



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

Eastern Region Office

4601 North Monroe St., Spokane, WA 99205-1295 • 509-329-3400

March 4, 2025

David Modde  
The JR Simplot Company  
david.modde@simplot.com

**Re: No further action necessary under state cleanup law for the following contaminated site based on Initial Investigation:**

Site name: Simplot Diesel Spill  
Property address: 12184 Dodd Road, Burbank  
Facility/Site ID: 100003434  
Cleanup Site ID: 17190  
ERTS ID: 734402

Dear David Modde:

The Washington State Department of Ecology (Ecology) received your report about a release of hazardous substances at the Simplot Grandview Farm facility (Site) and your independent cleanup of that release on October 16, 2024. We have investigated the release and reviewed your independent cleanup, as required under RCW [70A.305.030\(2\)\(d\)](#)<sup>1</sup> and WAC [173-340-310](#).<sup>2</sup>

Based on the investigation, Ecology has determined that a release posing a threat to human health or the environment occurred, but no further remedial action is necessary to clean up contamination at the Site due to a completed independent remedial action.

Ecology bases this determination on an analysis of whether the remedial action meets the substantive requirements of the Model Toxics Control Act, chapter [70A.305](#) RCW,<sup>3</sup> and the

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<sup>1</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.030>

<sup>2</sup> <https://app.leg.wa.gov/wac/default.aspx?cite=173-340-310>

<sup>3</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

cleanup regulations adopted under that act, chapters [173-340](#)<sup>4</sup> and [173-204](#)<sup>5</sup> WAC (collectively called the “state cleanup law”).

Based on this determination, Ecology has added the Site to the [No Further Action Sites List](#)<sup>6</sup> and assigned it Cleanup Site ID No. 17190. You can find information and electronic records for the Site on the [Simplot Diesel Spill](#)<sup>7</sup> webpage.

This determination applies only to the release(s) described in the release report dated October 16, 2024, that have a completed independent remedial action.

Ecology bases this determination on the information contained in the following documents:

- Modde, David, Email: *Diesel Spill Report – Simplot Farms Pasco, October 14, 2024*, February 21, 2025.
- Modde, David, Email: *Footprint and Soil Sampling*. February 28, 2025.

You can request these and other site file documents by submitting a [records request](#).<sup>8</sup> For help making a request, contact the Public Records Officer at [recordsofficer@ecy.wa.gov](mailto:recordsofficer@ecy.wa.gov) or call (360) 407-6040.

This determination is void if information in any of the listed documents is materially false or misleading.

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This determination does not:

- Resolve or alter a person’s liability to the state.
- Protect liable persons from contribution claims by third parties.

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<sup>4</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340>

<sup>5</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-204>

<sup>6</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/nfa>

<sup>7</sup> <https://apps.ecology.wa.gov/neighborhood/?tableId=4&lat=46.157976&lon=-118.864098&zoom=15&radius=false>

<sup>8</sup> <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW [70A.305.040](#)(4).<sup>9</sup>

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This determination does not provide an opinion on whether the action you performed is substantially equivalent. Courts make that determination. See RCW [70A.305.080](#)<sup>10</sup> and WAC [173-340-545](#).<sup>11</sup>

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this determination. See RCW [70A.305.170](#)(6).<sup>12</sup>

If you have any questions about this determination, please contact Sara Fulton, the regional Initial Investigation Coordinator, at 509-319-0047 or [sara.fulton@ecy.wa.gov](mailto:sara.fulton@ecy.wa.gov).

Sincerely,



Nicholas Acklam  
ERO, Toxics Cleanup Program

sf:hg

Att.: SHARP Report – 17190 Simplot Diesel Spill  
Cleanup Site Details report  
Model Toxics Control Act Cleanup Regulation Focus Sheet

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<sup>9</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

<sup>10</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

<sup>11</sup> <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

<sup>12</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

# Simplot Diesel Spill



SHARP Report — Part 1 of 2

[Go to site contamination history](#)

• SHARP first SHARP		v2024.04.29	Ecology Info	
• SHARP rating	Low		ERTS	734402
• SHARP date	02/24/2025		CSID	17190
• EJFlagged?	✓ – No Override		FSID	100003434
• LD confidence level	low		VCP	SHARP it
• Cleanup milestone	initial investigation		UST ID	SHARP it
• SHARPster	Sara Fulton		LUST ID	SHARP it

**This section is blank if this is the first SHARP**

SHARP Media	Scores	Confidence	Additional Factors
Indoor air	D4	medium	multiple chemical types <input type="checkbox"/>
Groundwater	D4	medium	risk to off-site people <input type="checkbox"/>
Surface water	D4	low	climate change impacts <input type="checkbox"/>
Sediment	D4	medium	plant/animal tissue data <input type="checkbox"/>
Soil	D4	medium	

Location and land use info	
12184 Dodd Rd Burbank, WA46° 09'32.61" 118°51' 54.51", Burbank, Walla Walla County, 99323	
Primary parcel	320819320001
Land use	agricultural
Responsible unit	ERO

Sources reviewed
Modde, David. JR Simplot. Diesel Spil Report Email. February 21, 2025.



Primary census tract	Associated census tracts
0	SHARP it

Local demographics comments
no comments

Source/source area description
<p>Byrnes Oil Company Inc. (Byrnes Oil) was delivering a full tanker load of diesel to a fuel storage tank at J.R. Simplot Company's potato storage facility when a release of approximately 300 gallons of fuel occurred due to a malfunctioning shut-off device on the diesel tank.</p>

Soil comments
no comments

Groundwater comments
no comments



**Surface water comments**

no comments

**Sediment comments**

no comments

**Indoor air comments**

no comments

**Additional factors comments**

no comments

## Site history

[Go to top](#)

On October 14, 2024, Byrnes Oil was delivering a full tanker load of diesel to the fuel storage tank at Simplot Farms Pasco's potato storage sheds off E Humorist Rd. The delivery began around 5:30 AM. It was reported that the high-level shut-off device on the diesel tank was not functioning properly, unaware that the tank was overfilling, the delivery driver inadvertently released diesel onto the ground surrounding the tank, with some fuel running toward E Humorist Rd. The driver immediately reported the spill to Simplot Farms employees in Pasco. Upon notification, Simplot farm employees promptly implemented the fuel spill response plan. Using front-end loaders, they contained the spill by removing affected soil and piling it for proper disposal. Reportedly by sunrise, all contaminated soil had been removed, by ensuring no visible staining remained around the tank, road edges, or main roads near the potato sheds followed by a single confirmation collected at 2 feet below ground surface to assess environmental impact. Due to the lack of precise depth measurements before the release and cleanup, operators excavated until they reached visibly clean soil.

The bulk diesel delivery was intended to off-load the entire tanker, with billing based on loadout tickets generated at the time the Byrnes Oil truck was filled. When asked to estimate the volume of spilled diesel, Byrnes Oil was unable to determine an exact amount, but they estimated the loss to be about 300 hundreds of gallons.

Recommend the site receive a no further action.



**Overflow - Site contamination and cleanup history**

No overflow

**Simplot Diesel Spill**

17190 Simplot Diesel Spill 20250224

First SHARP

SHARP rating — Low

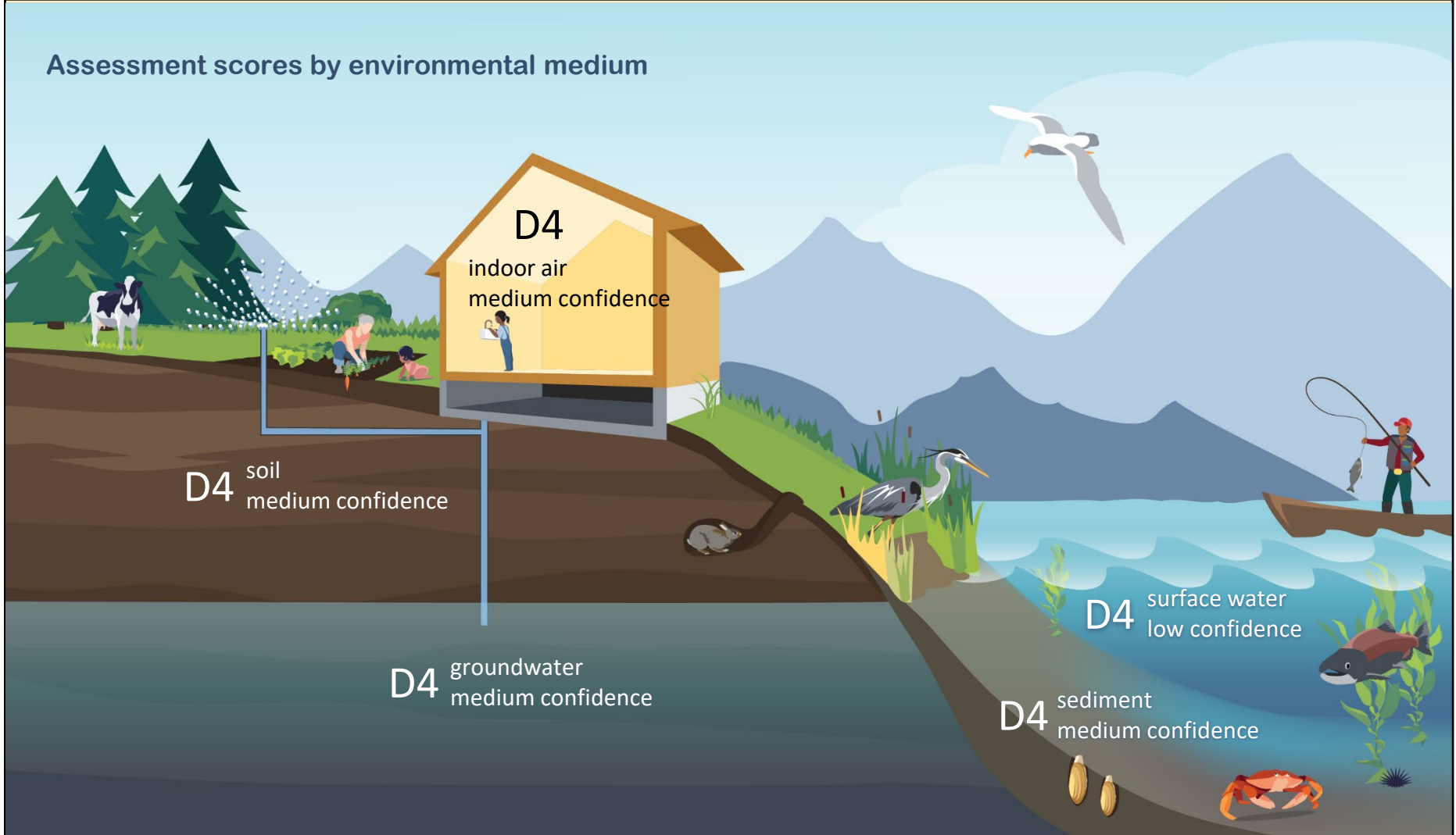
**SHARP Report — Part 2 of 2**

Conceptual site model

02/24/2025



**Assessment scores by environmental medium**



## Cleanup and Tank Search

☰ Menu



# Simplot Diesel Spill

 **Burbank, Walla Walla County**

Facility Site ID:

**100003434**

Cleanup Site ID:

**17190**

### Site Status

No Further Action

## More Information



This site has been cleaned up and complies with the standards in the state's environmental cleanup law, the Model Toxics Control Act.

See the Site Details report at left or the documents below to learn more about this site.

Ecology works to clean up contaminated properties throughout the state. Cleanups are construction projects that remove, treat, or contain potentially harmful substances.

### Documents



#### Places to see print documents

##### Eastern Regional Office

N 4601 Monroe St  
Spokane, 99205-1265  
[509-329-3415](tel:509-329-3415)

Please schedule an appointment to view print documents at this location.

### Contaminants 1



#### Contaminant Type

	Soil?	Groundwater?				
Non-Halogenated Organics - Petroleum-Diesel?	RB?					

**S** Suspected


**C** Confirmed Above Cleanup Levels

**B** Below Cleanup Levels

**RA** Remediated-Above

**RB** Remediated-Below

**R** Remediated

 This contaminant list was based on our best information at the time it was entered. It may not reflect current conditions at the site.





# Focus

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## **Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites**

In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington, changing the way hazardous waste sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. This fact sheet provides a brief overview of the process for the cleanup of contaminated sites under the rules Ecology adopted to implement that Act (chapter 173-340 WAC).

### **How the Law Works**

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The cleanup of hazardous waste sites is complex and expensive. In an effort to avoid the confusion and delays associated with the federal Superfund program, the Model Toxics Control Act is designed to be as streamlined as possible. It sets strict cleanup standards to ensure that the quality of cleanup and protection of human health and the environment are not compromised. At the same time, the rules that guide cleanup under the Act have built-in flexibility to allow cleanups to be addressed on a site-specific basis.

The Model Toxics Control Act funds hazardous waste cleanup through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or \$7 per \$1,000. Since its passage in 1988, the Act has guided the cleanup of thousands of hazardous waste sites that dot the Washington landscape. The Washington State Department of Ecology's Toxic Cleanup Program ensures that these sites are investigated and cleaned up.

### **What Constitutes a Hazardous Waste Site?**

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Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment must report this information to the Department of Ecology (Ecology). If an "initial investigation" by Ecology confirms further action (such as testing or cleanup) may be necessary, the facility is entered onto either Ecology's "Integrated Site Information System" database or "Leaking Underground Storage Tank" database. These are computerized databases used to track progress on all confirmed or suspected contaminated sites in Washington State. All confirmed sites that have not been already voluntarily cleaned up are ranked and placed on the state "Hazardous Sites List." Owners, operators, and other persons known to be potentially liable for the cleanup of the site will receive an "Early Notice Letter" from Ecology notifying them that their site is suspected of needing cleanup, and that it is Ecology's policy to work cooperatively with them to accomplish prompt and effective cleanup.

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## Who is Responsible for Cleanup?

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Any past or present relationship with a contaminated site may result in liability. Under the Model Toxics Control Act a potentially liable person can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

In situations where there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site. That means each person can be held liable for the entire cost of cleanup. In cases where there is more than one potentially liable person at a site, Ecology encourages these persons to get together to negotiate how the cost of cleanup will be shared among all potentially liable persons.

Ecology must notify anyone it knows may be a “potentially liable person” and allow an opportunity for comment before making any further determination on that person’s liability. The comment period may be waived at the potentially liable person’s request or if Ecology has to conduct emergency cleanup at the site.

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## Achieving Cleanups through Cooperation

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Although Ecology has the legal authority to order a liable party to clean up, the department prefers to achieve cleanups cooperatively. Ecology believes that a non-adversarial relationship with potentially liable persons improves the prospect for prompt and efficient cleanup. The rules implementing the Model Toxics Control Act, which were developed by Ecology in consultation with the Science Advisory Board (created by the Act), and representatives from citizen, environmental and business groups, and government agencies, are designed to:

- Encourage independent cleanups initiated by potentially liable persons, thus providing for quicker cleanups with less legal complexity.
- Encourage an open process for the public, local government and liable parties to discuss cleanup options and community concerns.
- Facilitate cooperative cleanup agreements rather than Ecology-initiated orders. *Ecology can, and does, however use enforcement tools in emergencies or with recalcitrant potentially liable persons.*

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## What is the Potentially Liable Person’s Role in Cleanup?

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The Model Toxics Control Act requires potentially liable persons to assume responsibility for cleaning up contaminated sites. For this reason, Ecology does not usually conduct the actual cleanup when a potentially liable person can be identified. Rather, Ecology oversees the cleanup of sites to ensure that investigations, public involvement and actual cleanup and monitoring are done appropriately. Ecology’s costs of this oversight are required to be paid by the liable party.

When contamination is confirmed at the site, the owner or operator may decide to proceed with cleanup without Ecology assistance or approval. Such “independent cleanups” are

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allowed under the Model Toxics Control Act under most circumstances, but must be reported to Ecology, and are done at the owner's or operator's own risk. Ecology may require additional cleanup work at these sites to bring them into compliance with the state cleanup standards. Most cleanups in Washington are done independently.

Other than local governments, potentially liable persons conducting independent cleanups do not have access to financial assistance from Ecology. Those who plan to seek contributions from other persons to help pay for cleanup costs need to be sure their cleanup is "the substantial equivalent of a department-conducted or department-supervised remedial action." Ecology has provided guidance on how to meet this requirement in WAC 173-340-545. Persons interested in pursuing a private contribution action on an independent cleanup should carefully review this guidance prior to conducting site work.

## **Working with Ecology to Achieve Cleanup**

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Ecology and potentially liable persons often work cooperatively to reach cleanup solutions. Options for working with Ecology include formal agreements such as consent decrees and agreed orders, and seeking technical assistance through the Voluntary Cleanup Program. These mechanisms allow Ecology to take an active role in cleanup, providing help to potentially liable persons and minimizing costs by ensuring the job meets state standards the first time. This also minimizes the possibility that additional cleanup will be required in the future – providing significant assurances to investors and lenders.

Here is a summary of the most common mechanisms used by Ecology:

- **Voluntary Cleanup Program:** Many property owners choose to cleanup their sites independent of Ecology oversight. This allows many smaller or less complex sites to be cleaned up quickly without having to go through a formal process. A disadvantage to property owners is that Ecology does not approve the cleanup. This can present a problem to property owners who need state approval of the cleanup to satisfy a buyer or lender.  
  
One option to the property owner wanting to conduct an independent cleanup yet still receive some feedback from Ecology is to request a technical consultation through Ecology's Voluntary Cleanup Program. Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site needs "No Further Action" or identifies what additional work is needed. Since Ecology is not directly involved in the site cleanup work, the level of certainty in Ecology's response is less than in a consent decree or agreed order. However, many persons have found a "No Further Action" letter to be sufficient for their needs, making the Voluntary Cleanup Program a popular option.
- **Consent Decrees:** A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons that incur cleanup expenses at the site while facilitating any contribution claims against the other persons when they are responsible for part of the cleanup costs. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

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- **De Minimus Consent Decree:** Landowners whose contribution to site contamination is “insignificant in amount and toxicity” may be eligible for a de minimus consent decree. In these decrees, landowner typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a de minimus settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.
  - **Prospective Purchaser Consent Decree:** A consent decree may also be available for a “prospective purchaser” of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.
  - **Agreed Orders:** Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review and offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

## **Ecology-Initiated Cleanup Orders**

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Administrative orders requiring cleanup activities without an agreement with a potentially liable person are known as **enforcement orders**. These orders are usually issued to a potentially liable person when Ecology believes a cleanup solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person(s) at up to three times the amount spent. The state Attorney General’s Office may also seek a fine of up to \$25,000 a day for violating an order. Enforcement orders are subject to public notification.

## **Financial Assistance**

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Each year, Ecology provides millions of dollars in grants to local governments to help pay for the cost of site cleanup. In general, such grants are available only for sites where the cleanup work is being done under an order or decree. Ecology can also provide grants to local governments to help defray the cost of replacing a public water supply well contaminated by a hazardous waste site. Grants are also available for local citizen groups and neighborhoods affected by contaminated sites to facilitate public review of the cleanup. See Chapter 173-322 WAC for additional information on grants to local governments and Chapter 173-321 WAC for additional information on public participation grants.

## **Public Involvement**

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Public notices are required on all agreed orders, consent decrees, and enforcement orders. Public notification is also required for all Ecology-conducted remedial actions.

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Ecology's Site Register is a widely used means of providing information about cleanup efforts to the public and is one way of assisting community involvement. The Site Register is published every two weeks to inform citizens of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities. The Site Register can be accessed on the Internet at: [www.ecy.wa.gov/programs/tcp/pub\\_inv/pub\\_inv2.html](http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html).

## How Sites are Cleaned Up

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The rules describing the cleanup process at a hazardous waste site are in chapter 173-340 WAC. The following is a general description of the steps taken during the cleanup of an average hazardous waste site. Consult the rules for the specific requirements for each step in the cleanup process.

