the Standards for Competitive Solicitation Procedures outlined below for any personal services contracts over \$5000 (see also Chapter 39.29 RCW). In addition, such recipients must obtain any personal services contracts over \$20,000 by means of a formal bid process.

Soliciting Contractors for Architectural and Engineering Services

Recipients will award contracts for architectural and engineering services in a way that provides fair and open competition. They will have to certify that they have followed their standard procurement procedures and applicable state law in making such awards.

Recipients with no formal procurement procedures will have to certify that they have complied with the Standards for Competitive Solicitation Procedures outlined below. Recipients shall also comply with the provisions of Chapter 39.80 RCW, which provides that, except in an emergency, all architectural and engineering services shall be procured by a competitive solicitation. The competitive solicitation must select the most qualified applicant without consideration of price.

Soliciting Vendors for Purchased Goods and Services

Recipients will obtain purchased goods and services in a way that provides fair and open competition. Purchased goods and services include any materials, equipment, supplies, or services a supplier offers for sale that are not personal services or architectural and engineering services.

Recipients will have to certify that they have followed their standard procurement procedures in procuring purchased goods and services. Recipients with no formal procurement procedures will have to certify that they have complied with the Standards for Competitive Solicitation outlined below and have solicited procurements over \$7500 by means of a formal sealed bid (see Chapter 236-48 WAC).

Standards for Competitive Solicitations

In the conduct of a competitive solicitation, whether for supplies and materials or personal services, recipients shall conform to the following general standards:

- Publicize all requests for bids or proposals, identifying all evaluation factors and their relative importance. Recipients will ensure that any solicitation includes a clear and accurate description of the technical requirements for the goods or services. The description may include a statement on the quality of goods or services sought. The description may also include any minimum essential standards to which the goods or services must conform in order to achieve the project purpose. Descriptions should avoid detailed product description. When necessary, however, a "brand name or equal" description may help define the performance or other salient requirements. In such cases, you must clearly state the specific desired features of the named brand.

Any solicitation must also identify all requirements the potential contractors must fulfill and all other factors you will use in evaluating responses.

- Provide adequate time for contractors to prepare a response.
- Solicit at least three responses from qualified sources.
- Document the procedure used in evaluating the responses and in making the final selection.
- Select the contractor whose response is most advantageous to the project, considering price and other relevant evaluation criteria. Such criteria include, but are not limited to:
 - The price and the effect of any applicable discounts, rebates, or tax returns. (NOTE: For architectural and engineering services the consideration of price is prohibited.)
 - The quality of the articles proposed to be supplied, their conformity with the specifications, and the purposes for which they are required.
 - The ability, capacity, or skill of the respondent to perform the contract or provide the goods or services required.
 - The character, integrity, reputation, judgment, experience, and efficiency of the respondent.
 - The quality of performance on previous contracts.
 - Servicing resources, capability, and capacity.
 - Lack of uniformity or interchangeability, if such factors are important.
 - Energy efficiency of the product as projected throughout its anticipated useful life.
 - Effect of reciprocity assessments, OMWBE, or other preferences defined by statute.
 - Other information having a bearing on the decision to award the contract.

Recipients may reject any or all responses when it is in their interest to do so, provided such rejections are in accordance with applicable law and regulations. Rejection of responses may require Ecology approval.

- Publicize any amendment of the solicitation, any change in response periods, and any other information relevant to potential respondents.
- Maintain bidders lists that are current and open to competition. Recipients are to ensure that all lists of prequalified persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, recipients will not keep potential bidders from qualifying during the solicitation period.

Recipients will not:

- Place unreasonable requirements on firms in order for them to qualify to do business.
- Require unnecessary experience or excessive bonding.
- Use noncompetitive pricing practices between firms or between affiliated companies;
- Make awards to consultants placed on retainer without competition either at the time of award or at the time they were retained.
- Establish organizational conflicts of interest.
- Take any arbitrary action in the procurement process.

Ecology Approval of Solicitations, Bids, Proposals, Awards, and Amendments

The recipient may have to submit all bid documents or proposals to the grant manager for written approval before soliciting responses, awarding any contracts, or rejecting bids.

The recipient may also have to get written approval from the grant manager before making any amendment that changes the scope of a contract or increases the contract amount.

Cost Basis of Contract

You cannot write contracts for "cost-plus-a-percentage-of-cost" or "percentage of construction cost." The cost basis for any contract must be cost-reimbursement, unit price, fixed-price, time and materials, or any combination of these four methods.

Recipients are to negotiate profit as a separate element of the price for any cost-reimbursement contract. To establish a fair and reasonable profit, you may consider:

- The complexity of the work to be performed.
- The risk borne by the contractor.
- The contractor's investment.
- The amount of subcontracting.
- The quality of the contractor's past performance.
- Industry profit rates in the surrounding geographical area for similar work.

Documentation

The recipient must keep supporting documentation relevant to all procurements and make it available for review by Ecology on request.

For all contracts and purchase orders, the recipient will establish a file to contain all of the following:

- Complete copy of the purchase order or contract (and any amendments).
- Copy of the grant manager's approval, if any, of the award and any amendments.
- Invoices and records of payments by recipient.
 - If the goods or services were not competitively procured, the justification and written approval from the grant manager, if applicable.
 - For any procurement made through a competitive solicitation:
 - Names, addresses, telephone numbers, and business names of all candidates contacted.
 - Method of contact (copy of advertisement or bidder's list).
 - What the bidders were told (specifications of the invitation to bid or request for proposals).
 - Bidder's responses.
 - Name of successful contractor or vendor and written justification for selection.

Amendments and Grant Administration

Amendments

A grant may be amended to change tasks, change schedules, or redistribute funds within tasks. If a change is needed, you should notify the grant manager in writing of the required change. Once the change has been negotiated, the amendment process can begin.

Performance Monitoring

As a government agency, Ecology is accountable for the proper use of all grant funds. Performance monitoring is Ecology's ongoing review process of your performance to ensure accountability.

The objectives of performance monitoring are to determine if you are:

- Carrying out the scope of work described in the executed agreement.
- Administering the program in an effective and timely manner in accordance with the schedule and budget in the executed agreement.
- Complying with the Special and General Terms and Conditions of the grant agreement, as well as *Administrative Requirements for Ecology Grants and Loans* and the remedial action grants regulation, Chapter 173-322 WAC.

The grant manager monitors performance through your progress reports and final performance evaluation documents. The grant manager may also conduct on-site inspections.

Progress Reports, Final Project Reports, and Spending Plans

Progress Reports:

Progress reports are completed by the grant recipient and must be submitted with each payment request. Progress reports contain information about the grant activities that were performed during the billing period. The grant manager and site manager review the progress reports to learn how the activities are proceeding, reasons for any delays or cost overruns, and any other pertinent information.

Your grant officer cannot process a payment request without a progress report for the billing period.

Final Project Reports:

Final project reports are completed by the grant recipient. They summarize the entire project and its outcomes and include the following:

- A description of the problem addressed by the grant;
- The purpose of the project; and
- The project results and/or outcomes achieved.

Final project reports must be submitted with the last payment request.

Your grant officer uses your final project report to develop the final performance evaluation. So your last payment request will include two reports, a progress report for the work conducted during the last work period (needed to complete your payment request) and a final project report (needed to make final payment and close out your grant). Included in Appendix 3 are templates for each of these reports.

Spending Plans:

Spending plans must be submitted with your first invoice and revised copies provided as changes occur. The Spending Plan can be found on Ecology's website at:
<http://www.ecy.wa.gov/pubs/ecy070108.pdf>

In addition to these scheduled reports, you should notify the grant manager and site manager when any significant successes or problems occur or any changes take place in the project, project staff or contractors.

Final Performance Evaluation

Ecology will close out the grant when it determines all applicable grant requirements have been met or the project has been terminated. All financial requests should be submitted within 45 days of the end of the agreement. The grant manager completes a final performance evaluation (FPE) within 30 days after the receipt of the final project report. Upon completing the FPE, Ecology can officially close out the grant agreement.

Audits

All grants are subject to audit. For three years after the project is finished, Ecology has the right to audit the grant project. Ecology may also audit the grant project, invoices and backup documentation at any time during the project. Once problems are identified, they must be corrected, this could include repayment of grant funds or adjustments to subsequent billings. If any problems are identified on invoices, all previous invoices may be reviewed and corrected.

Roles and Responsibilities

The Recipient

The recipient is responsible for conducting the remedial action activity according to guidelines set forth by the Toxics Cleanup Program. The recipient must also:

- Manage the contractor procurement for any of the grant eligible work and make a conscientious effort to control the cost of such work, while still attaining the objectives.
- Notify the grant manager when:
 - Project scope of work changes.
 - Timelines change.
 - Budget is exceeded or otherwise changes.
- Regularly submit project reports to the grant and site managers.
- Comply with all the terms and conditions of the grant agreement.

The Ecology Grant Manager

The grant manager from the Solid Waste and Financial Assistance Program will serve as the contact person for all grant-related issues from application to grant close-out, including but not limited to:

- Notifying potential recipients of the application dates and deadlines.
- Reviewing grant applications, including proposed scopes of work and budgets.
- Preparing the draft grant scope of work for review by the Ecology site manager and recipient.
- Negotiating the final grant scope of work and budget.
- Preparing the formal grant offer.
- Reviewing changes in the grant scope of work or budget and preparing grant amendments.
- Arranging for audits and grant close-out.
- Working closely with the state Department of Health on safe drinking water action grants to ensure compliance with regulations.

The Ecology Site Manager

The site manager is the person from Ecology's Toxics Cleanup Program responsible for:

- Providing technical assistance to the recipient.
- Negotiating the work plan for the investigation.
- Initiating or reviewing and approving changes in the scope of work in response to unforeseen developments.
- Advising the grant manager on technical adherence to the grant agreement and whether grant invoices should be paid.

Department of Health

State Department of Health staff identifies sites and provides technical oversight to ensure that state regulations regarding drinking water are met.

Appendix 1 - Application Form and Instructions

Part I -- General Instructions

1. Applicant

- A. Name: Enter your agency's name.
- B. Department/Division: Enter the name of your department or division within the agency.
- C. Address: Enter your agency's mailing address.
- D. Tax ID Number: Enter your tax ID number. (We must have a tax ID number to write the agreement.)
- E. Type of Applicant: Enter your agency's classification. (Port districts are considered Special Purpose Districts.)

2. Project Title

Enter the official name of the project. (Example: Cascade Pole RI/FS. If you have a site ID number add that as well.)

3. Cost of Project

Enter the total cost of the project. Then enter the total of the costs eligible for grant funding. (Example: the costs of a landfill cleanup, minus retroactive costs, or contributions from PLPs.) Then enter total grant requested. (This would be the grant percentage of the total eligible costs. Example: if the total cost of a project is \$1,000,000 and the eligible costs are \$700,000 then the total you can request is 50 percent of \$700,000 or \$350,000.) (Note: You can calculate these figures by completing "Part II - Budget" of the application form.)

4. Project Period

Enter the estimated start and end date of the project.

5. Type of Grant or Loan

Enter the type of grant or loan you are applying for. (Note: Oversight remedial action grants cover remedial investigations and feasibility studies, remedial designs, interim remedial measures and remedial actions.)

6. Investment in the Environment

Enter the environmental benefits that will result from the project.

7. Project Location

Enter the county, municipality (if applicable), street address (if available), latitude and longitude, and legislative district where the site is located.

8. Is the Project Covered by an Agreement?

Check the box for the type of settlement agreement that applies or will apply to your site. You must have signed a cleanup agreement before your grant can be finalized, but you may apply while it is under negotiations. Please submit a signed copy of your agreement with the application package if available. If your agreement has not yet been signed by all parties, please submit a copy once the agreement is finalized. If you have a draft agreement, submit that with your application.

9. Applicant Project Manager

Enter information for the person Ecology should contact if there are any questions about the project or this application.

10. Administration Contact

Enter information for the person who should receive the voucher reimbursements (checks). Also identify the contact for any questions about the financial information.

Part II – Budget

1. Applicant's Name

Enter the name of the agency applying for the grant or loan.

2. Section A - Narrative Statement

Address the items listed on additional sheets as necessary and attach to the grant or loan application.

3. Section B -- Calculation of Ecology Grant

Enter the appropriate information for all project tasks for which you want grant funding and provide a detailed description of work to be performed under each task heading.

SAMPLE

	Item (Major Project Tasks and details)	Total Project Cost	Requested From Ecology	Estimated Date of Delivery or Completion
Task 1	Project Management	\$ 60,000	\$ 22,500	June 2009
Task 2	Field Work	190,000	95,000	October 2007
Task 3	Lab Analysis	40,000	20,000	December 2007
Task 4	Technical Reports	75,000	35,000	March 2009
Task 5	Community Relations	28,000	10,000	June 2009
Task 6	Feasibility Study and Work Plan	42,000	20,000	May 2009
Task 7	Administration & Management (local government)	<u>60,000</u>	<u>22,500</u>	June 2009
	TOTAL	\$495,000	\$225,000	

4. Section C -- Budget Funding Source

Enter the information that shows where you will get the funds for the project.
Enter name of financial/legal contact information for tracking possible future contributions/settlements.

Part III -- Certification and Agreement

The application must be signed by your agency representative who is authorized to obligate funds.
If the application is not signed, it is not valid.



Department of Ecology
SOLID WASTE AND FINANCIAL
ASSISTANCE PROGRAM
 ECY 070-104

FOR ECOLOGY USE ONLY	
Application No.	_____
Site Manager	_____
Facility Site ID	_____

Application for Remedial Action Grant

PART I - GENERAL INFORMATION

1. APPLICANT

Name _____ Address _____
 (Street or PO Box No.)

Dept/Div _____
 (Town/City, State and ZIP+4)

Tax ID Number _____

Applicant Type (Check appropriate box or boxes)

State City Other (Specify)

County Special Purpose District Health Department/District

2. PROJECT TITLE

3. COST OF PROJECT

4. PROJECT PERIOD

Total \$ _____ From _____

Eligible \$ _____ To _____

Total Grant or Loan Requested \$ _____

5. TYPE OF GRANT

Independent Remedial Action Derelict Vessel Safe Drinking Water Action

Meth Lab Oversight Remedial Action Areawide Groundwater Contamination

Site Study and Remediation Standard Loan Extraordinary Financial Hardship Loan

5A. Oversight Remedial Action Grant. Will the remedial action grant activities include:

New substantial economic development Habitat restoration Public recreation

Acquisition of vacant, orphaned, or abandoned property Use of outside contracts to conduct necessary studies

Purchase of remedial action cost-cap insurance

6. INVESTMENT IN ENVIRONMENT (Which of the following environmental benefits will result from the project proposal?)

Regulatory compliance with MTCA Restore or Protect Designated Beneficial Uses

Eliminate a Public Health Emergency

Other _____

*** Note: See Appendix 5 of RAG Guidelines for assistance.**

7. PROJECT LOCATION

County _____ Municipality _____

Street Address _____ LAT/LONG _____

Legislative District(s) _____

8. IS THIS PROJECT COVERED BY AN AGREEMENT?

Consent Decree, Ecology/EPA Agreed Order, Ecology Administrative Order, EPA

Prospective Purchaser Agreement Enforcement Order, Ecology/EPA _____ Other

Please Note: Provide the Official Document Number and include a signed copy of the document with your application.
 Official Document No. _____

9. APPLICANT PROJECT MANAGER

Name _____

Title _____

Address _____

Telephone
(Include Area Code) _____

Fax No. _____

Email Address _____

10. ADMINISTRATION CONTACT (To whom checks are to be mailed)

Name _____

Title _____

Address _____

Telephone
(Include Area Code) _____

Fax No. _____

Email Address _____

Application continued on the next page

If you require this publication in an alternate format, please contact the Solid Waste and Financial Assistance Program at 360-407-6900 or TTY 711 or 1-800-833-6388.

PART II - BUDGET

APPLICANT

Name _____

SECTION A – Narrative Statement

Include all information that the grant manager will need to draft the agreement, such as:

- Short history/background of the site
- Consent decree or settlement agreement
- Site's current status
- Overview / summary of what remedial activities will be performed (the specifics will be addressed under the scope of work and tasks below)
- Outcomes expected.
- Any existing agreements with consultants that will be grant funded
- Any existing scope of work approved by Ecology (Be specific; list out task headings and task details)
- All pertinent budget information

Attach additional sheets as necessary

SECTION B – CALCULATION OF ECOLOGY GRANT

(Note: requests checked in part 5A must be listed here. Land acquisition has an additional form.)

Note: Please provide specific details for each task in order for the project to be evaluated for eligibility.

TASK OR ITEM	TOTAL PROJECT COST	REQUESTED FROM ECOLOGY	ESTIMATED DATE OF DELIVERY OR COMPLETION
<p>Provide details about the kinds of actions or activities and costs you wish to be considered for eligibility under the grant.</p> <p>You may provide the details in this column or add an attachment to your application.</p> <p>Examples:</p> <p>Task 1 RI/FS Includes contractor and recipient project management costs needed to develop the RI/FS scope of work, draft and Final RI report, draft and final FS report, selection of remedy, sampling and analysis, and development of the cleanup action plan.</p> <p>Task 2 Interim Actions This task includes source removal in 3 locations to address hotspots of contamination in the soil. Costs include those reasonably associated with removal and disposal of contaminated soil, confirmational sampling and analysis in the soil and groundwater.</p>			
TOTALS			

SECTION C – BUDGET FUNDING SOURCE

ESTIMATED TOTAL COST OF PROJECT

Contribution from other PLP's	\$ _____
Contribution from other sources	\$ _____
Remaining Eligible Cost	\$ _____

REQUESTED GRANT OR LOAN AMOUNT _____ \$

POSSIBLE FUTURE CONTRIBUTIONS / SETTLEMENTS _____ \$

Financial / Legal Contact regarding Contributions / Settlements

Name _____

Title _____

Address _____

Telephone _____

Fax _____

Email _____

Do you have any existing insurance policy(ies) for post release discovery to cover unanticipated cleanup costs?

Yes No

MATCHING FUNDS BY SOURCE

Cash _____

General Obligation Bonds _____

Insurance Settlements _____

Local Improvement District (LID) _____

Revenue Bonds _____

Non-Ecology Grants (*Identify*) _____

Other _____

TOTAL MATCHING FUNDS _____

PART III – CERTIFICATION AND AGREEMENT

The undersigned representative certifies that the information submitted herewith is true and correct to the best of his/her knowledge and belief, and is authorized to sign and submit this application.

The applicant agrees that if a grant is awarded on the basis of this application or any revision or amendment thereof, it will comply with all applicable statutory provisions and with the applicable terms, conditions, and procedures of the Department of Ecology grant regulation and of the grant agreement.

Signature of Authorized Representative

Typed Name and Title

Date

Telephone No. (include area code)

Addendum to Remedial Action Grant Application for projects that include property acquisition

Acquisition of vacant, orphaned, or abandoned property: cost estimates			
(Vacant, orphaned, or abandoned property as defined under RCW 70.105D.040(5))			
	Property	Property	Total Properties
Property Name			Leave shaded areas blank
Date to be Acquired			
Acreage to be Purchased			
VALUE DETERMINATION TYPE (Check one for each property)			
Appraised/reviewed value	<input type="checkbox"/>	<input type="checkbox"/>	
Estimate of value	<input type="checkbox"/>	<input type="checkbox"/>	
Letter of opinion	<input type="checkbox"/>	<input type="checkbox"/>	
PURCHASE TYPE (Check one for each property)			
Fee ownership (land/improvements)	<input type="checkbox"/>	<input type="checkbox"/>	
Less than fee ownership (easements/rights/leases)	<input type="checkbox"/>	<input type="checkbox"/>	
ACQUISITION COST ITEMS (Select all applicable items)			
	Estimated Amount		
Applicable taxes			
Appraisal and review			
Baseline inventory			
Boundary line adjustment			
Closing			
Cultural resources			
Demolition			
Easement – conservation			
Easement – other			
Fencing			
Hazardous substances assessment			
Land			
Land with improvements			
Lease			
Lease – CREP (Conservation Reserve Enhancement Program)			
Noxious weed control			
Other (specify: _____)			
Recording fees			
Relocation			
Rights – development			
Rights – water			
Rights – other			
Signing			
Survey			
Title reports/insurance			
Wetland delineation			
Column Subtotals			
Administrative Costs (limit is 5% of subtotal)			
TOTAL ACQUISITION COSTS			

Appendix 2 – Payment Request Forms

- **Form A19** **Invoice Voucher Form**
- **Form B2** **Running Budget Summary for Projects with Cash Expenditures Only**
- **Form C2** **Voucher Support for Projects with Cash Expenditures Only**
- **Form D** **Contractor Participation Report**

Form A19-1A Invoice Voucher State of Washington 	AGENCY USE ONLY															
	AGENCY NO.			LOCATION CODE			P.R. OR AUTH. NO.									
AGENCY NAME	3. Payment Request No.:															
1. Project Officer: _____ Program: _____ Washington State Department of Ecology P.O. Box 47600, Olympia, WA 98504-7600	4. Agreement No:															
2. Grant/Loan Recipient (Warrant is to be payable to)	<i>Vendor's Certificate. I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.</i>															
Fed ID No.	5. By: (sign in blue ink)															
	Title				Date											
	6. Contact Person				Tel. No.											
	Received By			Date Received												
7	Effect. Date		Expiration. Date						Project Officer Approval for Payment/Performance Certification							
8	Billing Period from		to							Date:						
9	Fund Source Name															
10	Amount of Grant/Loan from Fund															
11	Cumulative Amount Requested															
12	Previous Cumulative Amount Requested															
13	Current Request/Payment Due															
14	Grant/Loan Remaining in the Fund															
All payments are made subject to federal and/or state audit																
DOC DATE		PMT DUE DATE		CURRENT DOC. NO.		REF. DOC NO.		VENDOR NO.		VENDOR MESSAGE		USE TAX	UBI NO.			
REF DOC SUF	TRANS CODE	M O D	FUND	MASTER INDEX		SUB OBJ	SUB SUB OBJECT	ORG INDEX	WORKCLASS	COUNTY	CITY/TOWN	PROJECT	SUB PROJ	PROJ PHAS	AMOUNT	INVOICE NUMBER
				APPN INDEX	PROGRAM INDEX				ALLOC	BUDGET UNIT	MOS					
ACCOUNTING APPROVAL FOR PAYMENT									DATE			WARRANT TOTAL		WARRANT NUMBER		

Ecology is an Equal Opportunity and Affirmative Action Employer.

INSTRUCTIONS FOR COMPLETING FORM A19

1. Enter the name and program of the Ecology project officer (this is the grant manager).
2. Enter the name and address of the recipient, along with the contact person for us to call with any questions about the billing. Enter the recipient's Federal ID No.
3. Enter the number of the payment request – they are numbered consecutively.
4. Enter the grant or loan number.
5. Have the authorized official sign and date the request.
6. Enter the name and telephone number of the person who completed the payment request.
7. Enter the effective date and expiration date of the agreement.
8. Enter the period covered by the current payment request. No costs are eligible if incurred before the effective date or after the expiration date.
9. FUND SOURCE Name: List the name of each fund source administered by Ecology that supports the project costs.
10. AMOUNT OF GRANT/LOAN from FUND: For each fund source, enter the amount of the grant or loan established in the agreement. If there have been any amendments to the agreement, enter the amount established in the last amendment.
11. CUMULATIVE AMOUNT REQUESTED from FUND: If there is only one Form B1 or B2 for this billing, enter the amounts computed for each fund on line 11 of Form B2 or line 6(B) of form B1 (page 2). If there is more than one Form B1 or B2, do the following: for each fund, add the fund amounts computed on line 11 of all Forms B2 or line 6(b) of all Forms B1 (page 2) submitted with this payment request, and enter the sum.
12. PREVIOUS CUMULATIVE AMOUNTS REQUESTED: Enter the amount on line 11 of the previous Form A19. For first billings, enter 0.
13. CURRENT REQUEST: Compare the amount of the grant or loan from each fund (line 10) to the cumulative amount requested from the fund (line 11). Subtract line 12 from the smaller of the two and enter the result. If less than zero, enter zero.
14. GRANT/LOAN REMAINING in the FUND: Subtract the cumulative amount requested (line 11) from the Grant/Loan Amount in the Fund (line 10). If the result is less than zero, enter zero.

FORM B2: Running Budget Summary for Projects with Cash Expenditures Only

Use one form for each group of costs with the same eligibility requirements.

Agreement No.: _____ Recipient: _____ Payment Request No.: _____ Page: _____ of _____

FOR PROJECTS WITH MORE THAN ONE GROUP OF ELIGIBILITY REQUIREMENTS: Group No.: _____ Fund Source(s): _____

(1) Element No.	(2) Cash Expenditures This Request	(See instructions)		(5) Cumulative Cash Expenditures on Prev. Form B2	(6) New Cumulative Cash Expenditures	(7) Budget	(8) Eligible Cumulative Element Cost
		(3) Elig. %	(4) Elig. Am't				
							(9)

(10) For each fund administered by Ecology that supports this group of costs, enter the name of the fund and the fund share (%) at right.	Fund: _	Share: _	%	Fund: _	Share: _	%	Fund: _	Share: _	%
(11) Compute fund amounts. In each column, multiply box 9 above by the fund share (%) in line 10 and enter the result.									

INSTRUCTIONS FOR COMPLETING FORM B2

1. (First line) Enter the agreement number, recipient name, payment request number, and page numbers.
2. (Second line) If the terms of the agreement establish groups of costs by different eligibility requirements, enter the group which is documented on this page. Otherwise, enter "1." Enter the name(s) of the fund source(s).
3. (Column 1) Enter the number of each budget element (task, subtask, or object) established in the agreement.
4. (Column 7) Enter the amount budgeted for each element in the agreement.
5. (Column 3) Enter as a decimal the eligibility percentage for each element as specified in the agreement. If none is specified, enter a "1."
6. (Column 2) On the line corresponding to each element, enter the cash expenditures reported for that element from box 8 of form C2.
7. (Column 4) Multiply column 2 by column 3 and enter the result.
8. (Column 5) If this is the first billing, leave this column blank. Otherwise, enter the cumulative costs computed in column 6 of the previous Form B2.
9. (Column 6) For each element, add the entries in columns 4 and 5 to obtain new cumulative cash expenditures.
10. (Column 8) For each element, compare the entry in column 6 (cumulative total element cost) with the entry in column 7 (budget amount). **IF THE CUMULATIVE TOTAL COSTS FOR ANY ELEMENT EXCEED THE BUDGET, THE EXCESS WILL NOT BE ELIGIBLE WITHOUT AN AMENDMENT.** For each element, enter the smaller of the entries in column 6 and 7 in column 8 (this is the eligible element amount to this point).
11. (Box 9) Add entries in column 8 and enter sum here. This is the Maximum Eligible Costs Based on the Budget.
12. (Line 10) Enter in a column at the right the name of each Ecology-administered fund that supports this group of costs. Below it, enter the percentage of eligible costs which will be supported by that fund as specified in the agreement (fund share).
13. (Line 11) For each fund, multiply the fund share (%) by box 9, and enter the result on line 11. This is the cumulative amount requested from the fund for this group of costs.
14. If there is only one group, transfer the amounts on line 11 to Form A19, line 11. If there is more than one group, add the fund amounts computed on line 10 of all Forms B2 for each fund, and enter on line 11 of Form A19.

FORM C2: Voucher Support for Projects with Cash Expenditures Only

Use one form for each group of costs with the same eligibility requirements.

Agreement No.: _____ Recipient: _____ Payment Request No.: _____ Page: _____ of _____

(1) Element No.	(2) Payee	(3) Item	(4) Invoice Number	(5) Date Cost Incurred	(6) Warrant Number (if any)	(7) Amount of Cash Expenditure
TOTALS BY ELEMENT						\$ ⁽⁸⁾

INSTRUCTIONS FOR COMPLETING FORM C2

1. Enter the agreement number, recipient name, payment request number, and page numbers at the top of the form.
2. (Column 1) Enter the element number (as specified in the agreement) to which the cost is to be attributed.
3. (Column 2) List the name of the payee.
4. (Column 3) List the item purchased.
5. (Column 4) Enter the vendor's invoice number.
6. (Column 5) Enter the date that the cost was incurred. NOTE: All costs must be incurred between the effective and expiration dates of the agreement.
7. (Column 6) Enter the number of the warrant used to pay the vendor (if payment has already been made).
8. (Column 7) Enter the amount of the cash expenditure.
9. (Box 8) If only one element is documented on this form, add the entries in column 7 and enter the result in box 8. If more than one element is documented on this form, add the entries in column 7 for each element and circle the total for each element.
10. Enter the total for each element in column 2, Form B2.

Appendix 3 - Progress Report Formats

- **Site Hazard Assessment**
- **Meth Lab**
- **Oversight Remedial Action Grants – Progress Report**
- **Oversight Remedial Action Grants - Final Project Report**

Grant Recipient's Name _____
Grant Number _____

Site Hazard Assessment Grants - Progress Report

For the period _____ through _____, 200__

PROJECT TITLE:

RECIPIENT MAILING ADDRESS:

TELEPHONE NUMBER:

CONTACT PERSON:

TASK 1: Initial Investigations

Overview – General Comments:

Site Specific Information

Date Received	ERTS#	Site or Address	Site Visit? (Y/N)	Date Report Was Sent to Ecology	Recommendations

Additional Comments:

Totals

Number initiated this period	
Number completed this period	
Number ongoing	
Number completed under award	

TASK 2: Site Hazard Assessments

Overview – General Comments:

--

Site Specific Information

Date Received	ERTS#	Site or Address	Site Visit? (Y/N)	Date Report Was Sent to Ecology	Recommendations

Additional Comments:

--

Totals

Number initiated this period	
Number completed this period	
Number ongoing	
Number completed under award	

TASK 3: (if applicable)

TASK 4: (if applicable)

If more tasks are in a specific grant, continue numbering the tasks in sequential order.

If you require this publication in an alternate format, please contact Solid Waste and Financial Assistance at 360-407-6900 or TTY 711 or 1-800-833-6388.



ECY 070-106

Grant Recipient's Name _____
Grant Number _____

Meth Lab Grants- Progress Report

Methamphetamine Lab Grant # _____

Name of Local Health Agency _____

PROJECT TITLE:

RECIPIENT MAILING ADDRESS:

TELEPHONE NUMBER:

CONTACT PERSON:

REPORTING PERIOD:

TASK 1:

NUMBER OF NEW SITES	
CONTINUED SITES	
NUMBER OF SITES COMPLETED THIS PERIOD	
TOTAL COMPLETED WITHIN GRANT	

SITE SPECIFIC INFORMATION

- Site name
- Site location
- Date
- Activities completed

Remaining activities (if applicable)

TASK 2: (If applicable)

If you require this publication in an alternate format, please contact Solid Waste and Financial Assistance at 360-407-6900 or TTY 711 or 1-800-833-6388.



Recipient: _____
Grant #: _____
Reporting Period: _____
Voucher Number _____

Oversight Remedial Action Grants - Progress Report

Project Task or Element Number (as listed in the Grant Award)	Narrative Description of Activities Accomplished; Deliverables; Status

Invoices and progress reports must match the tasks in the award

Oversight Remedial Action Grant - Progress Report

Explain any variations from tasks and expenditures planned this reporting period. Indicate what effect variations may have on the remedial action schedule and grant budget.

Identify challenges and deviations from the scope of work that were encountered during the reporting period and resolutions that were or will be implemented.

Provide up-to-date information on points of contact should there be any changes since the last reporting period.

The following information is needed from the financial/legal contact.

Have there been any insurance settlements or contribution actions to date? Yes ___ or No ___

If yes, please explain in detail, including amounts received and party settlement was with.

Name of fiscal officer responsible for receiving payments: _____

Telephone number where fiscal officer can be reached: _____

If you require this publication in an alternate format,
please contact the Solid Waste and Financial Assistance
Program at 360-407-6900 or 1-800-833-6388.

Recipient: _____

Grant #: _____

Date of Report: _____

Oversight Remedial Action Grants - Final Project Report

Project or Site Name

Narrative Description of Problem Addressed by the Grant

Purpose of the Project

Project Results or Outcomes Achieved

ECY FORM #

If you require this publication in an alternate format,
please contact the Solid Waste and Financial Assistance
Program at 360-407-6900 or 1-800-833-6388.

Appendix 4 - Chapter 173-322 WAC - Remedial Action Grants

Last Update: 3/22/07

WAC

- 173-322-010 Purpose and authority.
- 173-322-020 Definitions.
- 173-322-030 Relation to other legislation and administrative rules.
- 173-322-040 Administration.
- 173-322-050 Fiscal controls.
- 173-322-060 Site hazard assessment grants.
- 173-322-070 Oversight remedial action grants.
- 173-322-080 Independent remedial action grants.
- 173-322-090 Area-wide ground water remedial action grants.
- 173-322-100 Safe drinking water action grants.
- 173-322-110 Methamphetamine lab site assessment and cleanup grants.
- 173-322-120 Derelict vessel remedial action grants.
- 173-322-130 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). The intent of the remedial action grants and loans 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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-010, filed 3/18/05, effective 4/18/05. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-010, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-010, filed 5/1/90, effective 6/1/90.]

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.

"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.

"Areawide groundwater contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.

"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.

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

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

"Department" means the department of ecology.

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

"Economically disadvantaged county" means a county that meets 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 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.

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

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

"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.

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

"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.

"Innovative technology" means new technologies that have been demonstrated to be technically feasible under certain site [3]

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

"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 [4]

percentage of 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, 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.

"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.

"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 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 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.

"Site" means any building, structure, installation,

[5]

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.

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

[Statutory Authority: RCW 70.105D.070. 07-08-010 (Order 06-13), § 173-322-020, filed 3/22/07, effective 4/22/07; 05-07-104 (Order 04-06), § 173-322-020, filed 3/18/05, effective 4/18/05.

Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-020, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-020, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-020, filed 5/1/90, effective 6/1/90.]

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 for remedial action. The execution of remedies 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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-030, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-030, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-030, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-030, filed 5/1/90, effective 6/1/90.]

WAC 173-322-040 Administration. (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 [6]

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.

(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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-040, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § [7]

173-322-040, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-040, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-040, filed 5/1/90, effective 6/1/90.]

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.** 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.

(3) **Limit on funding for a hazardous waste site.**

(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) **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 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 [8]

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 ground water remedial action grant funds.** If the department provides the local government with an area-wide ground water 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.

(9) **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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-050, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-050, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-050, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-050, filed 5/1/90, effective 6/1/90.]

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 [9]

and verify the results of a site hazard assessment and to establish the hazard ranking of the site.

(2) **Applicant eligibility.** To be eligible for a site hazard assessment grant, the applicant 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) The department has agreed that the applicant may conduct the site hazard assessment; and

(d) The scope of work for the site hazard assessment must conform to WAC 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.**

(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.

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

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

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-060, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-060, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-060, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-060, filed 5/1/90, effective 6/1/90.]

WAC 173-322-070 Oversight remedial action grants. (1)

Purpose. The purpose of the oversight remedial action grant program is to provide funding to local governments that conduct remedial actions 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 eligibility.** Except as provided under subsection (3) of this section, to be eligible for an oversight 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 applicant must be a potentially liable person or a potentially responsible party 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.

(3) **Retroactive applicant eligibility.** To be eligible to

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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;

(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 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 [12]

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.

(6) **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 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

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

(b) **Ineligible costs.** Ineligible costs for oversight remedial action grants include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (7) 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;

(v) Natural resource damage assessment costs and natural resource damages;

(vi) 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; and

(vii) In-kind services.

(7) **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

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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.

(8) **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.** 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.

(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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-070, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-070, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-070, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-070, filed 5/1/90, effective 6/1/90.]

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WAC 173-322-080 Independent remedial action grants. (1)

Purpose. The purpose of the independent remedial action grant program is to provide funding to local governments that have successfully cleaned up hazardous waste sites through independent remedial action. 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 eligibility.** To be eligible for an independent 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 applicant must be a potentially liable person or potentially responsible party 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.

(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 [15]

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

(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 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).

(b) **Ineligible costs.** Ineligible costs for independent remedial action grants include, but are not limited to, the following:

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

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

(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 costs and natural resource damages;

(vi) 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; and

(vii) In-kind services.

(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

(b) The department provided only partial funding under a

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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. 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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-080, filed 3/18/05, effective 4/18/05. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-080, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-080, filed 5/1/90, effective 6/1/90.]

WAC 173-322-090 Area-wide ground water remedial action

grants. (1) **Purpose.** The purpose of the area-wide ground water remedial action grant program is to provide funding to local

governments that facilitate the cleanup and redevelopment of property within their jurisdictions where the ground water has been contaminated by hazardous substances from multiple sources. The grants are intended to encourage and expedite the investigation and cleanup of area-wide ground water contamination.

(2) **Applicant eligibility.** To be eligible for an area-wide ground water 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 hazardous waste site must involve area-wide ground
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water 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 ground water action;

(d) The area-wide ground water 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 areawide ground water action specified in the grant agreement.

(3) **Application process.**

(a) **Submittal.** If the area-wide ground water 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 ground water 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 ground water contamination, the current status of the site, and the remedial actions to be performed at the site to address the area-wide ground water 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 ground water 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

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funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for area-wide ground water 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.

(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 area-wide ground water 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.

(b) **Ineligible costs.** Ineligible costs for area-wide ground water remedial action grants include, but are not limited to, the following:

(i) 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;
- (v) Natural resource damage assessment costs and natural resource damages;
- (vi) 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; and
- (vii) 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;

(b) The department provided only partial funding under a [19]

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.

(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 ground water 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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-090, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-090, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-090, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-090, filed 5/1/90, effective 6/1/90.]

WAC 173-322-100 Safe drinking water action grants. (1)

Purpose. The purpose of the safe drinking water action grant program is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking

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water to areas contaminated by, or threatened by contamination from, hazardous waste sites.

(2) **Applicant eligibility.** To be eligible for a safe drinking water 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 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 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 chapter 246-290 WAC (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;

(e) The public water system must exhibit levels of contamination which exceed the primary maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310, exhibit levels of contamination which exceed the cleanup standards established by the department of ecology under WAC 173-340-700 through 173-340-760, or 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;

(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) 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.

(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.

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(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;

(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.

(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 safe drinking water action grants include, but are not limited to, the reasonable costs for the following:

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

(ii) Transmission lines between major system components,
[22]

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 WAC 173-160-381;

(xi) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds;

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

(ii) Oversight costs;

(iii) Operating and maintenance costs;

(iv) Natural resource damage assessment costs and natural resource damages;

(v) 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; and

(vi) 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;

(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.

(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 [23]

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.

(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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-100, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-100, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-100, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter

70.105D RCW. 90-10-057 (Order 89-45), § 173-322-100, filed 5/1/90, effective 6/1/90.]

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 [24]

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.

(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;

[25]

(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;

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

(7) **Funding and reimbursement.**

[26]

(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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-110, filed 3/18/05, effective 4/18/05. Statutory

Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-110, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-110, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-110, filed 5/1/90, effective 6/1/90.]

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.

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(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.**

(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 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.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), [29]

§ 173-322-120, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-120, filed 2/12/01, effective 3/15/01; 90-10-057 (Order 89-45), § 173-322-120, filed 5/1/90, effective 6/1/90.]

WAC 173-322-130 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 to supplement local government funding and funding from other sources to meet the match requirements for oversight remedial action grants. The intent of the loan program is 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 two different types of 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.

(3) **Applicant eligibility.** To be eligible for a loan, the applicant 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;
 - (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;
- (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.

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(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 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).

(6) **Cost eligibility.** The eligible costs for the loan program shall be the same as the eligible costs for the oversight remedial action grant program set forth in WAC 173-322-070(6).

(7) **Retroactive cost eligibility.** The eligibility of retroactive costs for the loan program shall be the same as the eligibility of retroactive costs for the oversight remedial action grant program set forth in WAC 173-322-070(7).

(8) **Funding and repayment.**

(a) **General.** If the department provides the applicant an

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oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(8), 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.

(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 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.

[Statutory Authority: RCW 70.105D.070. 07-08-010 (Order 06-13),
§ 173-322-130, filed 3/22/07, effective 4/22/07; 05-07-104 (Order
04-06), § 173-322-130, filed 3/18/05, effective 4/18/05.]

Appendix 5 - Environmental Benefits Table

Applicants will need to indicate which of the following environmental benefits will result from a local government’s proposal:

Grant	Key Decision(s) under MTCA	Performance Measure(s) – Outcome-Focused ¹	Environmental Benefit ²	Prioritization Factor ³
Site Hazard Assessment	When a complaint is received an initial investigation is triggered. The initial investigation determines whether an SHA is warranted. Confirm or rule out the release or threatened release of a hazardous substance.	Collect site data, analyze the data to determine NFA (no further action) or score the site. (scope of problem is identified)	Regulatory compliance with Model Toxics Control Act.	Potential public health or environmental threat.
Site Study & Remediation	Determine the nature and magnitude of contamination and evaluate site information to adequately characterize the site. Determine cleanup action alternatives. Determine a cleanup action plan that will be permanent to the maximum extent possible.	Complete a remedial investigation. Select among cleanup action alternatives. Complete a cleanup action plan. Conduct a remedial action that protects human health and the environment. The final cleanup must have been approved (or reviewed, if an independent action) by Ecology.	Regulatory compliance with Model Toxics Control Act.	Relative hazard ranking according to Ecology’s or EPA’s listing.
Meth Lab	Determine that a meth lab requires immediate cleanup. Spills program initially contains the site. The jurisdictional health department/district (JHD) then posts the site and completes administrative actions.	Conduct an emergency action. Property owner is required to define scope of the problem and cleanup of the site. When site is cleaned up to satisfaction of JHD (dwelling) or Ecology (property), the site can be reused, if appropriate.	A public health emergency will be eliminated.	Potential public health or environmental threat.
Safe Drinking Water	Determine that a water system is in an area determined to be a hazardous waste site or threatened by contamination from a hazardous waste site.	A water supply source is developed and/or an alternate water supply is established.	Designated beneficial uses will be restored or protected and public health emergency will be eliminated.	Relative risk to human health.
Derelict Vessels	Determine that derelict vessel presents a potential threat to human health and the environment.	Vessel is removed and disposed of in a regulated facility.	Regulatory compliance with Model Toxics Control Act.	Potential public health or environmental threat.

¹ Under the Model Toxics Control Act, WAC 173-340, a hazardous waste site no longer poses a threat or potential threat to human health and the environment when cleanup standards are met following a remedial action.

² 2001 Legislature amended RCW 70.105D.100, Model Toxics Control Act, to require grant recipients to include the environmental benefits of the project into the grant applications. The amendment requires Ecology to utilize the statement of environmental benefit(s) in its prioritization and selection process.

³ The evaluation and prioritization criteria are found in WAC 173-322-070(1) (a); (2) (a); and (3) (a).

Appendix 6 – General Terms and Conditions

GENERAL TERMS AND CONDITIONS Pertaining to Grant and Loan Agreements of the Department of Ecology

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT'S employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits. Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.
2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The \$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Budget deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT'S request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.
3. Period of Compensation. Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT'S performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT'S sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.
6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination. A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.
2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above. When this agreement crosses the RECIPIENT'S fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT'S governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT'S possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. RECYCLED/RECYCLABLE PAPER

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content

and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite. As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT'S sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

SS-010 Rev. 05/02