



DEPARTMENT OF
ECOLOGY
State of Washington

Adopted Rule with Tracked Changes
Chapters 173-322 and 173-322A WAC
Remedial Action Grants and Loans

Tracks differences between repealed Chapter 173-322 WAC and new Chapter 173-322A WAC

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Chapters 173-322 and 173-322A WAC Remedial Action Grants and Loans

Toxics Cleanup Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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WAC 173-322-010 Purpose and authority

- (1) This chapter recognizes that ~~the state contains hundreds of hazardous waste sites which threaten the state's water resources, including those used for public drinking water; that many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and the environment; and that the costs of eliminating these threats in many cases are beyond the financial means of local governments and ratepayers.:~~
- (a) The state contains thousands of hazardous waste sites that present serious threats to human health and the environment, including the state's water resources;
 - (b) Many of these hazardous waste sites, such as landfills and port facilities, are owned or operated by local governments;
 - (c) Many of the properties affected by these hazardous waste sites are brownfield properties, where economic development and other community reuse objectives are hindered by the presence of contamination; and
 - (d) The cost of cleaning up these hazardous waste sites in many cases is beyond the financial means of local governments and ratepayers.
- (2) This chapter establishes requirements for a program of grants and loans to local governments for remedial action pursuant to RCW 70.105D.070 ~~(3)(a) and (7)~~ (4) and (8).
- (3) The ~~intent~~ purpose of the remedial action grants and loans program established by this chapter is to ~~encourage and~~ expedite the cleanup and redevelopment of hazardous waste sites and to lessen the impact of the cleanup on ratepayers and taxpayers. The remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out remedial actions.

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WAC 173-322-020 Definitions

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

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

- (1) "Agreement signature date" means, for the purposes of grant and loan agreements, the date the agreement document is signed by the department.
- (2) "Applicant" means a local government that applies for a grant or loan.
- (3) "Area-wide groundwater contamination" means groundwater contamination on multiple adjacent properties with different ownerships ~~affected by~~ consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.
- (4) "Average market rate" means the average market rate for tax-exempt general obligation municipal bonds for the month of June preceding the agreement signature date, as determined using rates published by *Bond Buyer*.
- (5) "Biennium" means the 24-month fiscal period extending from July 1st of odd-numbered years to June 30th of odd-numbered years.
- (6) "Brownfield property" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.
- (7) "Budget" means, for the purpose of grant and loan agreements, a breakdown of eligible costs by task.
- (8) ~~"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-350 through 173-340-390 the term as defined in WAC 173-340-200 or 173-204-505.~~
- (9) "Construction completion" means physical construction of a cleanup action component is complete.
- (10) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets

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forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

- (11)** "Decree" or "consent decree" means a consent decree issued under ~~WAC 173-340-520~~chapter 70.105D RCW or the federal cleanup law.
- (12)** "Department" means the department of ecology.
- (13)** "Department share" means the department's share of eligible costs.
- (14)** "Director" means the director of the department of ecology.
- (15)** "Economically disadvantaged county" means a county whose per capita income is equal to or below the median per capita income of counties in Washington state, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce. ~~that meets the following criteria:~~
- ~~• The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and~~
 - ~~• The county is economically distressed, as defined by chapter 43.168 RCW.~~
- ~~The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "Remedial Action Program Guidelines," Publication No. 99-505.~~
- (16)** "Economically disadvantaged city or town" means a city or town whose per capita income is equal to or below the median per capita income of cities and towns in Washington state, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce.
- (17)** "Eligible cost" means a project cost that is eligible for funding under this chapter and the terms of the grant or loan agreement.
- (18)** "Extended grant agreement" means a grant agreement entered into under RCW 70.105D.070(4)(e)(i).
- (19)** "Feasibility study" means the term as defined in chapter 173-340 WAC or chapter 173-204 WAC.
- (20)** "Federal cleanup law" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

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

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

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

(23) **"Hazardous waste site"** means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

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

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

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

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

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

(28) **"Innovative technology"** means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under ~~different site conditions. Innovative technology also means the innovative use of existing technologies that have been established for use under certain site conditions, but not~~ the conditions that exist at the hazardous waste site ~~for which a remedial action grant is sought~~. Innovative technology has limited performance and cost data available.

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

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

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(31) **"Local government"** means any political subdivision, ~~regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county~~ of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70.105D.160.

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

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

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

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

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

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

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

(35) **"Partial funding"** means funding less than the maximum ~~percentage of eligible costs~~ department share allowed under this chapter.

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

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

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

(38) "Property" means, for the purposes of independent remedial action grants, the parcel or parcels of real property affected by a hazardous waste site and addressed as part of the independent remedial action.

(39) "Public water system" means ~~any system, excluding a system serving only one single family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with such system~~ a Group A water system as defined in WAC 246-290-020.

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

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

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

(43) "Recipient share" or "match" means the recipient's share of eligible costs.

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

(44) "Redevelopment opportunity zone" means a geographic area designated under RCW 70.105D.150.

(45) "Remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

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

~~"Remedial investigation/feasibility study" or "RI/FS" means a remedial action that consists of activities conducted under WAC 173-340-350 intended to collect, develop, and evaluate~~

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~~sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390.~~

(46) "Remedial investigation" means the term as defined in chapter 173-340 WAC or chapter 173-204 WAC.

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

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

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

(49) "Scope of work" means the tasks and deliverables of the grant or loan agreement.

(50) "Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

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

(52) "Voluntary cleanup program" means the program authorized under RCW 70.105D.030(1)(i) and WAC 173-340-515.

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

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

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WAC 173-322-040 ~~Administration~~ Funding cycle

- (1) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsection (3) of this section. For multibiennial oversight remedial action grant projects, proposals must be updated biennially. To be considered for inclusion in the department’s budget for remedial action grants and loans, project proposals and updates should be submitted by the dates published by the department.
- (2) **Application submittal.** Applications for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsections (3) and (4) of this section. For multibiennial oversight remedial action grant projects, an application must be submitted before each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.
- (3) **Project evaluation and ranking.** Project proposals and applications for each type of grant or loan will be reviewed by the department for completeness and evaluated to determine:

 - (a) Project eligibility; and
 - (b) Funding priority under WAC 173-322A-210.
- (4) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

 - (a) Funding priority under WAC 173-322A-210;
 - (b) Cost eligibility;
 - (c) Allowable funding of eligible costs; and
 - (d) Availability of state funds and other funding sources.
- (5) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.
- ~~(1) **Notice of availability.** Local governments will be periodically informed of the availability of remedial action grant and loan funding.~~

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- ~~(2) — **Application package.** An application package will be sent to all parties expressing interest in remedial action grants or loans and to all local governments that have been required by decree or order to perform remedial actions. Application packages will include guidelines and application forms.~~
- ~~(3) — **Application guidance.** The department will prepare a guidance manual on a biennial basis to assist grant and loan applicants and to facilitate compliance with this regulation.~~
- ~~(4) — **Application period.** The application for a remedial action grant or loan must be submitted to the department within the period specified in this chapter for the particular type of grant or loan.~~
- ~~(5) — **Application form.** The application for a remedial action grant or loan must be completed on forms provided by the department.~~
- ~~(6) — **Appropriation of funds.** Grants and loans will be awarded within the limits of available funds. The obligation of the department to make grant payments or provide loans is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant or loan crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.~~
- ~~(7) — **Allocation of funds.** In conjunction with the biennial program report and program plan required by WAC 173-340-340, the department will prepare an administrative allocation from the legislative appropriation of the local toxics control account for funding remedial action grants and loans. Within that administrative allocation, the department will allocate subamounts for each type of remedial action grant or loan. The allocations shall be based on estimated costs for work on eligible sites which are identified in the program plan for the biennium.~~
- ~~(8) — **Funding.** Remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.~~
- ~~(9) — **Department discretion.** The department may fund all or portions of eligible grant or loan applications.~~
- ~~(10) — **Indemnification.** To the extent that the Constitution and laws of the state of Washington permit, the grantee or loan recipient shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee or loan recipient arising out of a grant or loan contract.~~
- ~~(11) — **Administrative requirements.** All grants and loans administered by the department under this chapter shall comply with the requirements set forth in the following publication: Washington state department of ecology, "Administrative Requirements for Ecology Grants and Loans," Publication No. 91-18.~~

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WAC 173-322-045 Funding priorities

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

 - (a) Oversight remedial action grants and loans under an existing extended grant agreement;**
 - (b) Site assessment grants and other remedial action grants and loans for previously funded projects, provided that substantial progress has been made; and**
 - (c) Remedial action grants and loans for new projects.**
- (2) For each type of grant or loan.** For each type of remedial action grant or loan, the department will further prioritize projects for funding or limit funding for projects based on the factors specified in WAC 173-322A-300 through 173-322A-350, as applicable.
- (3) Oversight remedial action loans.** The department will fund an oversight remedial action loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds exceeds the amount allocated, the department will give the oversight remedial action grant and loan the same priority.

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WAC 173-322-050 Fiscal controls

- (1) **General.** The department will establish reasonable costs for all grants and loans, require local governments to manage projects in a cost-effective manner, and ensure that all potentially liable persons assume responsibility for remedial action.
- (2) ~~Partial funding~~**Funding discretion.** ~~The department retains the authority to issue grants or loans which reimburse the local government for less than the maximum percentage allowable under WAC 173-322-060 through 173-322-130.~~ The department retains the discretion to not provide a grant or loan for an eligible project or to provide less funding for an eligible project than the maximum allowed under this chapter.
- (3) ~~Limit on funding for a hazardous waste site~~**Funding limits.** The department may not provide more funding for an eligible project than the maximum allowed under this chapter for each type of grant or loan.
 - ~~(a) — For hazardous waste sites where oversight remedial actions are being conducted, the department and the local government will establish a final cleanup budget and negotiate grant and loan agreements after the remedial investigation and feasibility study have been completed and a final remedial action plan has been developed by the local government. The funding provided under these agreements will be the final department remedial action fund commitment for cleanup at that hazardous waste site. Grant and loan agreements may be amended, but requests to increase the remedial action budget at that site will receive a lower priority than other applications.~~
 - ~~(b) — For hazardous waste sites where independent remedial actions have been conducted, the remedial action costs eligible for grant funding at a hazardous waste site shall not exceed four hundred thousand dollars.~~
- (4) **Retroactive funding.** Retroactive costs are not eligible for funding, except as provided under this chapter for each type of grant or loan.
- (5) **Cash management of grants.** For oversight remedial action grants, the department may not:
 - (a) Allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department; or
 - (b) Allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.
- ~~(5) — **Consideration of contribution claims.** The local government may not use proceeds from contribution claims to meet the match requirement for the grant. If the local government receives proceeds from a contribution claim before the effective date of the grant agreement,~~

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~~then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the local government pursuing the contribution claim. If the local government receives proceeds from a contribution claim after the effective date of the grant agreement, then the local government shall reimburse the department for a proportional share of those proceeds, after subtracting from those proceeds the legal costs incurred by the local government pursuing the contribution claim.~~

~~(6) — **Consideration of insurance claims.** The local government may use proceeds from insurance claims to meet the match requirement for the grant. If those proceeds exceed the match requirement for the grant, then the department may reduce grant funding or require a reimbursement of grant funding by up to the amount that those proceeds exceed the match requirement, after subtracting from that amount the legal costs incurred by the local government pursuing the insurance claims.~~

~~(7) — **Repayment of area-wide groundwater remedial action grant funds.** If the department provides the local government with an area-wide groundwater remedial action grant for conducting remedial action on property owned by private parties, then the grant amount shall be partially repaid to the department. The terms and amount of repayment shall be included in the grant agreement between the local government and the department.~~

~~(8) — **Financial reporting.**~~

~~(a) — **Grant application.** The local government shall specify in the grant application any proceeds it has received from contribution claims. The local government shall also specify in the grant application any current or potential sources of local funding to meet the match requirement for the grant including, but not limited to, other grants or loans and proceeds from insurance claims.~~

~~(b) — **Grant agreement.** If the department provides the local government with a remedial action grant or loan, then the local government shall:~~

~~(i) — Submit a copy of the local government's "Comprehensive Annual Financial Report" following its publication, for the year in which the grant is issued and for each year the grant is in effect; and~~

~~(ii) — Notify the department of any proceeds the local government receives from a contribution or insurance claim within ninety days of receipt of those proceeds.~~

(6) — **Consideration of insurance, contribution, and cost recovery claims.** A recipient may use proceeds from an insurance claim or a contribution or cost recovery claim under RCW 70.105D.080 or the federal cleanup law seeking recovery of remedial action costs at a hazardous waste site to meet recipient share requirements, subject to the conditions in (a) through (f) of this subsection.

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- (a) Applicability.** The project at the hazardous waste site is currently funded on or will be funded after July 1, 2014, under a grant agreement.
- (b) Notice of claims.** Upon application for the grant or within thirty days of filing a lawsuit or insurance claim to recover remedial action costs at the hazardous waste site, whichever is later, the recipient must notify the department of the filing.
- (c) Notice of proceeds.** Upon application for the grant, the recipient must notify the department of the total amount of proceeds received to date on any claims for remedial action costs at the hazardous waste site. The department may require the recipient to periodically update the total amount of proceeds received on the claims. The department may also require the recipient to provide documentation of the proceeds received on the claims.
- (d) Notice of resolution.** Upon application for the grant or within thirty days of any resolution of a claim for remedial action costs at the hazardous waste site, whichever is later, the recipient must:
- (i) Notify the department of the resolution;
 - (ii) Specify the amount of proceeds received under the resolution and the portion of the proceeds attributable to eligible costs; and
 - (iii) Provide the department a copy of the settlement, judgment, or other document resolving the claim or portion of the claim.
- (e) Repayment of grant funds.** If the total proceeds from all the claims for remedial action costs at a hazardous waste site exceed the following costs, then the department may reduce the department share or require repayment of costs reimbursed by the department under a grant agreement by up to the amount of the exceedance:
- (i) The cost incurred by the recipient to pursue the claims;
 - (ii) The cost of remedial actions incurred by the recipient that are not funded by the department at the hazardous waste site, including costs incurred before resolution of the claims; and
 - (iii) If approved by the department, the cost of remedial actions incurred by the recipient that are not funded by the department for an eligible project at a hazardous waste site that is not the basis for the claims.
- (f) Eligibility of payments to other recipients.** Contribution and cost recovery claim payments are not eligible costs if the payments are made for remedial actions previously funded by a grant to another jurisdiction.
- (7) Reimbursement request deadlines.**

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- (a) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred before the application date must be submitted to the department in the application.
- (b) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred between the application date and the agreement signature date must be submitted to the department within ninety days of the agreement signature date.
- (c) Requests for reimbursement and adequate documentation of eligible costs incurred after the agreement signature date must be submitted to the department within one hundred twenty days of incurring the costs.
- (d) If requests for reimbursement are not submitted by the deadlines in (a) through (c) of this subsection, as applicable, the department may deny reimbursement of the costs.
- (8) Spending plans for grant or loan agreements.** The department may require grant or loan recipients to provide and periodically update a spending plan for the grant or loan.
- (9) Financial responsibility.** As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, ~~the~~ potentially liable persons (~~PLPs~~) bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a ~~PLP~~ potentially liable person. Remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.
- (10) Puget Sound action agenda.** The department may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

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

- (1) **Purpose.** ~~The purpose of the site hazard assessment grant program is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site.~~ The purpose of site assessment grants is to provide funding to local governments that conduct initial investigations and site hazard assessments on behalf of the department. The department retains the authority to review and verify results and make determinations based on the initial investigations and site hazard assessments conducted by local governments.
- (2) **ApplicantProject eligibility.** To be eligible for a site ~~hazard~~ assessment grant, ~~the applicant a~~ project must meet all of the following requirements:
- (a) The applicant must be a local health district or department;
 - ~~(b) The site must be located within the jurisdiction of the applicant;~~
 - ~~(c)~~(b) The department has agreed ~~that~~ the applicant may conduct ~~the~~ initial investigations or site hazard assessments on its behalf; and
 - ~~(d)~~(c) The scope of work for ~~the~~ initial investigations and site hazard assessments must conform to WAC 173-340-310 and 173-340-320 and applicable department guidelines.
- ~~(3) Application process.~~
- ~~(a) Submittal.~~ The application for a site hazard assessment grant may be submitted to the department at any time.
 - ~~(b) Content.~~ The grant application must be completed on forms provided by the department and include the following:
 - ~~(i) Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;~~
 - ~~(ii) A description of the environmental benefits of the project;~~
 - ~~(iii) A copy of the scope of work which conforms to the requirements of WAC 173-340-320 and applicable department guidelines;~~
 - ~~(iv) A budget for the scope of work; and~~
 - ~~(v) A description of all current or potential sources of funding, including other grants or loans.~~
- ~~(4) Application evaluation and prioritization.~~

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

(3) Funding priority. The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

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

(4) Application process.

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

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- (i) Project eligibility under subsection (2) of this section; and
 - (ii) Funding priority under subsection (3) of this section.
 - (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
 - (i) Funding priority under subsection (3) of this section;
 - (ii) Cost eligibility under subsections (5) and (6) of this section;
 - (iii) Allowable funding under subsection (7) of this section; and
 - (iv) Availability of state funds and other funding sources.
 - (e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.
- (5) Cost eligibility.** ~~Costs must be eligible under this section and must be approved by the department in order to be eligible for reimbursement. Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority setting process. To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.~~
- (a) **Eligible costs.** Eligible costs for a site assessment grant include reasonable costs for the following:
 - (i) Initial investigations under WAC 173-340-310;
 - (ii) Site hazard assessments under WAC 173-340-320; and
 - (iii) Administrative or technical support for initial investigations or site hazard assessments performed by the department.
 - (b) **Ineligible costs.** Ineligible costs for a site assessment grant include, but are not limited to, the following:
 - (i) The cost of developing the grant application or negotiating the grant agreement;
 - (ii) The cost of dispute resolution under the grant agreement;
 - (iii) Retroactive costs, except as provided under subsection (6) of this section;

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- (iv) Legal costs including, but not limited to, the cost of seeking legal advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, defending actions taken against the recipient, penalties incurred by the recipient, and any attorney fees incurred by the recipient;
- (v) The cost of testing buildings and other structures for drug use residuals;
- (vi) The cost of testing buildings and other structures for radon, lead paint, or asbestos that is not required as a remedial action under chapter 70.105D RCW or the federal cleanup law; and
- (vii) In-kind contributions.

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

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

Retroactive costs are eligible for funding if the costs are incurred between the start of the biennium and the agreement signature date and are eligible under subsection (5) of this section.

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

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

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WAC 173-322-070 Oversight remedial action grants

- (1) **Purpose.** The purpose of ~~the~~ oversight remedial action grants ~~program~~ is to provide funding to local governments that ~~conduct remedial actions~~ investigate and clean up hazardous waste sites under an order or decree. The grants are intended to encourage and expedite remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.
- (2) **ApplicantProject eligibility.** For the purposes of this grant, a project consists of remedial actions conducted under one or more orders or decrees at a single hazardous waste site. A project may extend over more than one biennium. Except as provided under subsection (3) of this section, to be eligible for ~~an oversight remedial action~~ a grant, ~~the applicant~~ a project must meet all of the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020~~;
- (b) The applicant must be a potentially liable person, ~~or a~~ potentially responsible party, or prospective purchaser at the hazardous waste site; ~~and~~
- ~~(c) The applicant must meet one of the following criteria:~~
- ~~(i) The applicant is required by the department to conduct remedial action under an order or decree issued under chapter 70.105D RCW;~~
- ~~(ii) The applicant is required by the U.S. Environmental Protection Agency to conduct remedial action under an order or decree issued under the federal cleanup law and the order or decree has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; or~~
- ~~(iii) The applicant has signed an order or decree issued under chapter 70.105D RCW requiring a potentially liable person (PLP) other than the applicant to conduct remedial action at a landfill site and the applicant has entered into an agreement with the PLP to reimburse the PLP for a portion of the remedial action costs incurred under the order or decree for the sole purpose of providing relief to ratepayers and/or taxpayers from remedial action costs.~~
- (c) The project must meet one of the following criteria:
- (i) The applicant is required to conduct remedial actions at the hazardous waste site under an order or decree; or
- (ii) A person other than the applicant is required to conduct remedial actions at the hazardous waste site under an order or decree and the applicant has:
- (A) Signed the order or decree; and

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- (B) Entered into a written agreement with the other person to reimburse the person for a portion of the remedial action costs incurred under the order or decree;
 - (d) If the order or decree is issued under the federal cleanup law, it must be signed or acknowledged in writing by the department as a sufficient basis for funding under this chapter; and
 - (e) The project must be included in the department's ten-year financing plan required under RCW 70.105D.030(5).
- ~~(3) **Retroactive applicant eligibility.** To be eligible to receive an oversight remedial action grant for an order issued under the federal cleanup law before the effective date of the 2005 amendments to this chapter, the applicant must meet the following requirements:~~
- ~~(a) The applicant must be a local government, as defined in WAC 173-322-020;~~
 - ~~(b) The applicant was required by the U.S. Environmental Protection Agency to conduct remedial action under an order issued under the federal cleanup law;~~
 - ~~(c) The order has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and~~
 - ~~(d) The applicant must submit to the department a grant application within six months after the effective date of the 2005 amendments to this chapter.~~
- ~~(4) **Application process.**~~
- ~~(a) **Submittal.** Except as provided under subsection (3) of this section, the application for an oversight remedial action grant must be submitted to the department within sixty days of the effective date of the order or decree.~~
 - ~~(b) **Content.** The grant application must be completed on forms provided by the department and include the following:~~
 - ~~(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;~~
 - ~~(ii) A description of the history of the site, the current status of the site, and the remedial actions to be performed at the site under the order or decree;~~
 - ~~(iii) A description of the environmental benefits of the project;~~
 - ~~(iv) A copy of the order or decree;~~
 - ~~(v) A copy of the scope of work which accomplishes the requirements of the order or decree;~~

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- ~~(vi) — A budget for the scope of work;~~
- ~~(vii) — A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims;~~
- ~~(viii) — A commitment by the applicant to provide the required matching funds and a description of the sources of those funds; and~~
- ~~(ix) — If the applicant claims the use of innovative technology under subsection (7)(c)(i) of this section, a justification for the claim.~~

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

- ~~(a) — The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.~~
- ~~(b) — When pending grant applications or anticipated demand for oversight remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:
 - ~~(i) — Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;~~
 - ~~(ii) — Evidence that the grant will expedite cleanup;~~
 - ~~(iii) — Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~~~

(3) Funding priority. The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

- (a) The threat posed by the hazardous waste site to human health and the environment;
- (b) Whether the applicant is a prospective purchaser of a brownfield property within a redevelopment opportunity zone;
- (c) The land reuse potential of the hazardous waste site;
- (d) Whether the hazardous waste site is located within a highly impacted community;
- (e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

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- (f) The ability of the grant to expedite cleanup of the hazardous waste site;
- (g) The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste site;
- (h) The distribution of grants throughout the state and to various types and sizes of local governments; and
- (i) Other factors as determined and published by the department.

(4) Application process.

- (a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. For multibiennial projects, proposals must be updated biennially. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals and updates should be submitted by the dates published by the department
- (b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. For multibiennial projects, an application must be submitted before each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.
- (c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:
 - (i) Project eligibility under subsection (2) of this section; and
 - (ii) Funding priority under subsection (3) of this section.
- (d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
 - (i) Funding priority under subsection (3) of this section;
 - (ii) Cost eligibility under subsections (5) and (6) of this section;
 - (iii) Allowable funding under subsections (7) and (8) of this section; and
 - (iv) Availability of state funds and other funding sources.

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(e) Fund management. The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

~~(6)~~(5) **Cost eligibility.** ~~Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~ To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

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

~~(i) Remedial investigations;~~

~~(ii) Feasibility studies;~~

~~(iii) Remedial designs;~~

~~(iv) Pilot studies;~~

~~(v) Interim actions;~~

~~(vi) Cleanup actions;~~

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

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

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

(i) Emergency or interim actions;

(ii) Remedial investigations;

(iii) Feasibility studies and selection of the remedy;

(iv) Engineering design and construction of the selected remedy; and

(v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component.

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

(i) The cost of developing the grant application or negotiating the grant agreement;

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- (ii) The cost of dispute resolution under the order or decree or the grant agreement;
- (iii) The costs incurred under an order or decree by a potentially liable person, potentially responsible party, or prospective purchaser other than the recipient, except as provided under subsection (2)(c)(iii) of this section;
- ~~(iv)~~ (iv) Retroactive costs, except as provided under subsection ~~(7)(6)~~ (6) of this section;
- ~~(ii)(v)~~ (v) ~~Oversight costs~~ The remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at the hazardous waste site, including reviews of reimbursement requests;
- ~~(iii)~~ Operating and maintenance costs of long-term monitoring systems;
- ~~(iv)~~ Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;
- ~~(v)~~ (vi) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
- (vii) Site development and mitigation costs not required as part of a remedial action;
- (viii) Legal costs including, but not limited to, the cost of seeking client advice, the cost of pursuing cost recovery, contribution, or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant recipient, the cost of defending actions taken against the applicant recipient, and any attorney fees incurred by the recipient; and
- ~~(vii)~~ (ix) In-kind ~~services~~ contributions.

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

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

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The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

- (a) Costs incurred under the order or decree between the effective date of the order or decree and the agreement signature date;
- (b) Costs incurred under the order or decree during the period of a prior grant agreement that have not been reimbursed by the department;
- (c) Costs incurred negotiating the order or decree, provided that the costs are not legal costs and were incurred within:
 - (i) Sixty days after starting negotiations for an order; or
 - (ii) One hundred twenty days after starting negotiations for a decree; and
- (d) Costs incurred before the effective date of the order or decree conducting independent remedial actions, provided that:
 - (i) The actions are:
 - (A) Conducted within five years before the effective date of the order or decree;
 - (B) Consistent with the remedial actions required under the order or decree;
 - (C) Compliant with the substantive requirements of chapter 173-340 WAC; and
 - (D) Incorporated as part of the order or decree; and
 - (ii) Costs incurred before the start of negotiations for the order or decree do not exceed six hundred thousand dollars.

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

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

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- ~~(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible costs.~~
- ~~(c) **Additional funding.** The applicant shall be eligible to receive funding in excess of the limit set forth in (b) of this subsection under the following circumstances:~~
- ~~(i) **The applicant used innovative technology.** If the applicant utilizes innovative technology, as defined in WAC 173-322-020, as part of the cleanup action and the eligible costs exceed four hundred thousand dollars, then the applicant shall be eligible to receive additional funding up to fifteen percent of eligible costs. The applicant must include justification for the innovative technology claim in the grant application.~~
- ~~(ii) **The county is economically disadvantaged.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive additional funding up to twenty-five percent of eligible costs.~~
- (a) **Department share.** The department may fund up to fifty percent of the eligible costs. Except for extended grant agreements, the department may fund a higher percentage of the eligible costs as follows.
- (i) The department may fund up to an additional twenty-five percent of the eligible costs if the applicant is:
- (A) An economically disadvantaged county, city, or town; or
- (B) A special purpose district with a hazardous waste site located within an economically disadvantaged county, city, or town.
- (ii) The department may fund up to an additional fifteen percent of the eligible costs if the applicant uses innovative technology.
- (iii) The department may fund up to a total of ninety percent of the eligible costs if the eligible costs for the project are less than five million dollars and the director or designee determines the additional funding would:
- (A) Prevent or mitigate unfair economic hardship imposed by cleanup liability;
- (B) Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or
- (C) Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.

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

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

(8) Cash management of grants.

(a) The department may not allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department.

(b) The department may not allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.

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

(10) Extended grant agreements.

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

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

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

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WAC 173-322-080 Independent remedial action grants

- (1) **Purpose.** The purpose of ~~the~~ independent remedial action grants ~~program~~ is to provide funding to local governments that ~~have successfully cleaned up hazardous waste sites through independent remedial action~~ investigate and clean up hazardous waste sites independently under the voluntary cleanup program. ~~Independent remedial actions are remedial actions that are voluntarily initiated and conducted without department oversight or approval.~~ The grants are intended to encourage and expedite independent remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.
- (2) **Types of grants.** The department may provide the following types of independent remedial action grants:
- (a) **Post-cleanup reimbursement grant.** Under this grant, the department may reimburse the recipient after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.
 - (b) **Periodic reimbursement grant.** Under this grant, the department may reimburse the recipient periodically during the investigation and cleanup of a hazardous waste site or property under the voluntary cleanup program.
- (2)(3) **ApplicantProject eligibility.** For the purposes of these grants, a project consists of independent remedial actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for ~~an independent remedial action~~ a grant, the ~~applicant~~ project must meet all of the following requirements:
- (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
 - (b) The applicant must be a potentially liable person, ~~or~~ potentially responsible party, ~~or~~ prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site; ~~and~~
 - (c) For post-cleanup reimbursement grants, the ~~The~~ applicant must have completed independent remedial actions at the hazardous waste site or property and received ~~from the department~~ a no further action ~~(NFA)~~ determination for the site or property under the voluntary cleanup program;
 - (d) For periodic reimbursement grants, the applicant must:
 - (i) Enroll the hazardous waste site in the voluntary cleanup program before entering into a grant agreement for the site;
 - (ii) Conduct independent remedial actions at the hazardous waste site or property in accordance with work plans authorized by the department under the voluntary cleanup program; and

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(iii) Have necessary access to conduct independent remedial actions at the hazardous waste site or obtain such access in accordance with a schedule in the grant agreement.

~~(3) Application process.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (4) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:
- (a) The threat posed by the hazardous waste site to human health and the environment;
 - (b) Whether the applicant is a prospective purchaser of a brownfield property within a redevelopment opportunity zone;
 - (c) The land reuse potential of the hazardous waste site;
 - (d) Whether the hazardous waste site is located within a highly impacted community;
 - (e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;
 - (f) The ability of the grant to expedite cleanup of the hazardous waste site;
 - (g) The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste site;
 - (h) The distribution of grants throughout the state and to various types and sizes of local governments; and
 - (i) Other factors as determined and published by the department.
- (5) Application process.**
- (a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.
 - (b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.
 - (c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

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- (i) Project eligibility under subsection (2) of this section; and
- (ii) Funding priority under subsection (3) of this section.
- (d) Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:
 - (i) Funding priority under subsection (4) of this section;
 - (ii) Cost eligibility under subsections (6) and (7) of this section;
 - (iii) Allowable funding under subsections (8) and (9) of this section; and
 - (iv) Availability of state funds and other funding sources.
- (e) Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.
- ~~(5)~~**(6) Cost eligibility.** ~~Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~ To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.
 - (a) Eligible costs.** Eligible costs for an independent remedial action grants include, but are not limited to, ~~the~~ reasonable costs for the following:
 - ~~(i) Remedial investigations;~~
 - ~~(ii) Feasibility studies;~~
 - ~~(iii) Remedial designs;~~
 - ~~(iv) Pilot studies;~~
 - ~~(v) Interim actions;~~
 - ~~(vi) Cleanup actions;~~
 - ~~(vii) Capital costs of long-term monitoring systems;~~
 - ~~(viii) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed; and~~
 - ~~(ix) Development of the independent remedial action report required under WAC 173-340-515(4).~~

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- (i) Emergency or interim actions;
 - (ii) Remedial investigations;
 - (iii) Feasibility studies and selection of the remedy;
 - (iv) Engineering design and construction of the selected remedy;
 - (v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component; and
 - (vi) Development of independent remedial action plans or reports submitted to the department for review under the voluntary cleanup program.
- (b) Ineligible costs.** Ineligible costs for an independent remedial action grants include, but are not limited to, the following:
- (i) The cost of developing the grant application or negotiating the grant agreement;
 - (ii) The cost of dispute resolution under the voluntary cleanup program or the grant agreement;
 - ~~(iii)~~ (iii) Retroactive costs, except as provided under subsection ~~(6)~~(7) of this section;
 - ~~(iv)~~ (iv) Cost of technical consultations provided by the department under ~~WAC 173-340-515(5), including any deposit for such consultations~~the voluntary cleanup program, including reviews of reimbursement requests;
 - ~~(iii)~~ ~~Operating and maintenance costs of long-term monitoring systems;~~
 - ~~(iv)~~ ~~Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;~~
 - (v) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
 - (vi) Site development and mitigation costs not required as part of a remedial action;
 - (vii) Legal costs including, but not limited to, the cost of seeking client advice, the cost of pursuing cost recovery, contribution, or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant recipient, the cost of defending actions taken against the applicant recipient, and any attorney fees incurred by the recipient; and

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

~~(6)~~**(7) Retroactive cost eligibility.** ~~Retroactive costs are eligible for reimbursement if the costs were incurred within five years of the date of the grant application. Retroactive costs incurred more than five years before the date of the grant application are not eligible for reimbursement unless:~~

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

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

The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

(a) Costs incurred within five years before the date of the completed grant application; and

(b) Costs incurred during the period of a prior grant agreement that have not been reimbursed by the department.

~~(7) Funding and reimbursement.~~

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

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

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

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

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

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(8) Limit on eligible costs for a project. The eligible costs for a project may not exceed six hundred thousand dollars.

(9) Funding of eligible costs.

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

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

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

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

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

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

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

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

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

(10) Reimbursement of eligible costs.

(a) Post-cleanup reimbursement grants. For post-cleanup reimbursement grants, the department may reimburse the recipient for eligible costs only after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.

(b) Periodic reimbursement grants. For periodic reimbursement grants, the department may reimburse the recipient for eligible costs in accordance with the following terms and conditions.

(i) Remedial action work plans. The recipient must submit independent remedial action work plans to the department for review and authorization under the voluntary cleanup program.

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- (ii) Periodic reimbursement of remedial actions.** The department may reimburse the recipient no more frequently than quarterly for the following:

 - (A) The development of independent remedial action work plans and reports;**
 - (B) Independent remedial actions performed in accordance with a work plan authorized by the department in writing; and**
 - (C) Any other independent remedial actions authorized by the department in writing.**
- (iii) Performance guarantee for periodic reimbursement.** The department may withhold twenty percent of each periodic reimbursement payment as security for the recipient's completion of remedial actions at the hazardous waste site or property. Any funds withheld by the department may be paid to the recipient when the department issues a no further action determination for the hazardous waste site or property.
- (iv) Post-cleanup reimbursement of retroactive costs.** The department may reimburse the recipient for the retroactive costs specified in subsection (7)(a) of this section, but only after the department has issued a no further action determination for the hazardous waste site or property.
- (11) Administration of multiple grants.** The department may provide independent remedial action grants to a local government for more than one project under a single grant agreement.

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WAC 173-322-090 Area-wide groundwater ~~remedial action~~investigation grants

- (1) **Purpose.** ~~The purpose of the area-wide groundwater remedial action grant program is to provide funding to local governments that facilitate the cleanup and redevelopment of property within their jurisdictions where the groundwater has been contaminated by hazardous substances from multiple sources. The grants are intended to encourage and expedite the investigation and cleanup of area-wide groundwater contamination.~~The purpose of area-wide groundwater investigation grants is to provide funding to local governments that investigate known or suspected areas of area-wide groundwater contamination. The investigations are intended to facilitate the cleanup and redevelopment of properties affected by area-wide groundwater contamination.
- (2) **Applicant**Project **eligibility.** For the purposes of this grant, a project consists of an investigation of area-wide groundwater contamination in a single study area. A project may extend over more than one biennium. To be eligible for an area-wide groundwater remedial action ~~a grant, the applicant~~a project must meet all of the following requirements:
- ~~(a)~~ (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
 - ~~(b)~~ (b) The ~~hazardous waste site~~project must involve the investigation of known or suspected area-wide groundwater contamination, ~~as defined in WAC 173-322-020;~~
 - ~~(c)~~ (c) ~~The applicant must be a potentially liable person or a potentially responsible party at the hazardous waste site, have an ownership interest in the hazardous waste site, or apply on behalf of property owners affected by the hazardous waste site to facilitate area-wide groundwater action;~~
 - ~~(d)~~ (d) ~~The area-wide groundwater action must be required under an order or decree or be approved by the department. If the action is required under an order or decree issued under the federal cleanup law, then the order or decree must have been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and~~
 - ~~(e)~~ (e) ~~The applicant must agree to conduct or manage the area-wide groundwater action specified in the grant agreement.~~
 - (c) The applicant must not be required to conduct the investigation under an order or decree;
 - (d) The applicant must have the necessary access to conduct the investigation or obtain such access in accordance with a schedule in the grant agreement; and
 - (e) The project must be included in the ten-year financing plan required under RCW 70.105D.030(5).

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~~(3) Application process.~~

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

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

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

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- ~~(b) When pending grant applications or anticipated demand for area-wide groundwater remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~
- ~~(i) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;~~
 - ~~(ii) Evidence that the grant will expedite cleanup; and~~
 - ~~(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~

(3) Funding priority. The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

- (a) The threat posed by the hazardous waste sites to human health and the environment;
- (b) Whether the hazardous waste site is within a redevelopment opportunity zone;
- (c) The land reuse potential of the hazardous waste sites;
- (d) Whether the hazardous waste sites are located within a highly impacted community;
- (e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;
- (f) The ability of the grant to expedite cleanup of the hazardous waste sites;
- (g) The ability of the grant to leverage other public or private funding for cleanup and reuse of the hazardous waste sites;
- (h) The distribution of grants throughout the state and to various types and sizes of local governments; and
- (i) Other factors as determined and published by the department.

(4) Application process.

- (a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department

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

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

 - (i) Funding priority under subsection (3) of this section;**
 - (ii) Cost eligibility under subsections (5) and (6) of this section;**
 - (iii) Allowable funding under subsections (7) and (8) of this section; and**
 - (iv) Availability of state funds and other funding sources.**
- (e) Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) Cost eligibility. ~~Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~ To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

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

 - ~~(i) Remedial investigations;~~
 - ~~(ii) Feasibility studies;~~
 - ~~(iii) Remedial designs;~~
 - ~~(iv) Pilot studies;~~
 - ~~(v) Interim actions;~~
 - ~~(vi) Cleanup actions;~~

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

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

(i) Identifying the sources of the area-wide groundwater contamination;

(ii) Determining the nature and extent of the area-wide groundwater contamination;

(iii) Identifying the preferential groundwater contaminant migration pathways;

(iv) Identifying area-wide geologic and hydrogeologic conditions; and

(v) Establishing area-wide natural groundwater quality, including aquifer classification under WAC 173-340-720.

(b) Ineligible costs. Ineligible costs for an area-wide groundwater remedial action investigation grants include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

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

~~(ii) Oversight costs;~~

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

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

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

(v) Site development and mitigation costs not required as part of the remedial action;

(vi) Legal costs including, but not limited to, the costs of seeking client advice, the cost of pursuing cost recovery, contribution, or insurance claims, the cost of participating in administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the

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

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

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

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

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

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

Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

~~(7) — Funding and reimbursement.~~

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

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

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

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

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

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~~partial reimbursement from potentially liable persons and potentially responsible parties. Reasonable measures shall be taken by the applicant to maximize reimbursement.~~

- (7) Limit on eligible costs for a project.** The eligible costs for a project may not exceed five hundred thousand dollars.
- (8) Funding of eligible costs.**
- (a) Department share.** The department may fund up to one hundred percent of the eligible costs.
- (b) Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

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WAC 173-322-100 Safe drinking water action grants

- (1) **Purpose.** The purpose of ~~the safe drinking water action grants program~~ is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking water to areas contaminated by, or threatened by contamination from, hazardous waste sites.
- (2) **ApplicantProject eligibility.** For the purposes of this grant, a project consists of safe drinking water actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a ~~safe drinking water action~~ grant, ~~the applicant~~ a project must meet all of the following requirements:
 - (a) The applicant must be a local government, ~~as defined in WAC 173-322-020;~~
 - (b) The applicant must be a purveyor, ~~as defined in WAC 173-322-020,~~ or the applicant must be applying on behalf of a purveyor;
 - (c) The applicant or purveyor must be in substantial compliance, as determined by the department of health, with applicable rules of the state board of health or the department of health, ~~as contained in~~ including chapter 246-290 WAC (~~Public water supplies~~ Group A public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits);
 - (d) ~~The public water system must be located in an area determined by the department to be a hazardous waste site or threatened by contamination from a hazardous waste site~~ The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;
 - (e) The ~~public water system must~~ department of ecology has determined that the drinking water source:
 - (i) ~~exhibit~~ Exhibits levels of ~~contamination which~~ hazardous substances that exceed the primary maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310;~~;~~
 - (ii) ~~exhibit~~ Exhibits levels of ~~contamination which~~ hazardous substances that exceed the cleanup ~~standards~~ levels established by the department of ecology under ~~WAC 173-340-700 through 173-340-760~~ Part VII of chapter 173-340 WAC; or
 - (iii) ~~be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or trihalomethane, it must be determined to have originated from a hazardous waste site~~ is threatened to

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

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

~~(g)(f)~~ If the safe drinking water action includes water line extensions, then the extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies; and

(g) — The applicant must not be required to conduct the safe drinking water action under an order or decree.

~~(3) — Application process.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Funding priority. The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to drinking water;

(b) Whether the drinking water serves a highly impacted community;

(c) The per capita cost of providing safe drinking water;

(d) The ability of the grant to expedite the provision of safe drinking water;

(e) The ability of the grant to leverage other public or private funding for the provision of safe drinking water;

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(f) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements; and

(g) Other factors as determined and published by the department.

(4) Application process.

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

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

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsection (7) of this section; and

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

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) Cost eligibility. ~~Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.~~ To be eligible for funding, a project cost must be eligible

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under this subsection and the terms of the grant agreement and be approved by the department.

- (a) **Eligible costs.** Eligible costs for a safe drinking water action grants include, but are not limited to, ~~the~~ reasonable costs for the following, if needed:
- (i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;
 - (ii) Transmission lines between major system components, including inter-ties with other water systems;
 - (iii) Treatment equipment and facilities;
 - (iv) Distribution lines from major system components to system customers or service connections;
 - (v) Bottled water, as an interim action;
 - (vi) Fire hydrants;
 - (vii) Service meters;
 - (viii) Project inspection, engineering, and administration;
 - (ix) Individual service connections, including any connection fees and charges, ~~provided that property owners substantially participate in financing the cost of such connections;~~
 - (x) Drinking water well ~~abandonment for wells identified by the department as an environmental safety or health hazard and decommissioned in accordance with~~ decommissioning under WAC 173-160-381; and
 - ~~(xi) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds;~~
 - ~~(xii)~~ (xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards, ~~or by the coordinated water system plan as necessary to meet required standards; and.~~
 - ~~(xiii) Other costs identified by the department as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination.~~
- (b) **Ineligible costs.** Ineligible costs for a safe drinking water action grants include, but are not limited to, the following:

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- (i) The cost of developing the grant application or negotiating the grant agreement;
- (ii) The cost of dispute resolution under the grant agreement;
- ~~(i)(iii)~~ Retroactive costs, except as provided under subsection (6) of this section;
- ~~(ii)~~ Oversight costs;
- (iv) The cost of oversizing or extending a water system for future development;
- (v) The cost of individual service connections for undeveloped lots;
- (vi) Local improvement district assessments;
- ~~(iii)(vii)~~ Operatingion and maintenance costs;
- ~~(iv)(viii)~~ Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
- ~~(v)(ix)~~ Legal costs including, but not limited to, the costs of seeking client advice, the cost of pursuing cost recovery, contribution, or insurance claims, ~~the cost of participating in~~ administrative hearings, ~~the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant recipient, the cost of defending actions taken against the applicant recipient,~~ and any attorney fees incurred by the recipient; and
- ~~(vi)(x)~~ In-kind servicescontributions.

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

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

Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) Funding ~~and reimbursement~~ of eligible costs.

- ~~(a) Adjustment of eligible costs.~~ If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct

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remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding. If the applicant receives proceeds from a contribution claim before the effective date of the grant agreement, then the department shall deduct those proceeds from the amount eligible for grant funding, after subtracting from those proceeds the legal costs incurred by the applicant pursuing the contribution claim.

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

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

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

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

(a) **Department share.** The department may fund up to ninety percent of the eligible costs.

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

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WAC 173-322-110 Methamphetamine lab site assessment and cleanup grants [DELETED]

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

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

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

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

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

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

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

~~(7) — Funding and reimbursement.~~

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

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

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

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

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

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WAC 173-322-120 Derelict vessel remedial action grants [DELETED]

- ~~(1) — **Purpose.** The purpose of the derelict vessel remedial action grant program is to provide funding to local governments that clean up and dispose of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment.~~
- ~~(2) — **Applicant eligibility.** To be eligible for a derelict vessel remedial action grant, the applicant must meet the following requirements:~~
- ~~(a) — The applicant must be a local government, as defined in WAC 173-322-020;~~
 - ~~(b) — The vessel must be an abandoned or derelict vessel, as defined in WAC 173-322-020; and~~
 - ~~(c) — The applicant must be the owner of the abandoned or derelict vessel.~~
- ~~(3) — **Application process.**~~
- ~~(a) — **Submittal.** The application for a derelict vessel remedial action grant may be submitted to the department at any time.~~
 - ~~(b) — **Content.** The grant application must be completed on forms provided by the department and include the following:~~
 - ~~(i) — Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;~~
 - ~~(ii) — A description of the vessel, the types and quantities of hazardous substances located within the vessel, the threat posed by the vessel to human health and the environment, the remedial actions to be performed to address that threat, and the authority under which the remedial action will be performed;~~
 - ~~(iii) — A copy of the scope of work that specifies the remedial actions to be performed to address the threat;~~
 - ~~(iv) — A description of the environmental benefits of the project;~~
 - ~~(v) — A budget for the scope of work;~~
 - ~~(vi) — A description of all current or potential sources of funding including, but not limited to, other grants or loans and proceeds from contribution or insurance claims; and~~
 - ~~(vii) — A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.~~
- ~~(4) — **Application evaluation and prioritization.**~~

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

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

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

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

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

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

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

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

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

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

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

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

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WAC 173-322-130 Oversight remedial action loans

- (1) **Purpose.** ~~This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans~~ The purpose of oversight remedial action loans is to supplement local government funding and funding from other sources to meet the ~~match~~ recipient share requirements for oversight remedial action grants under WAC 173-322A-320. The ~~intent of the loan program is~~ loans are intended to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.
- (2) **Types of loans.** ~~The loan program includes~~ There are two different types of oversight remedial action loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different ~~applicant~~ project eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.
- (a) **Standard loan.** A standard loan is a loan that includes the terms and conditions for repayment.
- (b) **Extraordinary financial hardship loan.** An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Any such loan must be approved by the director or designee.
- ~~(3) **Applicant eligibility.** To be eligible for a loan, the applicant must meet the following requirements:~~
- ~~(a) The applicant must be a local government, as defined in WAC 173-322-020;~~
- ~~(b) The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);~~
- ~~(c) The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from other sources. The financial review shall be conducted at the direction and cost of the department. Based on that financial review, the applicant must demonstrate the following:~~
- ~~(i) For a standard loan, its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source;~~
- ~~(ii) For an extraordinary financial hardship loan, its financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;~~

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~~(d) — The hazardous waste site must present an immediate danger to human health and the environment; and~~

~~(e) — The inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site.~~

~~(4) — Application process.~~

~~(a) — **Submittal.** The loan application must be submitted to the department at the same time as the associated oversight remedial action grant application.~~

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

~~(i) — Sufficient evidence to demonstrate the following:~~

~~(A) — For a standard loan, the applicant's financial need for the loan, ability to repay the loan, and inability to obtain matching funds from any other source;~~

~~(B) — For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;~~

~~(ii) — Sufficient evidence that the hazardous waste site presents an immediate danger to human health and the environment;~~

~~(iii) — Sufficient evidence that the inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site; and~~

~~(iv) — A copy of the applicant's most recent Comprehensive Annual Financial Report.~~

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

~~(a) — The department will evaluate the loan application together with the associated oversight remedial action grant application. The grant and loan applications will be evaluated by the department for completeness and adequacy. After the grant and loan applications have been completed, the department and the applicant will negotiate a scope of work and budget for the grant and loan. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant and loan.~~

~~(b) — If the department determines that the applicant meets eligibility requirements for an extraordinary financial hardship loan in subsection (3) of this section, then the~~

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

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

(3) Project eligibility. For the purposes of this loan, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a loan, a project must meet all of the following requirements:

(a) The applicant must have an oversight remedial action grant for the project under WAC 173-322A-320; and

(b) The applicant must demonstrate the following to the department's satisfaction. The department may require an independent third-party financial review to support the demonstration:

(i) For a standard loan, the applicant's financial need for the loan and ability to repay the loan; or

(ii) For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, and ability to repay the loan in the future.

(4) Funding priority. The department will assign an oversight remedial action loan the same priority as the associated oversight remedial action grant.

(5) Application process.

(a) Project solicitation. Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. For multibiennial projects, proposals must be updated biennially. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals and updates should be submitted by the dates published by the department

(b) Application submittal. Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. For multibiennial projects, an application must be submitted before

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each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.

(c) Project evaluation and ranking. Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (3) of this section. If the department determines the applicant meets the eligibility requirements for an extraordinary financial hardship loan, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan; and

(ii) Funding priority under subsection (4) of this section.

(d) Agreement development. The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the loan and develop the agreement. The department will consider:

(i) Funding priority under subsection (4) of this section;

(ii) Cost eligibility under subsections (6) and (7) of this section;

(iii) Allowable funding under subsection (8) of this section; and

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

(e) Fund management. The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(6) Cost eligibility. The eligible costs for ~~the loan program~~ oversight remedial action loans shall be the same as the eligible costs for ~~the oversight remedial action grants~~ program set forth in under WAC 173-322A-~~070(6)~~ 320(5).

(7) Retroactive cost eligibility. The eligibility of retroactive costs for ~~the loan program~~ oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants ~~program set forth in~~ under WAC 173-322A-~~070(7)~~ 320(6).

~~**(8) Funding and repayment.**~~

~~**(a) General.** If the department provides the applicant an oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(8), then the department may also provide the applicant a loan to enable the applicant to meet the match requirement for the grant. The loan shall be used to supplement local government funding and funding from other sources to meet the match requirement.~~

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- ~~(b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant.~~
- ~~(c) **Local government funding of match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant or loan. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.~~
- ~~(d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department. For extraordinary financial hardship loans, the repayment terms and conditions can be deferred. Deferred terms are dependent on periodic review of the applicant's ability to pay. Deferred terms and conditions may not be indefinite.~~

(8) **Funding by department.** The department may provide the recipient of an oversight remedial action loan for up to one hundred percent of the recipient share under WAC 173-322A-320(7)(b). The loan shall be used by the recipient to supplement local government funding and funding from other sources to meet the recipient share requirement.

(9) **Repayment by recipient.** The terms and conditions for repayment of a loan shall be specified in the loan agreement.

(a) **Standard loans.** For a standard loan, the following terms and conditions shall apply. Additional terms and conditions may be specified in the loan agreement.

(i) **Repayment periods and interest rates.**

(A) If the repayment period is less than or equal to five years, then the interest rate shall be thirty percent of the average market rate.

(B) If the repayment period is more than five years and less than or equal to twenty years, then the interest rate shall be sixty percent of the average market rate.

(ii) **Interest accrual.** Interest shall accrue on each disbursement as it is paid to the recipient.

(b) **Extraordinary financial hardship loans.** For an extraordinary financial hardship loan, the repayment terms and conditions specified in (a) of this subsection may be adjusted or deferred. Deferred terms and conditions are dependent on periodic review of the recipient's ability to pay. Terms and conditions may not be deferred indefinitely.

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WAC 173-322-140 Integrated planning grants

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

 - (a)** The applicant must be a local government;
 - (b)** The applicant must have an ownership interest in property or have a demonstrated interest in purchasing property affected by the hazardous waste site;
 - (c)** The applicant must have the necessary access to complete the project or obtain such access in accordance with the schedule in the grant agreement; and
 - (d)** The applicant must not be required to conduct the actions under an order or decree.
- (3) Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

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

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

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

 - (i) Funding priority under subsection (3) of this section;**
 - (ii) Cost eligibility under subsections (5) and (6) of this section;**
 - (iii) Allowable funding under subsections (7) and (8) of this section; and**
 - (iv) Availability of state funds and other funding sources.**
- (e) Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.
- (5) Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

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

 - (i) Environmental site assessments;**
 - (ii) Remedial investigations;**

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(iii) Health assessments;

(iv) Feasibility studies;

(v) Site planning;

(vi) Community involvement;

(vii) Land use and regulatory analyses;

(viii) Building and infrastructure assessments;

(ix) Economic and fiscal analyses; and

(x) Any environmental analyses under chapter 43.21C RCW.

(b) **Ineligible costs.** Ineligible costs for an integrated planning grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

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

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

(v) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Limit on eligible costs for a project.**

(a) For a project consisting of a study of a single hazardous waste site, the eligible costs for the project may not exceed two hundred thousand dollars.

(b) For a project consisting of a study area involving more than one hazardous waste site, the eligible costs for the project may not exceed three hundred thousand dollars.

(c) A hazardous waste site may not be included in more one than project.

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(8) Funding of eligible costs.

(a) Department share. The department may fund up to one hundred percent of the eligible costs.

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

(9) Administration of multiple grants. The department may provide integrated planning grants to a local government for more than one project under a single grant agreement.