

Public Participation Plan
Rayonier Port Angeles Mill
Cleanup Project

Opportunities to Contribute
to the Investigation and Cleanup of the
Rayonier Port Angeles Mill Site
Port Angeles, Washington

Prepared by:



Publication TCP-00-09-035
Revised March 2002

Opportunities to Participate

What is a Public Participation Plan?

The Rayonier Mill site, located in Port Angeles, Washington, was originally proposed for cleanup under the Federal Superfund Law. Through an agreement between the Washington State Department of Ecology (Ecology), the Lower Elwah Klallam Tribe, and the U.S. Environmental Protection Agency, (EPA) the EPA deferred the site to Ecology for action under Washington State's cleanup law.

One of the main premises of our State's cleanup law, the Model Toxics Control Act, RCW 70.105D, is that the public should be given meaningful opportunities to learn about and provide input on important cleanup decisions before they are made. In order to do this, the public needs to have a basic understanding of the cleanup process and knowledge of how to access information and provide input. A Public Participation Plan outlines the means to meet these needs.

Why Have a Public Participation Plan?

Successful projects rely on sound decisions, formed through free dialogue between all involved interests. Cleaning up the Rayonier Mill Site is important to the environmental quality of the Port Angeles area and to its citizens, the Klallam Tribes, Rayonier, Washington State, and federal governments. The "environment" is not just the natural condition of a place or area, but the interdependence of natural and socio-economic values. It is critical to look at all interests in order to select the best approach.

Ecology's goal is to facilitate collaborative partnerships with those parties that are concerned with the effects of contaminants at the site. The public, which includes elected officials as well as special interest groups and the general resident population, is the body most familiar with the community, its history, and its values. Public approval is a primary measure of success, as it avoids delays, frustrations, and excess costs. The broader the audience, the more successful the project.

Ecology believes that the methods outlined in this Plan are the most effective way to disseminate information concerning the procedural, scientific, and technical aspects of the project. Many of these are complex concepts and processes, and Ecology hopes to explain them in a manner that everyone can understand. Information is the foundation of good decisions.

Site History

The former mill site consists of approximately 70 upland acres, fronting the beach and shoreline of the Strait of Juan de Fuca. Ennis Creek runs down from the foothills of the Olympic Mountains to its terminus in the Port Angeles Harbor. Rerouted a few times in its

Public Participation Plan for the Rayonier Mill Cleanup

history, the creek runs roughly one-half mile through the Site. The delta of Ennis Creek and the adjacent shoreline is a cultural site of great importance to the Lower Elwha Klallam Tribe. On the east side of the creek, along the beach, was a wealthy fortified Klallam settlement known as Y'innis (I-eh-nus) which means "good beach" in the Klallam language.

Y'innis was one of more than 30 known Klallam villages in the region. The total population of the Tribe was as high as 10,000 in the early 1800's. In 1847, the settlement was known to be occupied by about 200 Klallam tribal members. A mural depicting the village can be viewed on the east wall of the Arthur D. Fiero Marine Laboratory near the Port Angeles ferry landing. At the entry to the village was an entrance pole representing Grandmother Bear, indicating that residents of the village were of that Clan. A reproduction of this pole stands at the Lower Elwha Tribal Center.

After introduced diseases swept through the Tribe in the 1850's, only a few residents of Y'innis remained. Some of the survivors continued to live on the beaches of Port Angeles harbor until the 1930's. At that time, land was purchased for a Tribal Reservation on the Elwha River and tribal members were relocated.

The Site was next occupied in 1887 by the Puget Sound Cooperative Colony. Members built a sawmill, which was the economic base of the colony and which contributed to the rise of Port Angeles. The gradual absorption of many Colony members into the town, and disputes over business profits led to abandonment of the mill by 1893.

In 1917 the U.S. Government built a new sawmill on the site, to mill spruce wood for the manufacture of aircraft. However, the success of wooden aircraft proved to be limited, and the mill sat idle until it was purchased by Olympic Forest Products in 1929. The sawmill, rebuilt as a pulp mill in 1929-1930, was purchased by Rayonier and operated from the 1930's until its closure in February 1997.

The mill used an ammonia-based acid sulfite process to produce dissolving-grade pulps for a specialty pulp market. With additional processing, the buyers of Rayonier's products incorporated the pulp into items such as photographic film, high-impact plastic, fabric, synthetic leather, and disposable diapers.

Environmental practices at the mill evolved over the years of Rayonier's operations as public awareness increased and state and federal environmental laws became more stringent. Prior to 1972, mill effluent was discharged directly into Port Angeles Harbor through a series of outfalls along the shoreline. In 1972, primary treatment (settling) of the wastewater began and discharge was transferred to a deep-water outfall located more than a mile offshore. In 1974 a recovery boiler was constructed to recover spent sulfite liquor. A secondary treatment system was added in 1979. Air emissions and pollution control equipment also changed over time as state and federal air pollution requirements evolved.

Over the years, Rayonier was responsive to environmental needs, but there have been standards-exceedance at times. As a result, a segment of the population developed a greater

fear of pollution. There have been citizen complaints of a range of health problems linked to the mill emissions, correlating illness and death to the plume of smoke and steam that was a constant. An independent study conducted by local environmental groups suggested there was a correlation, but subsequent studies have not clearly demonstrated the connection.

Early Actions and Mill Closure

In March of 1997, Rayonier closed the mill. Later that year, a number of private citizens and several western Washington organizations active in environmental, health, and education issues, petitioned the EPA to investigate the Rayonier Mill site, the surrounds, and the Rayonier waste disposal facilities under the Superfund program. EPA responded by conducting an extensive inspection and sampling effort in 1997. That study, known as an Expanded Site Inspection, included the collection and analysis of approximately 300 samples of soils, surface water, harbor sediments, creek sediments, and marine organism tissues. Based on the results of this study, EPA concluded in January of 1999 that the site was eligible for Superfund status. However, state and local elected officials, concerned about the time factor, requested that EPA “defer” Superfund listing, in favor of site cleanup under Washington’s Model Toxics Control Act. (See Appendix B or download from Ecology’s website at <http://www.ecy.wa.gov/biblio/9406.html> -- PDF file)

The Lower Elwha Klallam Tribe requested an oversight role in the cleanup of the site, as it lies within the usual and accustomed resource area of the Tribe and is of major historical and cultural importance. In March of 1999, Ecology and the Tribe signed an agreement establishing an oversight role for the Tribe under the State cleanup process.

In February of 2000, the EPA announced that they would defer placing the site on the Superfund list in favor of allowing the site to be cleaned up under the State cleanup law. In May EPA, the Lower Elwha Klallam Tribe, and Ecology signed a deferral agreement, outlining the terms and conditions under which the investigation and cleanup process would occur.

Two limited cleanup actions have already occurred on the site. A 2.3 million-gallon fuel tank was decommissioned in 1993, and approximately 1,500 cubic yards of contaminated soil was excavated by Rayonier and removed from the site. Some contamination remains in the vicinity of the old tank and will be addressed during this project.

In 1998 hydraulic oil and polychlorinated biphenyl (PCB) contamination along the west bank of Ennis Creek was cleaned up. The contamination had been caused by leakage of PCB-tainted oil from large bailing presses in the mill’s “Finishing Room”. As part of this action, approximately 7,500 tons of contaminated soil was removed and disposed of at the Port Angeles Landfill. Clean fill-material was used where necessary to replace the soils removed. This action did not include known contaminated soils immediately adjacent to Ennis Creek, which will also be addressed during this project.

The Model Toxics Control Act

The ruling legislation for the Rayonier Mill Cleanup Project was passed in March of 1989. It was an innovative, citizen-mandated toxic waste cleanup law, changing the way that hazardous waste sites in this state are handled. The Model Toxics Control Act (MTCA), Chapter 70.105D RCW, is intended to provide a clear and efficient process to clean up chemical contamination of our state's soils, sediments, surface water, and ground water to levels that are protective of our citizens and environment. While modeled after the Superfund Law the Act is, in general, more stringent than the one regulating Superfund cleanups. (See Appendix B)

The Department of Ecology is charged with administering MTCA regulations (WAC 173-340). These regulations were developed by representatives from citizen, environmental, and industry groups and are designed to:

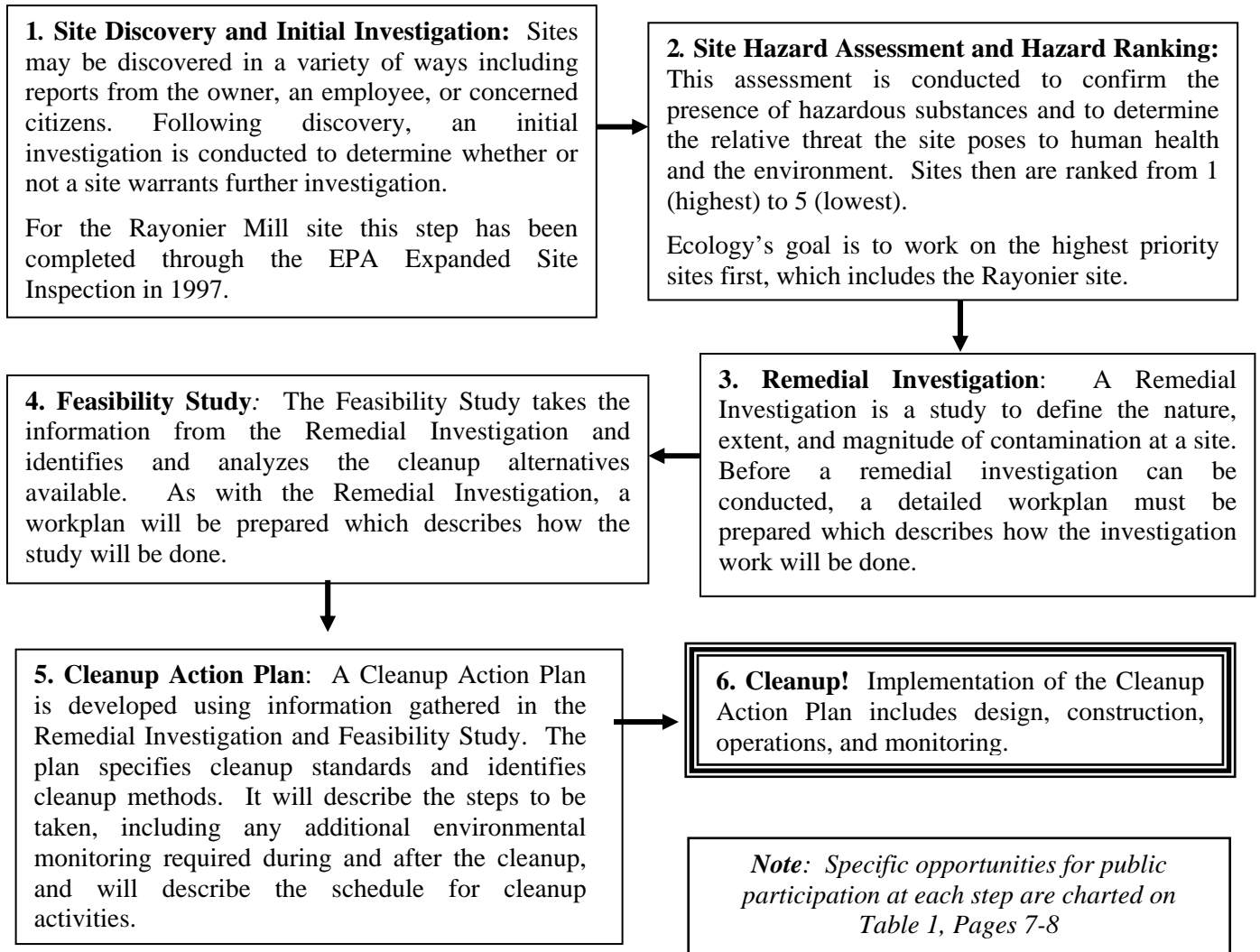
- Facilitate cooperative cleanup agreements, rather than Ecology-initiated orders to comply.
- Encourage an open process for the public, local government, and liable parties to discuss cleanup options and community concerns. Public awareness and involvement are keystones to the success of any project. A direct connection between all parties establishes a trust that will overcome barriers of communication.

Under the Act, past or current owners or operators of facilities which have caused contamination are responsible for investigating and cleaning up the contamination. Although Ecology has the legal authority to order a liable party to perform a clean up action, the department prefers to approach cleanups cooperatively.

Ecology does not conduct the actual cleanup when a liable party can be identified, but instead oversees each step of the cleanup process to ensure that investigations, public involvement, and actual cleanup and monitoring are done appropriately. Costs for this oversight are required to be paid by the liable party.

Steps in the State Cleanup Process

Washington State’s cleanup rules lay out in detail each step in the process to ensure that cleanups are thorough and protective of human health and the environment. This chart defines these steps and how they apply to the project site:



Some steps described above are accompanied by “Agreed Orders” or “Consent Decrees”, which are the legal documents for implementation of the plans and project.

In addition to the steps on the flow chart, “interim actions” may be taken during the investigation process to reduce or eliminate an immediate threat to human health or the environment. Interim actions under MTCA are described in WAC 173-340-430, and are typically used where an immediate response is appropriate to eliminate a current threat, where a problem may get worse if expedited cleanup actions are not taken, or where contamination in specific areas is at levels that require minimal treatment.

Public Participation Plan for the Rayonier Mill Cleanup

The process is complex. Issues often arise during projects that require additional scrutiny or evaluation, and may lead to changes in the scope or timing. Every effort will be taken to avoid delays.

Public Involvement Opportunities

The Model Toxics Control Act cleanup process (WAC 173-340-600) emphasizes giving the public the chance to review and provide suggestions on cleanup decisions at all major steps in the process. The goal of the Site Management Team (SMT – representatives from Ecology, the Lower Elwha Klallam Tribe, and Rayonier) is to provide timely information, an understanding of the process, and opportunities to review and comment on proposed cleanup decisions before they are made. (See Table 1 for a detailed list of the planned involvement activities for the Rayonier project.)

TABLE 1	
Public Involvement Milestones for Investigation and Cleanup of the Rayonier Mill Site	
MILESTONE	ESTIMATED DATE
Public Participation Plan	February 2002
Draft <i>Workplan for Marine Remedial Investigation and Interim Actions</i> ; Draft Agreed Order	March 2002
Public Comment Period and Hearing	March 6 – April 22, 2002
Final <i>Workplan for Marine Remedial Investigation and Interim Actions</i> ; Final Agreed Order	June 2002
Draft <i>Workplan for Uplands Remedial Investigation and Interim Actions</i> ; Draft Agreed Order	May 2002
Public Comment Period and Hearing Workshop(s) if requested or necessary	May – June 2002
Final <i>Workplan for Uplands Remedial Investigation and Interim Actions</i> ; Final Agreed Order	August 2002
Draft <i>Marine Remedial Investigation Report</i>	July 2003
Public Comment Period and Hearing Workshop(s) if requested or necessary	July – August 2003

(continued on next page)

Public Participation Plan for the Rayonier Mill Cleanup

TABLE 1	
Public Involvement Milestones for Investigation and Cleanup of the Rayonier Mill Site	
MILESTONE	ESTIMATED DATE
Final <i>Marine Remedial Investigation Report</i>	September 2003
Draft <i>Uplands Remedial Investigation</i>	October 2003
Public Comment Period and Hearing Workshop(s) if requested or necessary	October – November 2003
Final <i>Uplands Remedial Investigation</i>	January 2004
Draft <i>Workplan for Feasibility Study</i> ; Draft Agreed Order	March 2004
Public Comment Period and Hearing. Workshop(s) if requested or necessary	March – April 2003
Final <i>Workplan for Feasibility Study</i> ; Final Agreed Order	May 2004
Draft <i>Feasibility Study</i>	August 2004
Final <i>Feasibility Study</i>	November 2004
Draft <i>Cleanup Action Plan</i> ; Draft Consent Decree	January 2005
Public Comment Period and Hearing Workshop(s) if requested or necessary	January – February 2005
Final <i>Cleanup Action Plan</i> ; Final Consent Decree	April 2005
Regular community updates on cleanup/monitoring	Ongoing

For each milestone, Ecology will follow a system of notification, information distribution, and hearings to receive comments from the public. A summary of comments will be made available. Notification will include an entry into the Ecology Site Register, press releases, necessary Fact or Focus sheets, and letters to all interested parties currently on the Rayonier Project mailing list.

Comment periods will commence within a designated period of time, dependent on the complexity of the materials to be reviewed. The statute calls for 30 days, but it is not

Public Participation Plan for the Rayonier Mill Cleanup

unreasonable to extend that period. The length of time allotted for comments will be designated with each release.

Workshops or meetings will be held early in the comment period to clarify the issues and Ecology's approach to them. At any point the department is willing to meet with interested parties to facilitate their understanding of the process and pertinent issues.

All comments received from the public will be summarized and will include the rationale for decisions made by SMT about those comments. These summaries will be sent to all those who comment or indicate an interest in receiving them.

- **Mailing List**—Ecology maintains a list of interested parties who will receive notices about upcoming activities. Individuals who live in the immediate vicinity of the site, sign in at public meetings, or have provided written comments are automatically included on this list. Additional names will be added by request.
- **Fact and Focus Sheets**—These one or two page mailings and handouts will describe issues and activities and will provide information about upcoming opportunities for involvement.
- **Workshops**—The cleanup partners will arrange workshops when requested or when they feel an issue is so complex that it is difficult to understand. A variety of public forums will be held in the event that communication methods need to be more direct.
- **Internet**—Ecology will establish a website for the project where interested community members may go for status updates. There will be links to regulations, publications, and other organizations. Follow the link from Ecology's Solid Waste & Financial Assistant Program homepage at <http://www.ecy.wa.gov/programs/swfa/index.html>.
- **News Releases**—Ecology will issue news releases to local media on major milestones, significant events, and accomplishments. News releases may also be provided to Seattle-based media and the Associated Press.
- **Notices**—Paid notices will be published in *The Sequim Gazette* and the *Peninsula Daily News* describing upcoming events and comment opportunities.
- **Local Information Repositories**—Data, studies, and investigation/cleanup proposals will be made available locally for review. To provide interested citizens with convenient access to cleanup studies or proposals, Ecology will maintain local information repositories at the following locations:

North Olympic Library System, Reference Desk
2210 South Peabody St.
Port Angeles, WA 98362
(360) 417-8500

Peninsula College Library, Reference Desk
1502 East Lauridsen
Port Angeles, WA 98362
(360) 417-6280
Contact: Joanne Hughes, ext. 6286

(Appendix A has a list of publications at each repository)

Public Participation Plan for the Rayonier Mill Cleanup

- **Ecology's Site Register**—A biweekly publication details the upcoming milestones in statewide cleanup efforts. Notices will be placed in the site register as the project develops. They will include Fact Sheets mailed out prior to meetings and workshops.
- **Ecology Files**—A complete Rayonier Mill site file containing all studies and correspondence relating to the site is kept at Ecology's Southwest Regional Office. The address is:

Department of Ecology
Records Center, Southwest Regional Office
300 Desmond Drive, Lacey, WA 98503
Contact: Sherri Greenup (360) 407-6253 *By appointment only*

How Can the Public Be Sure Their Concerns Are Heard?

- **Comment Periods**—Public comment will be invited at each major step in the process.
- **Public Meetings and Workshops**—Ecology will hold public meetings during each public comment period to discuss and gather input on investigation and cleanup proposals.
- **Written Response to Comments**—Ecology will publish a *Responsiveness Summary* to comments received during comment periods. The responsiveness summary will detail the comments received and provide Ecology's response to each issue.
- **Advocates**—Public interest groups will be invited to review the responsiveness summaries prior to their distribution to ensure that the messages are clear.

Will Technical Assistance Be Provided for Review of Documents?

- **Access to Staff**—Ecology will have staff available to answer questions on the cleanup process or meet with individuals or groups as requested. Contact Bill Harris at (360) 407-6253 if you have questions or would like someone to come speak to your group.
- **Public Participation Grants**, available to groups needing technical assistance in interpreting cleanup documents, are distributed by Ecology's Solid Waste and Financial Assistance Program. A grant has been awarded to the Olympic Environmental Council for the 2000-2002 cycle. Funds are being used, in part, to hire a technical expert. To contact this source, call Darlene Schanfald at (360) 417-0855, or e-mail darlenes@olympus.net. There is also a web page at <http://www.oecprotects.org>.

Whenever possible, Ecology will consolidate public notice and opportunities for public comment required under other environmental laws with those in this plan. One example is the State Environmental Policy Act (SEPA). In this case, Ecology will hold the

Public Participation Plan for the Rayonier Mill Cleanup

comment period for the “threshold determination” under the SEPA concurrently with the comment period required under the Model Toxics Control Act. If the comment period required under the State Environmental Policy Act is shorter than that required under the Model Toxics Control Act, the coordinated comment period will be extended to the longer period.

Is There a Process for Appeal?

The State Environmental Protection Act provides opportunities for the appeal of decisions made by local government or the state. The appeals process is mandated to be in accordance with the enabling legislation for the action being taken. In the Port Angeles Mill Cleanup Project, the enabling legislation is the Model Toxics Control Act (MTCA).

For every piece of State legislation which mandates an action by an agency, an administrative rule is written, to detail how the mandate will be carried out. The MTCA rule, Washington Administrative Code (WAC) 173-340, Section 130, states that Department of Ecology’s remedial decisions may be appealed only as provided for in the Hazardous Waste Cleanup – MTCA Legislation, Revised Code of Washington (RCW) 70.105D.060.

RCW 70.105D.060 states that the only challenge of Ecology’s decisions regarding a cleanup action is through the Superior Court system of Thurston County or the jurisdiction involved, and only in certain circumstances. These circumstances include a citizen suit to compel Ecology to perform a mandated duty that appears to be neglected. The section also states “the court shall uphold the department's actions unless they were arbitrary and capricious”.

The rationale for the limited nature of appeal is based on the hazards that fugitive toxic materials create. In certain instances action could be curtailed for long periods of time, allowing increased damage to the environment and the people of the State.

Can This Plan Be Amended?

Ecology views this plan as a living document which may be improved based on suggestions received from the community. An example of this might be a suggestion on how to communicate more effectively with a particular segment of the community. Such improvements may be put into practice without changing the plan.

However, the public participation activities specified for each step in the process will not be reduced without a formal amendment to the plan. Such an amendment will only be made after an opportunity for public comment.

How Can I Find Out More?

Ecology staff are available to answer questions about specific cleanup issues, the process in general, or other questions related to the Site. Staff can also help provide information on related environmental regulations and in finding specific documents that may be of interest. E-mail or letters are the preferred form of communication, as field work will take staff away from their phones.

In addition, personnel from Rayonier can answer questions about day-to-day activities on the site. Staff from the Lower Elwha Klallam Tribe are also available to answer questions about cleanup investigations and activities.

If you have questions about the Rayonier Mill site or the cleanup process in general, please contact one of the individuals listed below:

Bill Harris
Site Manager
Washington Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6253
whar461@ecy.wa.gov

Jack Anderson
Manager, Environmental Engineering
Rayonier, Inc.
700 North Ennis
Port Angeles, WA 98362
(360) 457-2329
jack.anderson@rayonier.com

Mikel Baxter
Public Involvement Coordinator
Washington Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-0067
mmcc461@ecy.wa.gov

David Hannah
Project Coordinator
Lower Elwha Klallam Tribe
2851 Lower Elwha Road
Port Angeles, WA 98363
(360) 452-8471
daveh@elwha.nsn.us

Please contribute to the success of this project!

Appendix A

Public Repositories for Information Concerning the Port Angeles Cleanup Project

Date of Report	DESCRIPTION OF INFORMATION	Peninsula College Library Call Number	North Olympic Library Call Number
1991	Outfall Location Studies, ITT Rayonier	TD899.P3O98	979.799
1994	Outfall Dilution Study Report: Order DE-92WQ1064	TD899.P3O984	676.27CH2MHill
1995	Port Angeles Bioaccumulation Study	TD899.P3P67	979.799 Port Ang
Jul 97	Groundwater Monitoring Results – Landau	TD899.P3G76	628.11 Landau
	Appendix B – Supporting Data	TD899.P3G781	628.11 Landau
Oct 97	Current Situation/Site Conceptual Model Report Mill Site and Landfills – Foster Wheeler	TD899.P3C87	NW628.11 Foster
Oct 97	Dismantling and Remediation Project Cultural Resource Assessment – Larson Anthropological	CC135.R63	979.799 Robbins
Oct 97	Draft Final Sampling and Quality Assurance Plan for Expanded Site Inspection Activities submitted to EPA	TD899.P3R39	979.799
Jan 98	1998 Groundwater Monitoring Results – Landau	TD899.P3G76	979.799
Jan 98	Independent Review of Expanded Site Inspection Report – Joel Hirshhorn	TD899.P3S87	979.99 Hirsh
Jun 98	Public Participation Plan – Rayonier Mill Site Finishing Room Area Interim Action – Ecology	TD899.P3F56	979.799 WDOE

* materials submitted but not catalogued

Date of Report	DESCRIPTION OF INFORMATION	Peninsula College Library Call Number	North Olympic Library Call Number
Jul 98	Finishing Room- Final Draft Work Plan, Soil and Ground water Remediation – SECOR	TD899.P3S6	979.799 Secor
Jul 98	Finishing Room-Cleanup Agreed Order DE98-SW-S288 Compliance Groundwater Monitoring	TD899. P3S6	979.99 Exhibit
Jul 98	Final Work plan Soil and Groundwater Remediation Finishing Room Report – SECOR	TD899. PE95	979.799 Exhibit
Aug 98	Petitioned Health Consultation Review of Ambient Air Work Plan – U.S. Dept of Health and Human Services	*	979.99 United
Oct 98	Exhibit B to Agreed Order DE 98 SW-S288 Final Work Plan Soil and Groundwater Remediation Finishing Room Report – SECOR	TD899. P3F6	979.799 Exhibit
Oct 98	Rayonier Port Angeles Site Stack and Recovery Building Air Emission Control and Monitoring Plan	TD899.P3S733	979.799 Rayonier
Oct 98	Expanded Site Inspection Draft Final Sampling. Soil Remediation	*	979.799 Rayonier
Oct 98	Rayonier Port Angeles Stack and Recovery Building Demolition Plan – ICONCO	TD899.P3R39	979.799 Rayonier
Dec 98	<i>The Closing of the Rayonier Port Angeles Mill: The End of an Era</i> – Dreschel <i>et al.</i>	*	979.999 Closing
98	Finishing Room Interim Action Report – SECOR	TD899.P3F56	979.799 Secor
98	Highest and Best Use Study for Rayonier Mill Site	TD899.P31154	*
Jan 99	PA Landfill Waste Disposal Application – Landau	*	979.799 Rayonier

* materials submitted but not catalogued

Date of Report	DESCRIPTION OF INFORMATION	Peninsula College Library Call Number	North Olympic Library Call Number
Jan 99	Exhibit B - Port Angeles Landfill Waste Disposal Application for Finishing Room Soil Stockpile – Landau-	*	979.999 Exhibit
Apr 99	Final PCB Cleanup Report, Former Transformer Rooms – Landau	979.999.PCB CLE	979.799 Landau
Jun 99	Finishing Room Quarterly report for Second Quarter 1999	*	*
Aug 99	(DE 98-SW-S288) Compliance Groundwater Monitoring , Third Qtr 1999	TD899.P3G76	979.799 Landau
Dec 99	Compliance Groundwater Monitoring, Fourth Quarter 1999 – Landau	TD899.P3G76	979.799 Landau
Mar 00	Stormwater Management Plan – Foster Wheeler	TD899.P3S76	979.799 Rayonier
May 00	Log Recovery Project Completion Report – Foster Wheeler	TD899.P3L6	979.799 Rayonier
Oct 00	Shoreline Stabilization Project Completion Report – Foster Wheeler	TD899.P3S5	979.799 Rayonier
Jan 01	Collection Tank Discharge – Soil and groundwater risk management – Foster Wheeler	TD899.P3C6	979.799 Rayonier
Feb 01	Solid Waste Characterization Rayonier Inc. Port Angeles Mill Site – Landau	TD899.P3S65	979.799 Landau
Feb 01	Spent Sulfite Lagoon Soil Characterization – Landau	TD899.P3S64	979.799 Landau
Apr 01	Groundwater Monitoring Rayonier Inc., Port Angeles Mill Site – Landau	TD899.P3G76	979.799 Landau
Apr 01	SSL Earthen Berm Removal Archeological Report – Anderson	TD899P3E37.	*
May 01	Well Installation and Abandonment – Rayonier Inc.	TD899.P3W45	979.999 Report

* materials submitted but not catalogued

Date of Report	DESCRIPTION OF INFORMATION	Peninsula College Library Call Number	North Olympic Library Call Number
Jun 01	Public Participation Plan: Opportunities to Contribute – Ecology	TD899.P3P83	979.999 Washington
01	Log Pond Scoping Summary Data, Tech. Memo – Foster Wheeler	TD899.P3S86	979.799 Hummel
Feb 02	August 2001 Groundwater Monitoring – Landau	PD899.P3G76	979.799 Landau
Mar 02	Management Plan for Remedial Investigation of the Marine Environment – Foster Wheeler	*	333.916 Management
Mar 02	Focus Sheet on Remedial Investigation Plan – Ecology	*See Project Website – Http//ecy.wa.gov	
Mar 02	Draft Agreed Order Between the Department of Ecology and Rayonier – Ecology (<i>not yet submitted</i>)		
AIR MONITORING INFORMATION			
Feb 98	Ambient Air <i>Monitoring Plan</i> for Rayonier – Foster Wheeler Appendix B – Supporting Data Supplement	TD899.P3A43	979.99 Ambient
	All ambient air reports from Oct 1997 – June 1999 are catalogued only to the level of the general file identification. They include a summary and a raw data supplement.	TD899.	979.99 Ambient
ADDITIONAL HELPFUL MATERIALS			
Feb 01	Model Toxics Control Cleanup Regulation, Chapter 173.340 WAC, Amended February 2001 – Ecology Publication No. 94-06	*	363.7384 Model T

North Olympic Library Website Catalogue - <http://pac.nols.org/>

Peninsula College Website Catalogue - <http://peninsula.library.ctc.edu/>

* materials submitted but not catalogued

Model Toxics Control Act

Chapter 70.105D RCW

Effective
January 1, 2003

Model Toxics Control Act

Chapter 70.105D RCW

Sections

- 70.105D.010 Declaration of policy.
- 70.105D.020 Definitions.
- 70.105D.030 Department's powers and duties.
- 70.105D.040 Standard of liability – Settlement.
- 70.105D.050 Enforcement.
- 70.105D.060 Timing of review.
- 70.105D.070 Toxics control accounts.
- 70.105D.080 Private right of action – Remedial action costs.
- 70.105D.090 Remedial actions – Exemption from procedural requirements.
- 70.105D.100 Grants to local governments – Statement of environmental benefits – Development of outcome-focused performance measures.
- 70.105D.110 Releases of hazardous substances – Notice – Exemptions.
- 70.105D.900 Short title – 1989 c 2.
- 70.105D.905 Captions – 1989 c 2.
- 70.105D.910 Construction – 1989 c 2.
- 70.105D.915 Existing agreements – 1989 c 2.
- 70.105D.920 Effective date – 1989 c 2.
- 70.105D.921 Severability – 1989 c 2.

NOTES:

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

RCW 70.105D.010 Declaration of policy.

(1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste

sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.

(5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

(6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up.

[2002 c 288 § 1; 1994 c 254 § 1; 1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Severability – 2002 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 288 § 5.]

RCW 70.105D.020 Definitions.

(1) **"Agreed order"** means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) **"Department"** means the department of ecology.

(3) **"Director"** means the director of ecology or the director's designee.

(4) **"Facility"** means (a) 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 (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) **"Federal cleanup law"** means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) **"Foreclosure and its equivalents"** means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions,

representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) **"Hazardous substance"** means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

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

(9) **"Holder"** means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include

others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the

government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040 (1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040 (1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this

chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iv).

(13) "**Participation in management**" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental

and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia

of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "**Public notice**" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(20) "**Release**" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "**Remedy**" or "**remedial action**" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential 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.

(22) "**Security interest**" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility

for the purpose of securing a loan or other obligation.

(23) "**Industrial properties**" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "**Workout activities**" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(25)(a) "**Fiduciary**" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in sub-

section (12)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(26) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

[1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Findings – Intent – 1997 c 406: "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

RCW 70.105D.030 Department's powers and duties.

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the atten

dance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(h) Require holders to conduct remedial actions necessary to abate an imminent or

substantial endangerment pursuant to RCW 70.105D.020(12)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to

human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial cleanup standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their

hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(7) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

[1997 c 406 § 3; 1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Effective date – 2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability – 2002 c 288: See note following RCW 70.105D.010.

Part headings not law – Effective date – 2001 c 291: See notes following RCW 43.20A.360.

Findings – Intent – 1997 c 406: See note following RCW 70.105D.020.

Severability – 1994 c 257: See note following RCW 36.70A.270.

RCW 70.105D.040 Standard of liability – Settlement.

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agree

ment, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefore.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care

with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the

substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to

the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) 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.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

[1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Findings – Intent – 1997 c 406: See note following RCW 70.105D.020.

RCW 70.105D.050 Enforcement.

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this

section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

[2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Severability – 1994 c 257: See note following RCW 36.70A.270.

RCW 70.105D.060 Timing of review. The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050 and its decisions regarding liable persons under RCW *70.105D.020(8) and 70.105D.040 shall be review

able exclusively in superior court and only at the following times: **(1)** In a cost recovery suit under RCW 70.105D.050(3); **(2)** in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; **(3)** in a suit for reimbursement under RCW 70.105D.050(2); **(4)** in a suit by the department to compel investigative or remedial action; and **(5)** in a citizen's suit under RCW 70.105D.050(5). The court shall uphold the department's actions unless they were arbitrary and capricious.

[1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

***Reviser's note:** RCW 70.105D.020 was amended by 1994 c 254 § 2, changing subsection (8) to subsection (9); and was subsequently amended by 1995 c 70 § 1, changing subsection (9) to subsection (15); and was subsequently amended by 1997 c 406 § 2, changing subsection (15) to subsection (16).

Severability – 1994 c 257: See note following RCW 36.70A.270.

RCW 70.105D.070 Toxics control accounts.

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement,

technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW;

(iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "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. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However,

during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

[2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

Finding – 2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability – Effective date – 2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability – Effective date – 1999 c 309: See notes following RCW 41.45.063.

Construction – Severability – Effective date – 1998 c 346: See notes following RCW 50.24.014.

Local governments – Increased service – 1998 c 81: "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings – Intent – 1997 c 406: See note following RCW 70.105D.020.

Finding – Effective date – 1994 c 252: See notes following RCW 70.119A.020.

Effective dates – Severability – 1991 sp.s. c 13: See notes following RCW 18.08.240.

RCW 70.105D.080 Private right of action – Remedial action costs. Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively.

[1997 c 406 § 6; 1993 c 326 § 1.]

NOTES:

Findings – Intent – 1997 c 406: See note following RCW 70.105D.020.

Effective date – 1993 c 326: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 326 § 2.]

Severability – 1993 c 326: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 326 § 3.]

RCW 70.105D.090 Remedial actions – Exemption from procedural requirements.

(1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, *75.20, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, *75.20, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, **75.20.025, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section.

[1994 c 257 § 14.]

NOTES:

Reviser's note: *(1) Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107. See

Comparative Table for that chapter in the Table of Disposition of Former RCW Sections, Volume 0.

******(2) RCW 75.20.025 was recodified as RCW 77.55.030 pursuant to 2000 c 107 § 129.

Severability – 1994 c 257: See note following RCW 36.70A.270.

RCW 70.105D.100 Grants to local governments – Statement of environmental benefits – Development of outcome-focused performance measures. In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

[2001 c 227 § 5.]

NOTES:

Findings – Intent – 2001 c 227: See note following RCW 43.41.270.

RCW 70.105D.110 Releases of hazardous substances – Notice – Exemptions.

(1) Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.

(2) The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.

(3) After receiving the notice from the facility, the department must review the notice and mail a summary of its contents, along with any additional information deemed appropriate by the department, to:

(a) Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;

(b) Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;

(c) Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;

(d) Neighborhood associations and community organizations representing an area within one mile of the facility and recognized by the city or county with jurisdiction within this area;

(e) The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and

(f) The department of health.

(4) A notice produced by a facility shall provide the following information:

(a) The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;

(b) The address of the facility where the release occurred;

(c) The date the release was discovered;

(d) The cause and date of the release, if known;

(e) The remedial actions being taken or planned to address the release;

(f) The potential health and environmental effects of the hazardous substances released; and

(g) The name, address, and telephone number of a contact person at the facility where the release occurred.

(5) The following releases are exempt from the notification requirements in this section:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;

(c) The discharge of hazardous substances in compliance with permits issued under chapter 70.94, 90.48, or 90.56 RCW;

(d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;

(e) The discharge of hazardous substances to a permitted waste water treatment facility or from a permitted waste water collection system or treatment facility as allowed by a facility's discharge permit;

(f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;

(g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported to the United States coast guard and the state division of emergency management under chapter 90.56 RCW;

(h) Any release of hazardous substances to the air;

(i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and

(j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW 70.105D.040(4) or enforcement order or agreed order issued under this chapter or have been the subject of an opinion from the department under RCW 70.105D.030(1)(i) that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

(6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.

(7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the actual costs associated with the production and mailing of the notices under this section.

[2002 c 288 § 2.]

NOTES:

Effective date – 2002 c 288 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2003." [2002 c 288 § 6.]

Severability – 2002 c 288: See note following RCW 70.105D.010.

RCW 70.105D.900 Short title – 1989 c 2. This act shall be known as "the model toxics control act."

[1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

RCW 70.105D.905 Captions – 1989 c 2. As used in this act, captions constitute no part of the law.

[1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

RCW 70.105D.910 Construction – 1989 c 2.

The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

[1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

RCW 70.105D.915 Existing agreements – 1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding.

[1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

RCW 70.105D.920 Effective date – 1989 c 2.

(1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988.

[1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

NOTES:

***Reviser's note:** Neither condition contained in subsection (2) was met.

RCW 70.105D.921 Severability – 1989 c 2.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 2 § 18 (Initiative Measure No. 97, approved November 8, 1988).]