



Remedial Action Grants for Local Governments

2013 – 2015 Guidance

Toxic Cleanup Program

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Toxics Cleanup Program
Washington State Department of Ecology
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Table of Contents

Acknowledgments	viii
Abstract/Executive Summary	1
1.0 Introduction.....	3
1.1 Purpose and Applicability.....	3
1.2 Program History.....	3
1.3 Categories of Grants	4
1.4 How Do I Apply for a Remedial Action Grant?	5
1.5 Ecology’s Budget and the Ten-Year Plan.....	8
1.6 Availability of Funding.....	10
1.7 Environmental Equity/Justice	11
1.8 Investments in Environmental Benefits	12
1.9 Redevelopment Opportunity Zones	12
1.10 Consideration of Insurance, Contribution, and Cost Recovery Claims	13
2.0 Grant Roles and Responsibilities.....	17
2.1 The Grant Applicant/Recipient	17
2.2 The Ecology Grant Financial Manager	18
2.3 The Ecology Cleanup Project Manager	18
2.4 The Ecology Toxics Cleanup Program Section Manager	19
3.0 Site Cleanup Process Overview	21
3.1 Phases of the Cleanup Process	21
3.2 Administrative Mechanisms for Cleanups.....	23
4.0 Site Assessment Grants.....	26
4.1 Who Can Receive a Site Assessment Grant?.....	27
4.2 What Criteria Will Ecology Use to Prioritize Applications for Site Assessment Grants?	27
4.3 Eligible Costs under Site Assessment Grants	28
4.4 Ineligible Costs under Site Assessment Grants	30
4.5 Retroactive Cost Eligibility under Site Assessment Grants.....	30
4.6 Match Requirements for Site Assessment Grants.....	30
4.7 Site Assessment Grant Contacts	31
5.0 Integrated Planning Grants	33
5.1 Who Can Receive an Integrated Planning Grant?	33
5.2 Property Ownership and Access	34
5.3 What Criteria Will Ecology Use to Prioritize Applications for Integrated Planning Grants?	35
5.4 Eligible Costs under Integrated Planning Grants.....	36
5.5 Ineligible Costs under Integrated Planning Grants	37

5.6	Retroactive Cost Eligibility under Integrated Planning Grants	38
5.7	Match Requirements for Integrated Planning Grants	38
5.8	Integrated Planning Grant Contacts	38
6.0	Oversight Remedial Action Grants	40
6.1	Who Can Receive an Oversight Remedial Action Grant?.....	41
6.2	What Criteria Will Ecology Use to Prioritize Applications for Oversight Remedial Action Grants?	42
6.3	Eligible Costs under Oversight Remedial Action Grants	43
6.4	Ineligible Costs under Oversight Remedial Action Grants	45
6.5	Retroactive Cost Eligibility under Oversight Remedial Action Grants.....	46
6.6	Match Requirements for Oversight Remedial Action Grants.....	46
6.7	Reduction in Match Requirements.....	47
6.8	Extended Grant Agreements	48
6.9	Oversight Remedial Action Grant Contacts	50
7.0	Independent Remedial Action Grants	51
7.1	Who Can Receive an Independent Remedial Action Grant?.....	52
7.2	What Criteria Will Ecology Use to Prioritize Applications for Independent Remedial Action Grants?	52
7.3	Eligible Costs under Independent Remedial Action Grants	54
7.4	Ineligible Costs under Independent Remedial Action Grants.....	55
7.5	Retroactive Costs under Independent Remedial Action Grants	55
7.6	Match Requirements for Independent Remedial Action Grants.....	56
7.7	Reimbursement Options under Independent Remedial Action Grants.....	56
7.8	Independent Remedial Action Grant Contacts	57
8.0	Area-wide Groundwater Investigation Grants	58
8.1	Who Can Receive an Area-wide Groundwater Investigation Grant?.....	58
8.2	What Criteria Will Ecology Use to Prioritize Applications for Area-wide Groundwater Investigation Grants?	59
8.3	Eligible Costs under Area-wide Groundwater Investigation Grants	60
8.4	Ineligible Costs under Area-wide Groundwater Investigation Grants:.....	61
8.5	Retroactive Costs under Area-wide Groundwater Investigation Grants.....	62
8.6	Match Requirements for Area-wide Groundwater Investigation Grants.....	62
8.7	Area-wide Groundwater Investigation Grant Contacts.....	62
9.0	Safe Drinking Water Action Grants	64
9.1	Who Can Receive a Safe Drinking Water Action Grant?.....	64
9.2	What Criteria Will Ecology Use to Prioritize Applications for Safe Drinking Water Action Grants?	65
9.3	Eligible Costs under Safe Drinking Water Action Grants	66
9.4	Ineligible Costs under Safe Drinking Water Action Grants	67
9.5	Retroactive Cost Eligibility under Safe Drinking Water Action Grants.....	68
9.6	Financial Match Requirements for Safe Drinking Water Action Grants.....	68
9.7	Safe Drinking Water Action Grant Contacts	68

10.0 Oversight Remedial Action Loans.....	70
10.1 Types of Oversight Remedial Action Loans.....	70
10.2 Who Can Receive an Oversight Remedial Action Loan?.....	70
10.3 What Criteria Will Ecology Use to Prioritize Applications for Oversight Remedial Action Loans?.....	71
10.4 Eligible and Ineligible Costs.....	71
10.5 Retroactive Costs for Oversight Remedial Action Loans.....	71
10.6 Repayment of Oversight Remedial Action Loans.....	71
10.7 Oversight Remedial Action Loan Contacts.....	72
11.0 Financial and Grant Management.....	74
11.1 Ecology Administration of Grants and Loans (EAGL).....	74
11.2 Cash Management.....	75
11.3 Amendments.....	75
11.4 Eligible Costs - General.....	75
11.5 Eligible Costs – Specific Issues.....	77
Administrative Costs.....	77
Direct Expenses.....	77
Monitoring Costs.....	77
Operating and Maintenance Costs.....	77
Overhead.....	77
Per Diem.....	79
Supplies.....	79
11.6 Conditionally Eligible Costs.....	80
Amenity Replacement Costs.....	80
Computer Purchases.....	80
Equipment.....	81
Groundbreaking and Cleanup Completion Ceremonies.....	81
Light Refreshments.....	81
Negotiation Costs.....	81
Overtime and Overtime Differential.....	82
Tools.....	82
Training.....	82
Working Lunches.....	83
11.7 Ineligible Costs.....	83
Contingencies, Rising Costs and Change Orders.....	83
Dispute Resolution Costs.....	83
Ecology Oversight Costs.....	84
Ecology Voluntary Cleanup Program (VCP) Charges.....	84
Grant Application Development.....	84
Legal Expenses/Attorney Fees.....	84
Lobbying Costs.....	84
Monitoring Costs.....	84

Natural Resource Damage Assessment Costs and Natural Resource Damages..	84
Operating and Maintenance Costs.....	84
Penalties and Late Fees	84
Retroactive Costs.....	85
Withholding.....	85
11.8 Performance Monitoring.....	85
11.9 Payment Requests and Documentation Requirements	85
Time Limit for Billing	86
Billing Forms.....	86
Documentation of Remedial Action Costs	86
Removing Ineligible Costs	88
Payroll and Personnel Information	88
Prior Approvals	88
Automobile.....	88
Fleet Costs and Mileage	88
Rental Cars	89
12.0 Reporting	90
12.1 Technical Reports	90
12.2 Ten-Year Cost Forecast	90
12.3 Progress Reports	90
12.4 Final Project Reports.....	91
12.5 Annual Financial Statement.....	91
12.6 Audits.....	91
Appendix A: Acronyms	92
Appendix B: Chapter 173-322A WAC, Remedial Action Grants and Loans	94

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Abstract/Executive Summary

The remedial action grant program helps local governments with the costs to clean up facilities that are contaminated with hazardous substances.

This *Remedial Action Grants for Local Governments: 2013-2015 Guidance* (hereafter referred to as “Guidance”) provides information about remedial action grants and loans, requirements and processes. This Guidance is applicable to all remedial action grant and loan agreements. All grant and loan Applicants and Recipients are responsible for reading and understanding this Guidance before entering into a grant or loan agreement with the Washington State Department of Ecology (Ecology).

In addition to editorial changes and reorganization, numerous changes have been made to the 2007 version of this Guidance to reflect changes to the statute under SB 5296 and HB 2072 (both passed in the 2013 legislative session) and corresponding rule changes (Chapter 173-322A WAC):

- Updated discussion of roles and responsibilities of Applicants and Ecology staff that manage grants and site work.
- Removed the Meth Lab Assessment and Cleanup Grant, which has been discontinued. Funds for these sites are now provided under Site Assessment Grants and Independent Remedial Action Grants.
- Made changes to match requirements and priorities for the various grant categories.
- Added an option for periodic reimbursement of remedial action costs under Independent Remedial Action Grants.
- Made changes to Area-wide Groundwater Investigation Grants for studies of groundwater contamination caused by multiple sites in a limited geographic area.
- Updated the eligible activities for Integrated Planning Grants.
- Removed the Derelict Vessel Grant category, which has been discontinued. The Department of Natural Resources now has a derelict vessel grant program.
- Renamed Site Hazard Assessment Grants to Site Assessment Grants, to provide funds for both Initial Investigations and Site Hazard Assessments by local Health Departments/Districts at sites approved by Ecology.
- Added a discussion of “redevelopment opportunity zones.”
- Added a discussion of “highly impacted communities.”
- Added instructions for how to apply for grants through Ecology’s new online grant management system, Ecology Administration of Grants and Loans (EAGL). As of April 2014, all remedial action grants must be established and managed through this system.
- Eliminated appendices that included the forms and general terms and conditions related to remedial action grants. This information is now located in EAGL and on Ecology’s grant website.

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1.0 Introduction

1.1 Purpose and Applicability

This *Remedial Action Grants for Local Governments: 2013-2015 Guidance* (Guidance) is intended to help local governments understand the Department of Ecology's (Ecology) administrative and fiscal policies and procedures for remedial action grants. It is applicable to all remedial action grants and loans¹.

The governing rule for remedial action grants, Chapter 173-322A WAC, Remedial Action Grants and Loans, is also applicable to these agreements. The definitions of terms used in this Guidance can be found in that rule and in Chapter 173-340 WAC, the Model Toxics Control Act Cleanup Regulation, at http://www.ecy.wa.gov/programs/tcp/regs/reg_main.html.

All grant Applicants and Recipients² should read and understand this Guidance, the remedial action grant rules, and Ecology's [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002.

Applicants and Recipients are responsible for understanding the scope of work in their agreement, program requirements and cost eligibility, and any general and special terms and conditions in their agreements.

This Guidance is intended to provide a summary of the rule requirements for remedial action grants and provide an explanation of those requirements. If any provisions in this Guidance are found to be in conflict with the rule language in Chapter 173-340 WAC or Chapter 173-322A WAC, the rule language governs.

1.2 Program History

In 1988, Washington voters passed Initiative 97, known as the Model Toxics Control Act (MTCA). This was subsequently codified as Chapter 70.105D RCW. The Act authorizes remedial action grants and designates them top priority among grants funded under the Act.

Funds for grants and loans come from a tax on the first possession of certain hazardous substances in Washington. The Act, as amended by SB 5296, directs 44 percent of the revenue from the Hazardous Substance Tax to be deposited in the Local Toxics Control Account for grants to local governments. The Act also directs Ecology to "adopt rules for grant issuance and performance."

¹ When the term "grant" is used in this Guidance, unless the context otherwise requires, it generally applies to both grants and loans.

² As used in this Guidance, the term "Applicant" applies before receipt of the grant, and "Recipient" applies after the grant has been awarded.

In May 1990, the state adopted Chapter 173-322 WAC, Remedial Action Grants. This rule created the program described in this Guidance. Ecology has since amended this rule several times:

- Added Safe Drinking Water Action Grants (1993);
- Added new grants and amended existing grants to improve their operation (2005);
- Amendments to improve the usability of Oversight Remedial Action Loans (2007).

The passage of SB 5296 and HB 2072 in the 2013 legislative session made numerous changes to the statutes that govern remedial action grants. As a result, Ecology rescinded Chapter 173-322 WAC and replaced it with Chapter 173-322A WAC. Updates found in this Guidance reflect changes to the statute and rule.

1.3 Categories of Grants

There are several categories of remedial action grants. They are:

[Oversight Remedial Action Grants](#) – These grants help pay for local governments’ cleanup³ of contaminated sites⁴ where the work is being conducted under an enforcement order, agreed order or consent decree issued under Chapter 70.105D RCW (Model Toxics Control Act or MTCA). Cleanups conducted under an order or decree issued by EPA under the federal cleanup law are also eligible for Oversight Remedial Action Grants.

[Extended Grant Agreements](#) – Extended Grant Agreements are a subset of Oversight Remedial Action Grants. Extended Grant Agreements can be provided for cleanups that will cost more than \$20 million and the cleanup will extend over several years. These agreements can provide more certainty that grant funds will be available in future years.

[Independent Remedial Action Grants](#) – These grants help to offset some of the expense involved in an independent remedial action when a local government conducts a cleanup under Ecology’s Voluntary Cleanup Program (VCP).

[Safe Drinking Water Action Grants](#) – These grants help local governments provide safe drinking water to areas where a site has contaminated drinking water.

[Area-wide Groundwater Investigation Grants](#) – These grants enable local governments to facilitate redevelopment within their jurisdiction by conducting a study of the groundwater in a limited geographic area that has groundwater contamination caused by multiple sites.

[Integrated Planning Grants](#) – These grants provide opportunities for local governments to develop an integrated plan for cleanup and future land use of a contaminated site or group of sites.

³ As used in this Guidance, the term “cleanup” means the same as “remedial action” and includes both investigations and cleanup actions.

⁴ As used in this Guidance, the terms “contaminated site” and “site” means the same as “hazardous waste site” under WAC 173-322A.

Site Assessment Grants – These grants help local Health Departments/Districts identify and assess the degree of contamination at suspected contaminated sites within their jurisdictions. The grants include Initial Investigations and Site Hazard Assessments.

Methamphetamine Lab Assessment and Cleanup Action Grants – Ecology is no longer allocating funds separately for meth lab assessment and cleanup. When a meth lab is encountered, a local Health Department/District may conduct an Initial Investigation and Site Hazard Assessment by amending their Site Assessment Grant. Funding for cleanup of a local government-owned meth lab site is provided through Independent Remedial Action Grants. Remedial Action Grant funds cannot be used to cleanup private property, or test private or public housing or businesses for drug use residuals.

Derelict Vessel Grants – This grant program has been discontinued. The Department of Natural Resources (DNR) now has a derelict vessel removal and disposal grant program. Although Ecology’s Derelict Vessel Grants are no longer offered, when insufficient funding is available through DNR’s program, Ecology may provide funding to local governments to remove hazardous substances from derelict vessels under an Independent or Oversight Remedial Action Grant. Remedial action grant funds cannot be used to remove or scrap a derelict vessel. For more information on the Department of Natural Resource Derelict Vessel Removal Program, visit http://www.dnr.wa.gov/RecreationEducation/Topics/DerelictVessels/Pages/aqr_derelict_vessel_removal_program.aspx, or call 360-902-1574.

Oversight Remedial Action Loans – These are intended to provide local governments with access to low interest loans to help fulfill their match requirement for Oversight Remedial Action Grants.

1.4 How Do I Apply for a Remedial Action Grant?

RCW 70.105D.030(5) requires Ecology to submit to the legislature a ten-year financing report for remedial action funding needs under MTCA. This report, submitted by September 20th of each even-numbered year, provides the foundation for Ecology’s biennial budget for cleanups, including remedial action grants.

In the spring of each even-numbered year, Ecology solicits potential grant projects from local governments. These projects are then ranked using the criteria in the rule and this Guidance and assembled into a prioritized funding list. ***For a project to be considered for inclusion in Ecology’s biennial budget, it must be in this ten-year report.***⁵

To ensure you are notified during the solicitation process, local governments should be consulting with the appropriate Regional Office contact ⁶ to express their interest in applying for a grant as soon as they anticipate incurring future contaminated site investigation or cleanup expenses.

⁵ Site Assessment Grants follow a different timeframe. The legislature typically provides a block of funds that Ecology allocates to local Health Departments/Districts interested in conducting Initial Investigations or Site Hazard Assessments on behalf of Ecology, based on how much money the legislature appropriates and the criteria in Chapter 4.0 of this Guidance.

⁶ See contacts listed under each grant later in this Guidance.

Once the legislature passes the budget, Applicants will be notified by Ecology if their projects have been funded. Successful Applicants will then be required to submit a detailed application that describes the scope of work to be accomplished under the grant and the anticipated schedule for that work. Ecology uses this and other information to prepare the grant agreement.

An application for a grant should not be completed in EAGL until Ecology notifies you that your project has been awarded funding and your Ecology Grant Financial Manager has requested that you complete an application.

Table 1: Remedial Action Grants and Loans at a Glance

Type of Grant	Base Funding	Additional Funding			Funding Limit
		Economic Disadvantage (up to 25%)	Innovative Technology (up to 15%)	Reduced Match (up to 90%)	
Site Assessment Grants (a)	Up to 100%	--	--	--	None
Integrated Planning Grants	Up to 100%	--	--	--	\$200,000 for single site; \$300,000 for multiple sites
Oversight Remedial Action Grants					
Normal	Up to 50%	YES	YES	YES	None (c)
Extended Grants (b)	Up to 50%	NO	NO	NO	None
Independent Remedial Action Grants	Up to 50%	YES	NO	YES	\$600,000
Area-wide Groundwater Investigation Grants	Up to 100%	--	--	--	\$500,000
Safe Drinking Water Action Grants	Up to 90%	NO	NO	NO	None
Oversight Remedial Action Loans					
Type of Loan	Amount	Loan Duration	Interest Rate (d)	Deferred Payment	Funding Limit
Standard Loan	Up to Grant Match	≤ 5 years	30% AMR	No	None
		5 to 20 years	60% AMR		
Financial Hardship Loan	Up to Grant Match	Site-Specific	Site-Specific	Yes	None

a. Site Assessment Grants are only available for local Health Departments and Districts.

b. For sites costing \$20 million or more and extending over more than one biennium.

c. Total eligible project costs for Reduced Match Grants are limited to \$5 million.

d. AMR = Average market rate for tax exempt municipal bonds.

1.5 Ecology's Budget and the Ten-Year Plan

The state of Washington operates on a two-year budget called a biennial budget. This two year budget cycle starts on July 1st of each odd-numbered year and ends two years later on June 30th of the next odd-numbered year. For example, the budget for July 1, 2015, through June 30, 2017, is called the 2015-17 biennial budget. Any one-year period from July 1st to June 30th of the following year is called a state fiscal year.⁷

When MTCA was passed by the voters as Initiative 97 in 1988, it created a tax on the first possession of hazardous substances. Fifty-six percent of the money generated by this tax is deposited in the State Toxics Control Account; forty-four percent in the Local Toxics Control Account.⁸ SB 5296 capped tax revenues for these two accounts at \$140 million per fiscal year, with any remainder being deposited in a new Environmental Legacy Stewardship Account.

The budget includes both an operating budget and a capital budget. The operating budget primarily addresses ongoing operating costs such as Ecology's personnel, facility, and contract expenses. For Ecology's Toxic Cleanup Program, a majority of these expenses are funded out of the State Toxics Control Account with additional funding from a variety of other accounts and federal grants. The capital budget primarily addresses one-time expenditures such as construction projects. The budget for remedial action grants is typically set in the capital budget. This grant program is primarily funded out of the Local Toxics Control Account. The Environmental Legacy Stewardship Account is used for both operating and capital expenditures.

The State Legislature meets from mid January to mid April each odd numbered year to establish the budget for the upcoming biennium. But long before this, state agencies develop their budgets for the Governor's and legislature's consideration. For this reason, solicitation of projects from local governments begins early in the year before the legislature meets.

RCW 70.105D.030(5) requires Ecology to submit to the legislature a ten year financing report for remedial action funding needs under MTCA. The report is to be submitted by September 20th of each even-numbered year and is developed in coordination with local governments with cleanup obligations. It provides an estimate of the funds needed to clean up sites known to Ecology and identifies cleanups that are likely to occur within the next 10 years. Ecology will periodically update the report as more sites needing funding are identified and cost estimates are refined.

The report, along with other information, is used to develop Ecology's biennial budget recommendations for cleanups, including remedial action grants. Typically, only a subset of sites that need funds are included in the biennial budget, as Ecology's budget recommendations must be within available resources.

In general, the schedule for Ecology's budget process for the awarding of remedial action grants is as follows. The actual timeframe may vary somewhat depending on whether the legislature can reach agreement on a budget during its regular 105 day session and on direction from the Governor.

⁷ A fiscal year is named after the year it ends (i.e. the 2017 fiscal year is from July 1, 2016 to June 30, 2017).

⁸ SB5296 altered these percentages somewhat from the allocation originally in Initiative 97.

Biennial Budget Process - Even Numbered Years

January – March: Ecology solicits projected ten-year grant needs from local governments. Projections must be submitted by March 15th to be considered for inclusion in Ecology’s budget.

March – June: Ecology prioritizes projects for funding using the information provided by local governments and the criteria found in the rule and Guidance. This includes consideration of which previously-funded projects should be carried over to the new biennium when a grant has not been fully expended.

June: Budget instructions from the Governor’s Office of Financial Management are published. These instructions set requirements and provide guidance for Ecology to develop its proposed budget.

July – September: Ecology’s Director, in consultation with Ecology Program Managers and Senior Budget Staff, evaluates proposed budgets from the various Ecology programs and prepares Ecology’s budget for submittal to the Governor’s Office.

October – December: The budget and policy staff in the Governor’s Office of Financial Management evaluate proposed budgets from the various state agencies and prepare the Governor’s budget for submission to the legislature. Under the State Constitution, the Governor is required to submit a proposed budget to the legislature by December 20th.

Biennial Budget Process - Odd Numbered Years

January – April: The budget is deliberated and adopted by the legislature. If an agreement on the budget cannot be reached during the normal legislative session, the Governor may call the legislature back into one or more 30-day Special Sessions until an agreement is reached. (Ecology also begins the process to update the ten-year plan for the following year’s supplemental budget.)

May – June: The Office of Financial Management instructs each agency on its operating and capital budgets as passed by the legislature. Ecology’s Director, in consultation with Ecology Program Managers and Senior Budget Staff, provides each program its authorized budget and spending rate.

July – August: Ecology’s Toxics Cleanup Program prepares a monthly spending plan (called “allotments”). These allotments reflect the work that can be completed within available funds and may require adjustments to work plans, contracts, staffing levels and grant amounts. Ecology then notifies local governments which projects were funded by the legislature. Recipients prepare and submit a detailed scope of work and schedule to implement the grant. Ecology’s Grant Financial Managers use this information to prepare grant contracts.

Remainder of Biennium

Ecology's Toxics Cleanup Program Management Team⁹ meets quarterly to review expenditures to date and projected expenditures at grant sites. If unallocated funds are available, or grant-funded projects become significantly delayed, these unspent funds may be allotted to the next set of priority projects. New projects that Ecology learned of since the ten-year plan was prepared may be factored into this process.

Ecology also begins preparation of the next biennium's budget, following the process described above.

Supplemental Budget

Halfway through the biennium, the legislature makes a mid-biennia adjustment to the budget based on updated revenue and expense projections. This occurs during a 60-day regular legislative session in odd numbered years and is called the "supplemental budget." If less funds are available than were projected for the biennial budget, adjustments are made. This may include reducing or slowing down grant reimbursements, especially at sites where work has yet to begin.

Fortunately, increasing revenues to the Toxics Accounts in recent years have resulted in additional funds becoming available for remedial action grants. When this is the case, Ecology follows an abbreviated budget process similar to that described above for the regular biennial budget. Generally, projects already on the priority list that were not previously funded are recommended by Ecology for funding in the supplemental budget.

1.6 Availability of Funding

Grants are contingent on appropriations made by the legislature and on cash being available in the MTCA accounts. The fact that a local government is eligible or has received funding for initial phases of remedial action is no guarantee of continued funding. Separate grant agreements are typically written for each major phase of remedial action and for each biennium.



The obligation of Ecology to make payments is contingent on the availability of funds, which is approved by the legislature. When an agreement crosses over state fiscal biennia, funds not yet spent must be included in Ecology's budget request for the next biennium and be reappropriated by the legislature.

When substantial progress has not been made on a project in the biennium the grant is awarded, Ecology may decide to not request that the legislature carry unspent grant funds

⁹ Ecology's Toxics Cleanup Program Management Team consists of the Program Manager, Section Managers from Headquarters and each of Ecology's four Regional Offices, and senior budget and policy support staff.

forward in the next biennium. Even if the project is included in Ecology’s budget, each time a biennial funding line is crossed, there is a risk that funds will not be reappropriated. If this occurs, agreements that fail to receive funding would be closed and any unspent funds would be returned to the MTCA accounts.

The legislature has directed Ecology to manage the MTCA accounts on a cash basis to reduce carryover between biennia and the need for reappropriation. This means that future grants will only be provided for work that can be completed in the biennium for which funds are requested. Should carryover of funds be necessary, any additional funding for future biennia may receive a lower priority for funding until the carryover funds are expended.

1.7 Environmental Equity/Justice

Providing equitable environmental protection to all residents in our state is important to Ecology and the state of Washington. This is consistent with MTCA’s key policy that “Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right.”¹⁰

This principle is often referred to as “environmental equity” or “environmental justice.” Ecology defines environmental equity (justice) as:

The proportionate and equitable distribution of environmental benefits and risks among diverse economic and cultural communities. It ensures that the policies, activities, and the responses of government do not differently impact diverse social and economic groups. Environmental equity promotes a safe and healthy environment for all people.¹¹

Ecology Policy 1-12 encourages staff to consider environmental justice in our work. The remedial action grant rule aligns with MTCA and this policy by including consideration of “highly impacted communities” when prioritizing grant applications. A highly impacted community is defined in WAC 173-322A-100 as “... a community that the department has determined is likely to bear a disproportionate burden of public health risks from environmental pollution.”

Ecology interprets this to include consideration of both minority and low income populations, and communities with disproportionate public health challenges. Applicants are encouraged to provide in their grant applications environmental justice related information for the site and surrounding area. Examples of such information are existing demographic and health data such as:

- Per capita and median household income
- Unemployment rate

¹⁰ RCW 70.105D.010 (1)

¹¹ Ecology Executive Policy 1-12, available upon request.

- Minority populations
- English language proficiency
- Cancer rates or other disproportionate health impacts.

The Washington State Department of Transportation has great information on their environmental justice website, including links to demographic data. This information can be found at <http://www.wsdot.wa.gov/environment/ej/envirojustice.htm>.

The U.S. Environmental Protection Agency has a wide range of information on their environmental justice website at <http://www.epa.gov/environmentaljustice/index.html>.

Information on diseases and chronic conditions can be found on the Washington State Department of Health’s website at <http://www.doh.wa.gov/DataandStatisticalReports/DiseasesandChronicConditions.aspx>.

1.8 Investments in Environmental Benefits

In 2001, the legislature amended RCW 70.105D.100 to require Recipients to include a description of the project’s environmental benefits in their grant application. To meet this requirement, EAGL’s application forms include a list of potential environmental benefits. Applicants need to identify which of these benefits apply to their project when they submit their grant application.

1.9 Redevelopment Opportunity Zones

SB 5296, passed by the 2013 legislature and codified in RCW 70.105D.150, authorizes cities, counties and port districts to establish “redevelopment opportunity zones.” In general terms, these zones are envisioned as a way to focus local governments’ and Ecology’s resources within a limited geographic area typically with multiple contaminated sites to accelerate cleanups in these areas so that redevelopment can occur more expeditiously. RCW 70.105D.150 specifies the requirements for establishing redevelopment opportunity zones.

Within these zones, *local governments* are authorized to:

- Create a “brownfield renewal authority” with broad powers to facilitate cleanup and redevelopment. (see RCW 70.105D.160)
- Access a “brownfield redevelopment trust fund account,” created within the state’s budget, which can be used to secure long-term funding for cleanup. (see RCW 70.105D.140)¹²

Within these zones, *Ecology* is authorized to:

- Enter into agreed orders with prospective purchasers to accelerate the study of sites with redevelopment potential.

¹² This account currently contains no funds. The legislature needs to appropriate funds to this account and authorize expenditures for a specific project to activate it. This could include local and private funds deposited in the account.

- Enter into mixed funding settlement agreements with prospective purchasers where public funding is commensurate with a public benefit other than cleanup.
- Prioritize grants for integrated planning and area-wide groundwater remedial actions within these zones.

Local governments already have a broad array of governance and financing tools to facilitate redevelopment within their communities. Redevelopment opportunity zones and associated authorities (above) are intended to supplement, not replace, existing authorities.¹³

As noted in the discussion above, some limited additional access to, and priority for, certain grants under MTCA is provided by the statute for redevelopment opportunity zones. Ecology has decided to not broaden the effect of these new authorities through rule-making at this time. This decision may be revisited in the future as additional experience is obtained.

1.10 Consideration of Insurance, Contribution, and Cost Recovery Claims

During development of a budget for a site and as part of an application for a grant, the local government must identify all actual and pending potential sources of public and private cleanup financing. These sources include:

- Other grants;
- Local matching funds;
- Agreements with other public and private Potentially Liable Persons (PLPs) and Potentially Responsible Parties (PRPs) to help pay for remedial action costs;
- Insurance policies and claims made against those policies; and
- Lawsuits that have been filed to pursue a contribution claim or cost recovery claim under MTCA or the federal cleanup law.

Applicants should conduct a thorough search for other potentially liable persons and relevant insurance policies, and initiate contact with these entities to try and reduce the public's share of the cleanup costs. Ecology may condition a grant on a requirement to have exhausted all means—including litigation if appropriate—to recover grant funds from these other sources.

¹³ For additional information, see Municipal Services and Research Center of Washington: Community Renewal Law: <http://www.mrsc.org/subjects/econ/ed-comrenewal.aspx>
Public Corporations/Public Development Authorities: <http://www.mrsc.org/subjects/econ/ed-pda.aspx>
Washington Statutes Related to Financing Economic Development: http://www.mrsc.org/subjects/econ/ed_laws.aspx

Notifying Ecology of Insurance Claims and Legal Actions

A Recipient may use proceeds from a) an insurance claim, b) a contribution claim, or c) cost recovery claim under MTCA or the federal cleanup law, to meet the grant match requirements, provided the following conditions are met:

- The project is currently funded under a grant agreement on July 1, 2014, or will be funded under a grant agreement after this date;¹⁴
- Upon application for a grant, or within thirty days of filing a lawsuit or insurance claim to recover remedial action costs at the site, Ecology must be notified of the filing;
- Upon application for a grant, Ecology must be notified of the total amount of monies received to date on any lawsuit or insurance claim for remedial action costs at the site. Recipients must also notify Ecology of any additional payments as part of their quarterly report; and
- Upon application for a grant, or within thirty days of any resolution of a lawsuit or claim, for remedial action costs at the site, whichever is later, the Recipient must:
 - Notify Ecology of the resolution;
 - Specify the amount of proceeds (or anticipated proceeds) received under the resolution or payment and the portion of the proceeds attributable to eligible costs; and
 - Provide Ecology with a copy of the settlement, judgment, or other document resolving the lawsuit or claim (or portion of the lawsuit or claim).

Allowed Use of Proceeds

The Recipient may use the proceeds it receives from the settlement of an insurance claim, contribution claim, or cost recovery claim for the following cleanup-related costs:

- The Recipient's grant match;
- The legal costs incurred by the Recipient to pursue the claim or action;
- Remedial action costs incurred by the Recipient at the site that were not eligible to be funded under the grant such as long term operation and maintenance costs and retroactive costs; and
- With Ecology's approval, remedial action costs incurred by the Recipient at another site that was not the basis of the insurance claim, contribution claim, or cost recovery claim for remedial action costs at the site.

Repayment of Excess Proceeds

When the proceeds from the settlement of all insurance claims, contribution claims, and cost recovery claims at a site exceed the allowed uses of the proceeds as described above:

- If the grant has not yet been issued, Ecology will typically reduce the amount of the grant by the excess proceeds; or

¹⁴ Projects closed before this date are subject to the rules that were in effect at the time the grant was awarded.

- If the grant has been issued, Ecology will typically require repayment of the grant up to the amount of the excess proceeds.

Reimbursement of Payments to Other Grant Recipients

Contribution and cost recovery claim payments are not grant-eligible costs if the payments are made for remedial actions previously funded by a grant to another jurisdiction and cannot be used to reduce match requirements.

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2.0 Grant Roles and Responsibilities

2.1 The Grant Applicant/Recipient

Grant Applicants and Recipients are responsible for managing work funded by the grant. The Applicant/Recipient is also responsible for:

- Providing a ten year cost forecast for remedial action costs and grant needs.
- Making application and managing the agreement processes, including payments through Ecology Administration of Grants and Loans (EAGL).
- Complying with the terms and conditions of the grant agreement.
- Conducting the remedial action activity consistent with:
 - The MTCA rule;
 - The terms of the order or decree¹⁵ or, in the case of an independent cleanup, consistent with the VCP Guidance and contract; and
 - The approved work plan.
- Making a conscientious effort to control costs while meeting project objectives.
- Managing the contractor procurement for any of the grant eligible work.
- Insuring staff and contractors comply with the state requirements for the documentation of expenditures and eligibility of costs if the Applicant/Recipient wants those costs reimbursed under the grant.
- Updating the forecasted need and spending plan quarterly as more accurate cost estimates are developed.
- Ensuring all sampling data is entered into Ecology's Environmental Information Management (EIM) system.
- Notifying Ecology's Financial & Cleanup Project Managers when:
 - Project scope of work needs to be amended;
 - Work schedule changes;
 - Budget is exceeded or needs to be redistributed among grant tasks; or
 - Circumstances at the site affect the cleanup schedule and grant expenditures.

¹⁵ The term "order" means an enforcement order or agreed order under MTCA, or an agreed order on consent under the federal cleanup law. The term "decree" means a consent decree filed in state or federal court under MTCA or the federal cleanup law.

2.2 The Ecology Grant Financial Manager

Ecology's Grant Financial Manager serves as the contact person for all grant implementation issues from application to grant closeout, including but not limited to:

- Helping the Applicant/Recipient get a Secure Access Washington (SAW) account and approval to access EAGL.
- Assisting the Applicant/Recipient with the new EAGL grant application process.
- Managing grants and loans through EAGL.
- Reviewing the grant application, including proposed scope of work and budget.
- Working with the Ecology Cleanup Project Manager to prepare the final grant scope of work.
- Preparing the formal grant offer.
- Reviewing changes in the grant scope of work or budget and preparing amendments.
- Providing technical assistance to the Recipient on grant management and billing issues.
- Working with the Ecology Cleanup Project Manager to make cost eligibility determinations.
- Processing and approving payment requests.
- Arranging for audits and grant closeout.

2.3 The Ecology Cleanup Project Manager ¹⁶

Ecology's Cleanup Project Manager is the primary point of contact for Recipient's site work and is primarily responsible for day-to-day project management. Key responsibilities of the Cleanup Project Manager relevant to grant management include:

- Providing assistance to an Applicant when applying for a grant.
- Providing assistance to an Applicant/Recipient for the ten-year cost forecast.
- Providing assistance to an Applicant/Recipient when preparing a draft scope of work.
- Reviewing the grant application in EAGL and completing the application screening checklist.
- Working with Ecology's Grant Financial Manager through EAGL to develop the grant scope of work, including the task goal statements, descriptions and expected outcomes.
- Providing technical assistance, guidance and direction to the Recipient on site cleanup issues.
- Conducting site inspections and documentation of work completed.

¹⁶ For Site Assessment Grants, this will be the Regional Site Hazard Assessment Coordinator. For Integrated Planning Grants, this may be the Integrated Planning Grant Coordinator at Ecology's Headquarters.

- Coordinating Ecology’s review of the Recipient’s submittals for compliance with the order or decree, or if an independent cleanup, for consistency with the VCP Guidance and MTCA rule.
- Reviewing payment requests and advising Ecology’s Grant Financial Manager on technical adherence to the scope of work (and any deliverables) and whether the payment request should be paid. This includes verification that the Recipient has entered site data in EIM.
- Entering data into Ecology’s Integrated Site Information System (ISIS) to track progress at site.
- Using EAGL to document site visits verifying grant compliance.

2.4 The Ecology Toxics Cleanup Program Section Manager

Ecology’s Toxics Cleanup Program Section Manager supervises Ecology’s Cleanup Project Managers and is responsible for managing the staff and budget allocated to their geographic area of responsibility. With regard to remedial action grants, their role includes:

- Providing information to potential Applicants on the availability of grants.
- Coordinating ten-year plan submissions for projects within their area of responsibility.
- Working with other members of Ecology’s Toxic’s Cleanup Program Management Team to develop the program budget, rank projects, and provide for equitable distribution of grant funds throughout the state.
- Monitoring overall progress and expenditures on grant projects, meeting quarterly with the Program Management Team to review actual and projected expenditures, and making adjustments as appropriate.

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3.0 Site Cleanup Process Overview

A key goal of the Model Toxics Control Act (MTCA) is to encourage interested parties to cooperate in identifying and cleaning up contaminated sites. There are multiple steps to cleaning up a contaminated site. The following discusses these steps as though they occurred sequentially, but steps are often combined to expedite the cleanup process, especially for independent remedial actions.

3.1 Phases of the Cleanup Process

Site Discovery

Persons who discover a contaminated site must report the site to Ecology's Toxics Cleanup Program within 90 days of discovery.¹⁷

Initial Investigation

Within 90 days of receiving the site discovery report, Ecology, or a local Health Department/District under contract to Ecology, conducts an "Initial Investigation" of the site. An Initial Investigation consists of a review of readily available information on a site, as well as an inspection of the site. This is sometimes supplemented with limited sampling. Based on information gathered during this investigation, Ecology determines if the site requires additional investigation, emergency cleanup, or no further action. If further action is needed, the site is placed on Ecology's "Confirmed and Suspected Contaminated Sites List."¹⁸ Initial investigations conducted by local Health Departments/Districts under contract to Ecology are eligible for grant funding under Site Assessment Grants.

Site Hazard Assessment

If a site needs additional evaluation after the Initial Investigation, Ecology, or a local Health Department/District under contract to Ecology, conducts a Site Hazard Assessment. A Site Hazard Assessment is a more detailed evaluation of a site to confirm the type and level of contaminants present, identify site characteristics, and evaluate the potential threats to human health and the environment. Site Hazard Assessments conducted by local Health Departments/Districts under contract to Ecology are eligible for grant funding under Site Assessment Grants.

¹⁷ See RCW 70.105D.030(2)(c) and WAC 173-340-300. This is the reporting requirement under MTCA. Shorter reporting timeframes may apply if the facility is a regulated underground storage tank system or an otherwise permitted facility. Persons operating such facilities should consult the rules and permit specific to their facility. Spills must be reported immediately. If there is any doubt about reporting contamination, call Ecology. See the following website for spill reporting information: <http://www.ecy.wa.gov/programs/spills/other/reportaspill.htm>

¹⁸ See http://www.ecy.wa.gov/programs/tcp/sites_brochure/SiteLists.htm

Hazard Ranking

MTCA requires that Ecology rank sites according to the relative health and environmental risk of the site. Ecology worked with the former MTCA Science Advisory Board to create the Washington Ranking Method, which uses data from the Site Hazard Assessment to rank sites. Sites are ranked on a scale of one to five. A score of one represents the highest level of risk relative to the other sites on the list; a score of five represents the lowest relative risk. Ranked sites are placed on Ecology’s “Hazardous Sites List.”¹⁹

Figure 3.1 Steps in the MTCA Cleanup Process



*Comment periods can be combined when possible.

¹⁹ See http://www.ecy.wa.gov/programs/tcp/sites_brochure/SiteLists.htm

Once a site is placed on Ecology's Hazardous Sites List, Ecology uses the site's rank and other factors to prioritize the site for further remedial action. These subsequent actions are typically paid for by the persons responsible for the cleanup. For local governments, Ecology can provide grants to help pay for the costs of this work.

Remedial Investigation

A remedial investigation defines the extent and magnitude of contamination at a site and potential impacts on human health and the environment. If this work is being conducted under Ecology's oversight under an order or decree, the reports are subject to public review and comment.²⁰

Feasibility Study

A feasibility study identifies and evaluates the cost and benefits of cleanup alternatives. This includes an evaluation of different cleanup technologies, the amount of cleanup, and timeframe for cleanup. If this work is being conducted under Ecology's oversight under an order or decree, the reports are subject to public review and comment.²⁰ Ecology is in the process of developing model remedies to speed up simple cleanups. If a model remedy is used at a site, a streamlined feasibility study may be conducted.

Selection of Cleanup Action

Using information gathered during the remedial investigation and feasibility study, Ecology (if the site is under an order or decree), or the responsible party (if an independent cleanup) selects a preferred cleanup plan ("cleanup action plan" or CAP) from the alternatives developed. The plan identifies the selected cleanup alternative, and specifies cleanup standards and other requirements the site must meet. If this work is being conducted under Ecology's oversight under an order or decree, the reports are subject to public review and comment.²⁰

Site Cleanup

Once the cleanup action plan is developed, the engineering design and specifications are prepared, the cleanup construction commences, and monitoring is conducted to verify cleanup standards have been met at the completion of cleanup. If Ecology determines cleanup standards have been met, Ecology removes the site from the Hazardous Sites List. Some sites require long-term monitoring to determine the effectiveness of the cleanup. It may take from several months to several years to establish that a site is "clean."

3.2 Administrative Mechanisms for Cleanups

There are a variety of administrative mechanisms that Ecology uses for overseeing cleanups under MTCA and that can qualify a local government for a remedial action grant. The most relevant for this Guidance are below.

²⁰ Public notice is not required for most independent remedial actions. See WAC 173-340-545 for public notice requirements for private rights of action.

Voluntary Cleanup Program (VCP)

Under Ecology's Voluntary Cleanup Program, the local government submits a cleanup report (or a proposed work plan if requesting periodic reimbursement as described in Chapter 7) and agrees to pay for Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site or property needs "No Further Action" (NFA) or identifies what additional work is needed. If an NFA letter is issued, the project is eligible for an Independent Remedial Action Grant.

There is no equivalent document under the federal cleanup law that is acceptable for grant purposes.

Consent Decree

A consent decree is a formal legal agreement filed in state court. The cleanup work to be conducted and the terms under which it must be done are negotiated and agreed to by the local government, Ecology and the state Attorney General's office. Consent decrees protect a local government from being sued for "contribution" by other persons who underwent cleanup expenses at the site.

Consent decrees can also be used to support an insurance claim, and a private right of action against other potentially liable persons, requesting that they help pay for the cleanup. Sites cleaned up by a local government under a consent decree are eligible for Oversight Remedial Action Grants.

Consent decrees can also be used to settle the liability of prospective purchasers of contaminated property. These are persons who are not currently a potentially liable person at the site, but would like to purchase, redevelop, or reuse the property. To be eligible, the settlement must contribute substantial new resources to the cleanup of the property consistent with MTCA.

Agreed Order

An agreed order is a legally binding administrative order issued by Ecology and agreed to by the local government. Agreed orders are available for remedial investigations, feasibility studies, interim actions, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, they can be used to support an insurance claim, and a private right of action against other potentially liable persons. Sites cleaned up by a local government under an agreed order are eligible for Oversight Remedial Action Grants.

SB 5296 also authorized the use of agreed orders for prospective purchasers to accelerate the study of sites within redevelopment opportunity zones. While agreed orders may be used for all remedial actions, they are more commonly used for the study phases of cleanup and other circumstances where the remedial actions do not meet the requirements of RCW 70.105D.040(4) for settlement of liability and contribution protection.

Enforcement Order

Ecology is authorized under MTCA to issue an enforcement order requiring remedial actions to be taken at a site. Generally, the requirements, terms and conditions in an enforcement order are not negotiated. These orders can be used to support an insurance claim, and a private right of action against other potentially liable persons. Sites cleaned up by a local government under an enforcement order are eligible for Oversight Remedial Action Grants.

Cleanups Conducted under Federal Law

In general, cleanups conducted under the federal cleanup law are eligible to apply for Oversight Remedial Action Grants. For a cleanup to be eligible for these grants, Ecology must either co-sign the federal order or decree, or acknowledge in writing that the federal order or decree is a sufficient basis to compete for funding. Ecology makes this decision after considering whether the federal cleanup fully complies with MTCA.

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4.0 Site Assessment Grants

The purpose of Site Assessment Grants is to provide funding for local Health Departments and Districts to conduct Initial Investigations and Site Hazard Assessments on behalf of Ecology. Ecology retains the authority to review and verify results and make determinations based on the Initial Investigations and Site Hazard Assessments.

Site Assessment Grants may be used to investigate public or privately owned sites. For economy and efficiency, most grants are written to cover several sites. Ecology and the local Health Department or District will negotiate a scope of work and budget, including an agreed list of sites to assess, with Ecology having final approval. Generally, this process occurs within the March to May timeframe in even-numbered years, so grants can be awarded without a gap in funding (assuming the legislature passes a budget within the normal timeframe as discussed in Chapter 1 of this Guidance).

4.1 Who Can Receive a Site Assessment Grant?

To be eligible for a Site Assessment Grant:

- The Applicant must be a local Health Department or District;
- Ecology has agreed the Applicant may conduct Initial Investigations or Site Hazard Assessments on its behalf. Generally, Ecology will delegate this authority only for sites where the jurisdictions that make up the governing board of the local Health Department or District do not have the potential to be liable for the site under MTCA; and
- The scope of work for Initial Investigations or Site Hazard Assessments must conform to WAC 173-340-310 and 173-340-320, respectively, and applicable Ecology guidance.

4.2 What Criteria Will Ecology Use to Prioritize Applications for Site Assessment Grants?

Ecology will use the following criteria to prioritize Site Assessment Grants and determine the level of funding:

- The need for Initial Investigations or Site Hazard Assessments within the jurisdiction of the Applicant. The sites being assessed do not need to be within the legal jurisdiction of the Applicant. Sites may be in another jurisdiction if the Applicant has an agreement with the jurisdiction to do work in their area;
- The population within the jurisdiction of the Applicant. Larger jurisdictions will typically receive more funding; and
- Whether the Applicant has previously received a Site Assessment Grant and the prior performance of the Applicant under these previous grants. Poor performance could result in a smaller grant amount, a requirement for match, or no grant being awarded.

4.3 Eligible Costs under Site Assessment Grants

Work plans for Initial Investigations and Site Hazard Assessments must meet the requirements of WAC 173-340-310 and 320, respectively. See Ecology Policy 310A for guidance on conducting Initial Investigations: <http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>. Ecology's publication, *Site Hazard Assessment and Guidance Procedures for Washington Ranking Method* (Ecology Publication Number 91-73), can assist in preparation of a work plan. This publication can be found at <https://fortress.wa.gov/ecy/publications/SummaryPages/9173.html>.

Ecology's Grant Financial Manager has final approval authority for all grant-related costs. The grant agreement must be signed by both the Recipient and Ecology for any costs incurred under a new agreement to be eligible for reimbursement. Applicants can only be reimbursed for costs of implementing a work plan if that plan has been approved by the Regional Site Hazard Assessment Coordinator. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs pre-approved by the Grant Financial Manager.



Figure 4.1 Surficial soil sampling at a contaminated site.

Eligible costs under Site Assessment Grants include reasonable and necessary costs for conducting Initial Investigations and Site Hazard Assessments. Examples of eligible activities and costs include:²¹

- Research of available information related to historic uses of the site, including purchase of related materials such as air photos, maps, and copies of records.
- Inspection of the site and documentation of site conditions.
- Identifying the hazardous substances and decomposition products known or suspected of being present at the site, and their toxicity. Initial Investigations and Site Hazard Assessments typically use existing information on hazardous substances present at the site. However, sometimes limited sampling may be necessary to confirm the presence of a release or threatened release of hazardous substances and concentration. If authorized, eligible costs would include purchasing equipment needed to conduct the sampling such as safety equipment and sampling devices, and may include:²²
 - Surficial soil sampling (soil borings are not usually done for Initial Investigations and Site Hazard Assessments)
 - Sampling of water supplies and existing monitoring wells
 - Surface water sampling
 - Residential lead assessments in response to reported excessive blood lead levels in children
 - Sampling septic systems for hazardous substances
 - Meth lab investigations (does not include testing housing or businesses for meth use).
- Identifying potential human and ecological exposure pathways and potential receptors;
- Compiling and mapping available information on the physical characteristics of the site such as structures; paved areas; underground utilities; depth and direction of groundwater flow; soil types; distance to surface waters; and habitat;
- Identification of facilities where the releases appear to have originated from, and documentation of their historic and current condition;
- Research and identification of possible potentially liable parties;
- Preparation of related reports and production costs;

²¹ All of these activities and costs could be incurred for both Initial Investigations and Site Hazard Assessments. Initial Investigations primarily work with readily available existing information; Site Hazard Assessments also work with existing information but typically expand this somewhat to include further research and sometimes limited site sampling.

²² Requires prior written approval from Ecology's Regional Site Hazard Assessment Coordinator for scope of sampling and Ecology's Grant Financial Manager for eligible costs.

- Salaries and benefits and training for personnel conducting the above activities;²³
- Technical support services related to the above activities; and
- Grant administration consistent with [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and Ecology Publication Number 14-01-002 and must be approved in advance by Ecology’s Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

4.4 Ineligible Costs under Site Assessment Grants

Ineligible costs under Site Assessment Grants include:

- The cost of developing the grant application or negotiating the grant agreement;
- The cost of dispute resolution under the grant agreement;
- Retroactive costs, except as provided for in subsection 4.5;
- 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;
- Testing buildings and other structures for drug use residuals where no drug manufacturing occurred;
- Testing buildings or other structures for radon, lead paint or asbestos when not needed to conduct a MTCA cleanup; and
- In-kind contributions.

4.5 Retroactive Cost Eligibility under Site Assessment Grants

Retroactive costs are eligible for funding if the costs were incurred between the start of the biennium and the agreement signature date and are eligible costs under this Guidance.

4.6 Match Requirements for Site Assessment Grants

Site Assessment Grants may be awarded for up to one hundred percent (100%) of eligible costs. Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities, depending on availability of funding and other factors in Section 4.2 of this Guidance.

²³ Training requires prior written approval from Ecology’s Regional Site Hazard Assessment Coordinator.

When a grant is awarded for less than 100% of eligible costs, the Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

4.7 Site Assessment Grant Contacts

Regional Office Contacts: Questions about how to apply for a Site Assessment Grant, authorization for which sites to include, and work plans and procedures for conducting Initial Investigations and Site Hazard Assessments, should be directed to the appropriate Regional Site Hazard Assessment coordinator.

- **For counties in the Northwest Region** (Island, Snohomish, King, Skagit, Whatcom, Kitsap and San Juan counties), contact Donna Musa at 425-649-7136 or Donna.Musa@ecy.wa.gov.
- **For counties in the Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston and Wahkiakum counties), contact Kirsten Alvarez at 360-407-6246 or Kirsten.Alvarez@ecy.wa.gov.
- **For counties in the Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla and Whitman counties), contact Patti Carter at 509-329-3522 or Patti.Carter@ecy.wa.gov.
- **For counties in the Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima counties), contact Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.

Headquarters Site Hazard Assessment Coordinator: For technical and policy issues that come up during Initial Investigations or Site Hazard Assessments that are not related to the grant, contact Ted Benson at 360-407-6683 or Ted.Benson@ecy.wa.gov.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs, and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions**, contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions**, contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

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5.0 Integrated Planning Grants

Local governments that own or are considering acquisition, cleanup and adaptive reuse of a brownfield property, or multiple properties within a defined area, may be eligible for an Integrated Planning Grant to facilitate remedial action and adaptive reuse of the property(s) following remediation. Brownfields are previously developed properties that are currently abandoned or underused because of actual or perceived historic contamination.

Adaptive reuse of a brownfield site can be a complicated undertaking that requires coordinated analysis of environmental conditions, site planning, and financial issues. Integrated Planning Grants can support local government's efforts in conducting the key first steps in the cleanup and redevelopment process by helping pay for an integrated project plan that addresses not only cleanup, but also administrative processes and investments needed for post cleanup redevelopment of a site.

An integrated project plan coordinates site characterization and analysis of cleanup alternatives with preliminary site planning and a redevelopment strategy. This plan should outline a strategy to solve multiple problems where reuse is hindered, or perceived to be hindered, by contamination.

5.1 Who Can Receive an Integrated Planning Grant?

For the purposes of this grant, a project consists of integrated planning for a single contaminated site or for multiple sites within a defined area. A project may extend over multiple biennia. To be eligible for a grant, the project must meet the following requirements:

- The Applicant must be a local government;
- The project encompasses a contaminated site regulated under MTCA, and the site is located within the jurisdiction of the Applicant;
- The Applicant must have the necessary access to complete the project or obtain such access in accordance with a schedule in the grant agreement;
- The scope of work must not be required under an order or decree; and
- Projects designed to address the restoration of Puget Sound must not be in conflict with the action agenda developed by the Puget Sound Partnership under RCW 90.71.310.

The application (proposal) and scope of work must be reviewed and approved by the Toxics Cleanup Program Regional Manager or their designee and Ecology's Grant Financial Manager before the work begins. The Recipient is responsible for any costs incurred prior to these approvals.



Figure 5.1 Palouse Producers Integrated Planning Grant Site, Existing Conditions Report



Figure 5.2 Palouse Producers Integrated Planning Grant Site, Redevelopment Concept

5.2 Property Ownership and Access

The local government must either have an ownership interest in the property or have a demonstrated interest²⁴ in acquiring the property or a portion of it. Ecology may enter into a grant agreement with a local government prior to the government acquiring a property or obtaining necessary access to conduct remedial actions—provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement. If multiple sites are covered by the agreement, this requirement applies to all sites within the scope of the agreement.

5.3 What Criteria Will Ecology Use to Prioritize Applications for Integrated Planning Grants?

Ecology will use the following criteria to prioritize Integrated Planning Grants and determine the level of funding:

- Whether the Applicant has received a prior grant for the project and the performance of the Applicant under that grant and other remedial action grants. Projects that are already underway under a previous grant will receive priority for additional grant funding if this funding is needed to expedite completion of the project. Additional funding may be awarded only if the total amount of all Integrated Planning Grants for a project does not exceed the maximum allowable grant amount (\$200,000 for a single site; \$300,000 for multiple sites).
- The threat posed by the site to human health and the environment. Sites that posed a higher threat will receive a higher priority for funding. For example, sites with a higher hazard ranking under MTCA will typically receive higher funding priority. For sites that haven't yet been ranked by Ecology, Applicants should consider including in their application sufficient information to rank the site as this may improve their priority.
- Sites within a redevelopment opportunity zone²⁵ will receive a higher funding priority.
- The land reuse potential of the site. Sites with a strong reuse potential will receive a higher priority. The following factors will be considered when evaluating the reuse potential of sites:
 - Whether the site is located within an incorporated city, town, or an urban growth area designated under RCW 36.70A.110;
 - The site is a vacant, abandoned, or significantly underutilized former industrial or commercial facility;

²⁴ For example: has an option to purchase; signed a prospective purchaser agreement; has a capital facilities plan, parks plan or other planning document indicating the site is a planned location for a public facility; or, has otherwise declared its intent to locate a public facility on the site or a portion of the site. Examples of public facilities are a marine terminal and related facilities, government office, museum, community center, park, or public works maintenance facility.

²⁵ Established “community renewal areas” under Chapter 35.81 RCW will be considered equivalent areas when considering grant priorities.

- Availability of urban infrastructure and services such as sewer, water and other utilities and transit service to serve the redeveloped site;
 - The current land use of the site is different than that envisioned in the comprehensive plan;
 - The site location presents an opportunity for significant habitat restoration;
 - The local government's commitment to redevelopment or restoration of the site such as: investments in infrastructure supporting redevelopment of the site or commitment in a capital facilities plan to completing such infrastructure; has a facilities plan, parks plan, or other planning document indicating the site is a planned location for a public facility; or, has invested in a community planning process supporting redevelopment or restoration of the site; and
 - Whether the application provides for a clear progression from remedial action to redevelopment or restoration. Projects with a clear vision for future use tend to be cleaned up faster with a more successful reuse.
- The readiness of the Applicant to start and complete the work to be funded by the grant;
 - The ability of the grant to expedite the cleanup. Sites where the local government can demonstrate that a lack of local funding or ability to obtain financing is significantly delaying cleanup and subsequent use, sale or redevelopment of the site will receive a higher priority;
 - The ability of the grant to leverage other public or private funds. Grants that are accompanied by a larger local investment that either reduces the match or expands the scope of work beyond that funded by the grant will receive a higher priority; and ²⁶
 - The overall distribution of grants throughout the state, with the intent to award grants to a variety of types and sizes of local government and redevelopment opportunities.

5.4 Eligible Costs under Integrated Planning Grants

Ecology's Grant Financial Manager has final approval authority for all grant-related costs. The grant agreement must be signed by both the Recipient and Ecology for any costs incurred under a new agreement to be eligible for reimbursement. Applicants can only be reimbursed for costs of implementing a work plan that has been approved by the Integrated Planning Grant Coordinator. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs pre-approved by the Grant Financial Manager.

Eligible costs under Integrated Planning Grants include reasonable and necessary costs for preparing an integrated project plan. Examples of eligible activities and related costs include:

- Environmental site assessment (ASTM 1527 Phase I environmental assessment, title report, preliminary testing for contamination);

²⁶ This can be local monies, other state or federal grants, private funds, insurance settlements, or funds from contribution actions.

- Remedial investigation (boundary survey; detailed testing to define the extent and degree of contamination; habitat survey and assessment);
- Human health assessment (evaluation of potential human exposures and health related issues at the site);
- Feasibility study (engineering evaluation and cost estimate of cleanup alternatives);
- Site planning (opportunities for habitat restoration, recreational uses, and conceptual post-cleanup redevelopment plan);
- Community involvement (informational mailings, public workshops);
- Land use and regulatory analysis (comprehensive plan and zoning analysis and update; permits needed for site redevelopment; cultural review under Executive Order Number 05-05);
- Building and infrastructure assessment (evaluation of the condition of onsite buildings; availability and condition of utilities; transportation limitations to redevelopment);
- Economic and fiscal analysis (cost of cleanup and redevelopment pro forma; return on investment analysis; property appraisal);
- Environmental analysis under Chapter 43.21C RCW (State Environmental Policy Act);
- Technical support related to the above activities;
- Grant administration consistent with [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002; and
- Staff salaries and benefits; development of a scope of work; budget; consultant fees; report preparation and production; materials and equipment related to the above activities.

For many of these elements, the costs could easily exceed the grant dollar limit. Applicants should carefully assess their needs and focus funds where they will do the most to move redevelopment forward.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and Ecology Publication Number 14-01-002, and must be approved in advance by Ecology's Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

5.5 Ineligible Costs under Integrated Planning Grants

Ineligible costs for an Integrated Planning Grant include:

- The cost of developing the grant application or negotiating the grant agreement;
- The cost of purchasing the property;²⁷
- The cost of dispute resolution under the grant agreement;

²⁷ NOTE: While grant funds cannot be used to purchase property, they can be used for a title search, appraisal, Phase I site assessment and other non-legal costs associated with purchasing property.

- Legal costs including, but not limited to: the costs 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; the cost of defending actions taken against the Recipient; and any attorney fees incurred by the Recipient; and
- In-kind contributions.

5.6 Retroactive Cost Eligibility under Integrated Planning Grants

Retroactive costs are eligible for reimbursement if the costs were incurred under a prior grant agreement and were not reimbursed under that prior agreement,²⁸ and the costs are eligible costs under this Guidance.

5.7 Match Requirements for Integrated Planning Grants

Integrated Planning Grants may be awarded for up to one hundred percent (100%) funding of eligible costs. Funding may be up to \$200,000 for a single site or up to \$300,000 for a study area involving multiple sites. Multiple site study areas are projects with multiple sites within a defined redevelopment area such as a Redevelopment Opportunity Zone or as part of Sub Area Planning under the Growth Management Act. A site can only be included once in an Integrated Planning Grant.

Funding is dependent upon the availability of funds. Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities depending on availability of funding and other factors in Section 5.3 of this Guidance.

When a grant is awarded for less than 100% of eligible costs, the Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

5.8 Integrated Planning Grant Contacts

Headquarters Integrated Planning Grant Coordinator: For questions about how to apply for an Integrated Planning Grant, scope of work, and technical assistance on issues that come up during preparation of an Integrated Project Plan, contact Ecology’s Integrated Planning Grant Coordinator Tiffany Johnson at 360-407-7336 or Tiffany.Johnson@ecy.wa.gov.

Cleanup Project Manager: For some sites, a Cleanup Project Manager in the appropriate Ecology Regional Office may be assigned to the project. If this is the case, this person will be specified in the grant agreement or associated correspondence. See Chapter 2 for Cleanup Project Manager responsibilities.

²⁸ Such as due to lack of funding.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions,** contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions,** contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

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6.0 Oversight Remedial Action Grants

The purpose of Oversight Remedial Action Grants is to provide funding to local governments that investigate and clean up contaminated sites under an enforcement order, agreed order or consent decree (“order or decree”). These grants are intended to expedite remedial action at sites that are a high enforcement priority for Ecology. They are also intended to lessen the impact of the cost of compliance with these orders and decrees on ratepayers and taxpayers.

For the purposes of Oversight Remedial Action Grants, a project consists of remedial actions conducted under an order or decree at a single contaminated site. Ecology may provide more than one grant for a project. Depending on availability of funding, the number of grant requests, and the pace of remedial actions, a project may have to be funded over multiple biennia. Very large projects seeking assurance of future funding may be eligible for an Extended Grant Agreement, providing priority for funding over multiple biennia.

6.1 Who Can Receive an Oversight Remedial Action Grant?

To be eligible for a grant, a project must meet the following requirements:

- The Applicant must be a local government.
- The Applicant must be a potentially liable person under MTCA, a potentially responsible party under the federal cleanup law, or prospective purchaser of a contaminated site.
- The project must be included in Ecology’s ten-year financing plan required under RCW 70.105D.030(5).
- Projects designed to address the restoration of Puget Sound must not be in conflict with the action agenda developed by the Puget Sound Partnership under RCW 90.71.310.

The Applicant must also meet one of the following criteria:

- Ecology requires the Applicant to conduct remedial action under an order or decree issued under MTCA.
- The United States Environmental Protection Agency requires the Applicant to conduct remedial action under an order or decree issued under the federal cleanup law. In such a case, Ecology must also sign the order or decree, or acknowledge in writing that it is a sufficient basis for remedial action grant funding.
- The Applicant has co-signed an order or decree issued under Chapter 70.105D RCW requiring a potentially liable person or prospective purchaser other than the Applicant to conduct remedial action at a contaminated site. The Applicant must also have entered into an agreement with the other potentially liable person allocating remedial action costs

incurred under the order or decree. In this case, the grant can only pay for that portion of the cleanup the local government is financially responsible for.²⁹

6.2 What Criteria Will Ecology Use to Prioritize Applications for Oversight Remedial Action Grants?

Under the statute, sites with Extended Grant Agreements are the highest priority of Oversight Remedial Action Grants. For all other sites, Ecology will use the following criteria to prioritize Oversight Remedial Action Grants and determine the level of funding:

- Whether the Applicant has received a prior grant for the project and the performance of the Applicant under that grant and other remedial action grants. Projects that are already underway under a previous grant will receive priority for additional grant funding if this funding is needed to expedite completion the project.
- The threat posed by the site to human health and the environment. Sites that posed a higher threat will receive a higher priority for funding. For example, sites with a higher hazard ranking under MTCA will typically receive higher funding priority. For sites that haven't yet been ranked by Ecology, Applicants should consider including in their application sufficient information to rank the site.
- The land reuse potential of the site. Sites with a strong reuse potential will receive a higher priority. The following factors will be considered when evaluating the reuse potential of sites:
 - Whether the site is located within an incorporated city, town, or an urban growth area designated under RCW 36.70A.110;
 - The site is a vacant, abandoned, or significantly underutilized former industrial or commercial facility;
 - Availability of urban infrastructure and services such as sewer, water and other utilities and transit service to serve the redeveloped site;
 - The current land use of the site is different than that envisioned in the comprehensive plan;
 - The site location presents an opportunity for significant habitat restoration;
 - The local government's commitment to redevelopment or restoration of the site such as: investments in infrastructure supporting redevelopment of the site or commitment in a capital facilities plan to completing such infrastructure; has a facilities plan, parks plan, or other planning document indicating the site is a planned location for a public facility; or, has invested in a community planning process supporting redevelopment or restoration of the site; and

²⁹ An example of this is a closed landfill that is on land owned by a local government but was operated by a private company that agrees to take the lead on completing remedial actions. A grant could be awarded to the local government to help pay for their portion of remedial costs.

- Whether the application provides for a clear progression from remedial action to redevelopment or restoration. Projects with a clear vision for future use tend to be cleaned up faster with a more successful reuse.
- The readiness of the Applicant to start and complete the work to be funded by the grant.
- The ability of the grant to expedite the cleanup. Sites where the local government can demonstrate that a lack of local funding or ability to obtain financing is significantly delaying cleanup and subsequent use, sale or redevelopment of the site will receive a higher priority.
- The ability of the grant to leverage other public or private funds. Grants that are accompanied by a larger local investment that either reduces the match or expands the scope of work beyond that funded by the grant will receive a higher priority.³⁰
- The overall distribution of grants throughout the state, with the intent to award grants to a variety of types and sizes of local government.

6.3 Eligible Costs under Oversight Remedial Action Grants

Ecology's Grant Financial Manager has final approval authority for all grant-related costs. The grant agreement must be signed by both the Recipient and Ecology for any costs incurred under a new agreement to be eligible for reimbursement. Applicants can only be reimbursed for costs of implementing a work plan that has been approved by the Cleanup Project Manager. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs must be pre-approved by the Grant Financial Manager.

Eligible costs under Oversight Remedial Action Grants must be reasonable and necessary to conduct the investigation and cleanup of a contaminated site. Examples of eligible activities and related costs include:

- Emergency or interim actions;
- Remedial investigations;
- Feasibility studies and selection of the remedy;³¹
- Engineering design and construction of the selected remedy;
- Operation and maintenance or monitoring of a cleanup action component for one year after construction completion of the component; and
- Grant administration consistent with [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and

³⁰ This can be local monies, other state or federal grants, private funds, insurance settlements, or funds from cost recovery and contribution claims.

³¹ While preparation of a draft cleanup action plan is a grant-eligible cost, Ecology retains final authority to determine the appropriate cleanup action at a site.

Ecology Publication Number 14-01-002 and must be approved in advance by Ecology's Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

6.4 Ineligible Costs under Oversight Remedial Action Grants

Ineligible costs include, but are not limited to:

- The cost of developing the grant application or negotiating the grant agreement;
- The cost of dispute resolution under the order or decree or the grant agreement;
- The costs incurred under an order or decree by a potentially liable person or a potentially responsible party other than the Recipient except as provided under WAC 173-322A-320 (2)(c)(iii);
- Retroactive costs except as provided for in the next subsection;
- The remedial action oversight costs of Ecology or the U.S. Environmental Protection Agency, such as the administration of an order or decree for remedial action at the site;
- Natural resource damage assessment and restoration costs and liability for natural resource damages under Chapter 70.105D RCW or the federal cleanup law;
- Site development and mitigation costs not required as part of a remedial action;
- 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
- In-kind contributions.



Figure 6.1 Thea Foss Waterway Tacoma – Pre cleanup



Figure 6.2 Thea Foss Waterway Tacoma – Post Cleanup with Development Underway

6.5 Retroactive Cost Eligibility under Oversight Remedial Action Grants

The following retroactive costs are eligible for reimbursement if they are also eligible costs under the grant:

- Costs incurred under the order or decree between the effective date of the order or decree and the signature date of the grant agreement;
- Costs incurred under an order or decree during the period of a prior grant agreement that were not reimbursed;
- Non-legal costs incurred negotiating an agreed order or consent decree, provided that the costs were incurred within:³²
 - Sixty days after starting negotiations for an agreed order (or agreed order on consent under the federal cleanup law); or
 - One hundred-twenty days after starting negotiations for a consent decree;
- Up to \$600,000 of eligible costs incurred conducting independent remedial actions before negotiations on the order or decree began, provided that:³³
 - The actions were conducted within five years of the date the negotiations begin on the order or decree;
 - The actions are consistent with the remedial actions required under the order or decree; and
 - The actions are compliant with the substantive requirements of Chapter 173-340 WAC and have been incorporated into the order or decree.

6.6 Match Requirements for Oversight Remedial Action Grants

Except as noted below, there is no dollar limit on Oversight Remedial Action Grants. Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities depending on availability of funding and the factors in Section 6.2 of this Guidance.

There are several levels of grant funding available. The Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

Regular Grant: Ecology may award a grant for up to fifty percent (50%) of eligible costs for a project. Most projects are expected to fall within this category.

³² Negotiation costs incurred on an enforcement order are not eligible for reimbursement.

³³ Ecology will generally reimburse these costs at the same percentage as awarded for future work. That is, if \$600,000 was spent on independent remedial actions and the grant is for 50%, then Ecology will retroactively reimburse the Applicant for up to \$300,000; for economically distressed communities, this would be 75% or up to \$450,000. Innovative technology grants are not awarded retroactively.

Economically Disadvantaged Community Grant: Ecology may award a grant for up to seventy-five percent (75%) of eligible costs for a project in an economically disadvantaged community. To be eligible for these grants, one of the following conditions must be met:

- **Economically Disadvantaged County:** Applicant is a County and the per capita income of the County is equal to or below the median per capita income of Counties in Washington State. See Ecology’s remedial action grant website for a list of economically disadvantaged Counties at <http://www.ecy.wa.gov/programs/tcp/grants/rag.html>.
- **Economically Disadvantaged City or Town:** The Applicant is a City or Town and the per capita income of the City or Town is equal to or below the median per capita income of Cities and Towns in Washington State. See Ecology’s remedial action grant website for a list of economically disadvantaged Cities and Towns at <http://www.ecy.wa.gov/programs/tcp/grants/rag.html>.
- **Special Purpose District:** The Applicant is a Special Purpose District and the site is located within an economically disadvantaged County, City or Town.

Innovative Technology Bonus: Ecology may award a grant for up to an additional fifteen percent (15%) of eligible costs for projects that use innovative technology. This is in addition to the 50% and 75% awards noted above. This bonus applies only to future work; it does not apply to retroactive costs. To receive an Innovative Technology Bonus, the Applicant must provide justification for the innovative technology claim in the grant application. Previously proven cleanup methods are not eligible for innovative technology match reductions. “Innovative technology” is defined in the remedial action grant rule, WAC 173-322-020 as:

. . . new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under the conditions that exist at the hazardous waste site. Innovative technology has limited performance and cost data available.

As an example, an Innovative Technology Bonus might be awarded to dig up a landfill, sort out clean soil and recyclable materials, and dispose of residuals in a lined landfill. Although landfill reclamation has been done elsewhere in the United States, such an application would be a unique cleanup method for a landfill in Washington State.

6.7 Reduction in Match Requirements

Under certain conditions, the Director of the Department of Ecology may fund a grant up to ninety percent (90%). If approved, this can reduce the match requirements for an Oversight Remedial Action Grant to as little as ten percent (10%) to create an incentive for a local government to expedite a cleanup. Only projects with a total eligible cost of less than \$5 million are eligible for this match reduction. Eligibility and match reductions are considered on a case-by-case basis. If you are interested in pursuing a reduction in the required match, contact the Toxics Cleanup Program Section Manager in the region where your site is located.

Typically, these match reductions will be granted only to Applicants who have not previously received a remedial action grant. Applicants must demonstrate financial need and that one or more of the following conditions exist:

1. The additional funding would prevent or mitigate unfair economic hardship imposed by cleanup liability. For example, the cost of the normal match exceeds local funding typically dedicated for non-cleanup projects in the capital facilities plan, or the cost of the normal match would jeopardize other grants already awarded to the local government by eliminating the local government's ability to match those grants.
2. The additional funding would create new substantial economic development that would not otherwise occur. For example, the property pro-forma clearly shows that the normal match requirement makes redevelopment of a brownfield property economically infeasible. But the reduced match for the cleanup tips the scale so that not only is redevelopment economically feasible, it is also projected to result in significant, post-cleanup public or private investment at or near the site, which would create family wage jobs and significantly increase post-cleanup tax revenues.
3. The additional funding would create public recreational opportunities that would not otherwise occur. For example, the reduced match would free up local funds to create public access to a currently inaccessible shoreline area (provided that the new access was not normally required as part of the cleanup).
4. The additional funding would provide habitat restoration opportunities that would not otherwise occur. For example, the reduced match would free up local funds that would be used to restore shoreline habitat (provided that the restoration was not normally required as part of a cleanup or natural resource damage mitigation). Any restoration under this provision must be consistent with the Puget Sound Action Agenda, as well as any watershed plan, habitat conservation plan, salmon recovery plan, or similar regional or local habitat restoration plan.
5. The additional funding would create an opportunity for acquisition and redevelopment of brownfield property that would not otherwise occur. For example, the property pro-forma clearly shows that the normal match requirement makes acquisition and redevelopment of a brownfield property economically infeasible. But the reduced match tips the scale so that it is economically viable for the local government to enter into a prospective purchaser agreement under MTCA to acquire, cleanup, and redevelop the property.

6.8 Extended Grant Agreements

Extended Grant Agreements are a new category of Oversight Remedial Actions Grants for the 2013-15 biennium. Projects that meet the following statutory criteria are eligible for Extended Grant Agreements:

- Total eligible project costs at a facility exceed \$20 million
- The project will extend over multiple biennia.

For such projects, these grants anticipate the development of long-range schedules and multiple biennia spending profiles. An overarching agreement will be negotiated between Ecology and the Recipient that establishes the general scope, schedule and overall cost for the project. A separate grant agreement will be prepared for each biennium that describes the scope of work, schedule and

expenses anticipated to occur during that biennium. This avoids tying up a large amount of grant funds for several years to cover future costs. This grant is intended to help achieve the legislature's goal of putting the MTCA grant funds to work on more sites.

The advantage of Extended Grant Agreements is that, by statute, these grants receive the highest priority for funding during the State's budget process, which provides the highest level of assurance that funds will be available in future years as work continues at a site. Funds must be substantially expended or contracts awarded each biennium to keep this priority.

Extended Grant Agreements are subject to the same eligibility limitations as other Oversight Remedial Action Grants. However, due to the size of projects that are funded under Extended Grant Agreements, grants are limited to a maximum of fifty percent (50%) of total project costs. Ecology intends to apply this 50% limit to each biennium.

Extended Grant Agreements are also limited in initial duration to 10 years; however, this duration can be extended by Ecology if substantial progress has been made on remedial actions under the initial agreement but additional work is left to be completed.

When determining total eligible project costs, costs will be calculated as if the entire project is being conducted at the time of application, with no discounting of future costs or adjustment of costs for inflation. Investigative costs, capital costs, and the first year of operating and monitoring costs after completion of the cleanup, are included in this calculation.

Extended Grant Agreements are limited to single sites. Where there are multiple source properties with overlapping groundwater plumes or sediment contamination such that they consist of one site, the aggregate cost of remedial actions at all of these properties will be considered when Ecology is determining if the \$20 million threshold is exceeded.

For sites where there are multiple jurisdictions at the same site, Ecology will consider the aggregate cost of remedial actions by all the jurisdictions when determining if the \$20 million threshold is exceeded. If there is a mix of public and private potentially liable persons paying for the cleanup of a site, Ecology will consider only the public's share of the costs of remedial actions when determining if the \$20 million threshold is exceeded.

While the legislature did not allocate grant funds for these agreements for the 2013-15 biennium, Ecology plans to examine existing oversight grant agreements for the potential for restructuring to Extended Grant Agreements. This will then be used to construct Ecology's budget request for the 2015-17 biennium.

To ensure sufficient MTCA grant funds are available for other sites, Ecology anticipates that we will seek a balanced portfolio of sites with Extended Grant Agreements and other grant agreements. The amount of grant funds tied up in Extended Grant Agreements will be re-examined in future biennia as experience is gained with managing these agreements.

6.9 Oversight Remedial Action Grant Contacts

Regional Office Contacts: Questions about Oversight Remedial Action Grants availability and ten-year plan submissions should be directed to the following Ecology Toxics Cleanup Program Regional Office Managers:

- For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima) the Regional Manager is Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.
- For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the Regional Manager is Mike Hibbler at 509-329-3568 or Mike.Hibbler@ecy.wa.gov.
- For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the Regional Manager is Bob Warren at 425-649-7054 or Bob.Warren@ecy.wa.gov.
- For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the Regional Manager is Rebecca Lawson at 360-407-6241 or Rebecca.Lawson@ecy.wa.gov.

Cleanup Project Managers: Projects receiving an Oversight Remedial Action Grant will be assigned an Ecology Cleanup Project Manager from the appropriate Regional Office. This person will be specified in the grant agreement or associated correspondence. See Chapter 2 for Ecology Cleanup Project Manager responsibilities.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs, and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions,** contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions,** contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

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7.0 Independent Remedial Action Grants

An independent remedial action is a cleanup action completed voluntarily—that is, a cleanup not under an order, agreed order, or consent decree. Independent Remedial Action Grants are available to help local governments defray costs of cleaning up sites independently. Grants can be awarded for an entire site (any place contamination has come to be located – including off-property areas) or just for a particular parcel of land within a larger site.

To be eligible, the Applicant’s site must have been accepted into Ecology’s Voluntary Cleanup Program (VCP). Applicants may apply for a grant at the same time they enter the VCP, but the VCP application is separate and distinct from the Independent Remedial Action Grant application.

7.1 Who Can Receive an Independent Remedial Action Grant?

To be eligible to receive an Independent Remedial Action Grant:

- The Applicant must be a local government;
- The Applicant must own the contaminated property or be potentially liable for contamination on the property. The Applicant can also be a prospective purchaser of contaminated property;
- For reimbursement of costs after completion of the cleanup, the Applicant’s site or property must have received a “No Further Action” letter under Ecology’s Voluntary Cleanup Program;
- For quarterly reimbursement of costs, the Applicant’s site must have been accepted into Ecology’s Voluntary Cleanup Program (VCP) and all work must be conducted in accordance with a pre-approved work plan. If the Applicant does not own the property or have an access agreement to conduct remedial action at the time of application, there will need to be a firm schedule for obtaining access. If this option is selected, Ecology will typically withhold twenty percent (20%) of the grant payment on each invoice until a “No Further Action” letter is issued; and
- Projects designed to address the restoration of Puget Sound must not be in conflict with the action agenda developed by the Puget Sound Partnership under RCW 90.71.310.

7.2 What Criteria Will Ecology Use to Prioritize Applications for Independent Remedial Action Grants?

Ecology will use the following criteria to prioritize Independent Remedial Action Grants and determine the level of funding:

- Whether the Applicant has received a prior grant for the project and the performance of the Applicant under that grant and other remedial action grants. Projects that are already underway under a previous grant will receive priority for additional grant funding if this funding is needed to complete the project. Additional funding may be awarded only if the

total amount of all Independent Remedial Action Grants for a project does not exceed the maximum allowable grant amount (\$600,000 total eligible costs, including required match).

- The threat posed by the site to human health and the environment. Sites that posed a higher threat prior to cleanup (if seeking reimbursement after cleanup), or currently pose a higher threat (if seeking periodic reimbursement for future cleanup), will receive a higher priority for funding. For example, sites with a higher hazard ranking under MTCA will typically receive higher funding priority. For sites that haven't yet been ranked by Ecology, Applicants should consider including in their application sufficient information to rank the site.
- The land reuse potential of the site. Sites with a strong reuse potential will receive a higher priority. The following factors will be considered when evaluating the reuse potential of sites:
 - Whether the site is located within an incorporated city, town, or an urban growth area designated under RCW 36.70A.110;
 - The site is a vacant; abandoned, or significantly underutilized former industrial or commercial facility;
 - Availability of urban infrastructure and services such as sewer, water and other utilities and transit service to serve the redeveloped site;
 - The current land use of the site is different than that envisioned in the comprehensive plan;
 - The site location presents an opportunity for significant habitat restoration;
 - The local government's commitment to redevelopment or restoration of the site such as: investments in infrastructure supporting redevelopment of the site or commitment in a capital facilities plan to completing such infrastructure; has a facilities plan, parks plan, or other planning document indicating the site is a planned location for a public facility; or, has invested in a community planning process supporting redevelopment or restoration of the site; and
 - Whether the application provides for a clear progression from remedial action to redevelopment or restoration. Projects with a clear vision for future use tend to be cleaned up faster with a more successful reuse.
- The readiness of the Applicant to start and complete the work to be funded by the grant. Sites already cleaned up and issued a "No Further Action" letter will receive the highest priority for funding.
- For sites not already cleaned up, the ability of the grant to expedite the cleanup.

- The ability of the grant to leverage other public or private funds. Grants that are accompanied by a larger local investment that either reduces the match or expands the scope of work beyond that funded by the grant will receive a higher priority.³⁴
- The overall distribution of grants throughout the state, with the intent to award grants to a variety of types and sizes of local government.



Figure 7.1 Removal of leaking underground storage tanks at Public Works facilities is a common use of Independent Remedial Action Grants.

7.3 Eligible Costs under Independent Remedial Action Grants

Ecology’s Grant Financial Manager has final approval authority for all grant-related costs. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs must be pre-approved by the Grant Financial Manager. Applicants choosing to receive quarterly reimbursements can be reimbursed only for costs incurred after the grant agreement has been signed by both the Recipient and Ecology. These costs must also be related to implementation of a work plan that has been approved by the Cleanup Project Manager.

Eligible costs under Independent Remedial Action Grants must be reasonable and necessary to conduct the investigation and cleanup of a contaminated site. Examples of eligible activities and related costs include:

- Emergency or interim actions;
- Remedial investigations;
- Feasibility studies and selection of the remedy;
- Engineering design and construction of selected remedy;
- Operation and maintenance or monitoring of constructed remedy for up to one year after construction completion of each cleanup action component;

³⁴ This can be local monies, other state or federal grants, private funds, insurance settlements, or funds from contribution actions.

- Development of independent remedial action plans or reports submitted to Ecology for review under the voluntary cleanup program; and
- Grant administration consistent with [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and Ecology Publication Number 14-01-002, and must be approved in advance by Ecology's Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

7.4 Ineligible Costs under Independent Remedial Action Grants

Ineligible costs for Independent Remedial Action Grants include:

- The cost of developing the grant application;
- The cost of dispute resolution under the voluntary cleanup program or the grant agreement;
- Retroactive costs, except as provided for in the next subsection;
- The cost of technical consultations Ecology provides under the Voluntary Cleanup Program, including reviews of reimbursements requests;
- Natural resource damage assessment costs and restoration costs, and liability for natural resource damages under MTCA or the federal cleanup law;
- Site development and mitigation costs not required as part of a remedial action;
- Legal costs including, but not limited to, the cost of seeking client advice; pursuing cost recovery; contribution or insurance claims 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
- In-kind contributions.

7.5 Retroactive Costs under Independent Remedial Action Grants

Retroactive costs are eligible for reimbursement only if the costs are eligible under this grant and one of the following conditions is met:

- The costs were incurred within five years of the date of the grant application.
- The costs were incurred during the period of a prior grant agreement and were not reimbursed under the prior grant agreement.

7.6 Match Requirements for Independent Remedial Action Grants

Funding for Independent Remedial Action Grants is provided for total project costs up to \$600,000 (Ecology's share plus grant match). Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities depending on availability of funding and other factors in Section 7.2 of this Guidance.

There are three levels of grant funding provided. The Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

Regular Grant: Ecology may award up to a 50 percent grant, up to a maximum of \$300,000 for a project.

Economically Disadvantaged Community Grant: Ecology may award up to a 75 percent grant, up to a maximum of \$450,000 for a project. To be eligible for these grants, one of the following conditions must be met:

- **Economically Disadvantaged County:** Applicant is a County and the per capita income of the County is equal to or below the median per capita income of Counties in Washington State. See Ecology's remedial action grant website for a list of economically disadvantaged Counties at <http://www.ecy.wa.gov/programs/tcp/grants/rag.html>.
- **Economically Disadvantaged City or Town:** The Applicant is a City or Town and the per capita income of the City or Town is equal to or below the median per capita income of Cities and Towns in Washington State. See Ecology's remedial action grant website for a list of economically disadvantaged Cities and Towns at <http://www.ecy.wa.gov/programs/tcp/grants/rag.html>.
- **Special Purpose District:** The Applicant is a Special Purpose District and the site is located within an economically disadvantaged County, City or Town.

Reduction in Match Requirements: Under certain conditions the Director of the Department of Ecology may reduce the above match requirements for an Independent Remedial Action Grant to as little as ten percent (10%) to create an incentive for a local government to expedite a cleanup. Eligibility and match reductions are considered on a case-by-case basis. See Section 6.7 of this Guidance for additional discussion and the requirements for qualifying for a reduced match.

7.7 Reimbursement Options under Independent Remedial Action Grants

Applicants have two reimbursement options under Independent Remedial Action Grants:

1. Applicants can complete the cleanup on their own and submit a request for reimbursement after the cleanup is complete. To receive reimbursement Ecology must have issued a "No Further Action" letter for the site or property being cleaned up.

2. Applicants can request quarterly reimbursement of costs incurred as the cleanup progresses. For this option the project must be accepted into Ecology's Voluntary Cleanup Program (VCP) and all work must be conducted in accordance with a pre-authorized work plan. If this option is selected, Ecology will typically withhold twenty percent (20%) of the grant payment on each invoice. This 20% will be awarded when a "No Further Action" letter is granted for the site or property. Applicants must enter these agreements in good faith with the intent of completing the cleanup. Failure to achieve a No Further Action designation may result in Ecology taking enforcement action to require completion of the cleanup.

7.8 Independent Remedial Action Grant Contacts

Voluntary Cleanup Program Coordinators: Questions about Ecology's Voluntary Cleanup Program (VCP), the availability of grants, ten-year plan submissions, and site work plans should be directed to the VCP Coordinators in Ecology's Regional Offices:

- For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima) the coordinator is Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.
- For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the coordinator is Mike Hibbler at 509-329-3568 or Mike.Hibbler@ecy.wa.gov.
- For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the coordinator is Louise Bardy at 425-649-7209 or Louise.Bardy@ecy.wa.gov.
- For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the coordinator is Scott Rose at 360-407-6347 or Scott.Rose@ecy.wa.gov.

Cleanup Project Managers: Projects receiving an Independent Remedial Action Grant with periodic reimbursement will be assigned an Ecology Cleanup Project Manager from the appropriate Regional Office. This person will be specified in the grant agreement or associated correspondence. See Chapter 2 for Ecology Cleanup Project Manager responsibilities.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs, and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions**, contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions**, contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

8.0 Area-wide Groundwater Investigation Grants

The purpose of the Area-wide Groundwater Investigation Grants is to provide funding to investigate area-wide groundwater issues within an area of known or suspected area-wide groundwater contamination.³⁵ These investigations are intended to facilitate the cleanup and redevelopment of multiple properties that are impacted by the area-wide groundwater contamination by addressing issues that would be difficult to resolve on a site by site basis.

An example of where this grant could be applied might be an intersection or street block that contains several current and former gas station sites with suspected off-property contamination:

An owner of one of the gas stations within this area wants to redevelop their property, but is reluctant to start a remedial investigation. They are concerned it would lead to an expensive investigation of their property to determine which part of the areal groundwater contamination was a result of their facility, and which part was caused by their neighbors.

The city's comprehensive plan supports this redevelopment as it envisions the area redeveloping from its current automobile-oriented land uses to a mixed-use development. However, the envisioned redevelopment has not moved forward, in part because of uncertainty caused by the areal groundwater contamination.

To facilitate this redevelopment, the city applies for an Area-wide Groundwater Investigation Grant. The grant is used to install and test groundwater monitoring wells within public right-of-ways throughout the area to better define the extent of the plumes coming from individual facilities. This information is made available to individual property owners.

In this case, the gas station owner can use this information, along with their own site-specific investigation, to define their cleanup liability, clean up their property, and move ahead with redevelopment.

8.1 Who Can Receive an Area-wide Groundwater Investigation Grant?

To be eligible to receive an Area-wide Groundwater Investigation Grant:

- The Applicant must be a local government.
- The project must involve the investigation of known or suspected area-wide groundwater contamination.
- The Applicant must not be required to conduct the investigation under an order or decree. This does not preclude a local government that is a potentially liable person at a site from

³⁵ WAC 173-322-020 defines area-wide groundwater contamination as “multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.”

receiving a grant, as long as an order to do the work has not been issued by Ecology or EPA.

- The Applicant must have the necessary access to conduct the investigation or obtain such access in accordance with a schedule in the grant agreement. This access may or may not involve access agreements with individual property owners. Often adequate access can be achieved by using public right-of-ways or publically-owned property within the study area.
- The project must be included in the ten-year financing plan required under RCW 70.105D.030(5).
- Projects designed to address the restoration of Puget Sound must not be in conflict with the action agenda developed by the Puget Sound Partnership under RCW 90.71.310.

8.2 What Criteria Will Ecology Use to Prioritize Applications for Area-wide Groundwater Investigation Grants?

If there are insufficient funds to award grants to all Applicants, Ecology will use the following criteria to prioritize Area-wide Groundwater Investigation Grants and determine the level of funding:

- Whether the Applicant has received a prior grant for the project and the performance of the Applicant under that grant and other remedial action grants. Projects that are already underway under a previous grant will receive priority for additional grant funding if this funding is needed to complete the project. Additional funding may be awarded only if the total amount of all Area-wide Groundwater Investigation Grants for a project does not exceed the maximum allowable grant amount (\$500,000 total eligible costs, including required match).
- The threat posed by the site to human health and the environment. Sites that pose a higher threat will receive a higher priority for funding. For example, sites with a higher hazard ranking under MTCA will typically receive higher funding priority. For sites that haven't yet been ranked by Ecology, Applicants should consider including in their application sufficient information to rank one or more sites within the study area.
- Sites within a redevelopment opportunity zone³⁶ will receive a higher funding priority.
- The land reuse potential of the sites within the study area. Sites within an area of strong reuse potential will receive a higher priority. The following factors will be considered when evaluating the reuse potential of the study area:
 - Whether the study area is located within an incorporated city, town, or an urban growth area designated under RCW 36.70A.110;

³⁶ Established "community renewal areas" under Chapter 35.81 RCW will be considered equivalent areas when considering grant priorities.

- The study area contains vacant, abandoned, or significantly underutilized former industrial or commercial facilities;
 - Availability of urban infrastructure and services such as sewer, water and other utilities, and transit service to serve the redeveloped area;
 - The current land use of the study area is different than that envisioned in the comprehensive plan;
 - The study area presents an opportunity for significant habitat restoration;
 - The local government's commitment to redevelopment or restoration of the study area such as: investments in infrastructure supporting redevelopment of the site or commitment in a capital facilities plan to completing such infrastructure; or, has invested in a community planning process supporting redevelopment or restoration of the study area; and
 - Whether the application provides for a clear progression from remedial action to redevelopment or restoration. Projects with a clear vision for future use tend to be cleaned up faster with a more successful reuse.
- The readiness of the Applicant to start and complete the work to be funded by the grant.
 - The ability of the grant to expedite the cleanup. Sites with cleanups being delayed because of unresolved area-wide groundwater issues will receive a higher priority for funding.
 - The ability of the grant to leverage other public or private funds. Grants that are accompanied by a larger local investment that either reduces the match or expands the scope of work beyond that funded by the grant will receive a higher priority.³⁷
 - The overall distribution of grants throughout the state, with the intent to award grants to a variety of types and sizes of local government.

8.3 Eligible Costs under Area-wide Groundwater Investigation Grants

Ecology's Grant Financial Manager has final approval authority for all grant-related costs. The grant agreement must be signed by both the Recipient and Ecology for any costs incurred under a new agreement to be eligible for reimbursement. Applicants can only be reimbursed for costs of implementing a work plan approved by the Cleanup Project Manager. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs must be pre-approved by the Grant Financial Manager.

³⁷ This can be local monies, other state or federal grants, private funds, insurance settlements or funds from contribution actions.

Eligible costs under Area-wide Groundwater Investigation Grants must be reasonable and necessary to conduct the area-wide groundwater investigation. Examples of eligible activities and related costs include:

- Identifying the sources of the area-wide groundwater contamination;
- Determining the nature and extent of the area-wide groundwater contamination;
- Identifying the preferential groundwater contaminant migration pathways;
- Identifying area-wide geologic and hydrogeologic conditions;
- Establishing area-wide natural groundwater quality, including aquifer classification under WAC 173-340-720; and
- Grant administration consistent with [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and Ecology Publication Number 14-01-002, and must be approved in advance by Ecology's Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

8.4 Ineligible Costs under Area-wide Groundwater Investigation Grants:

Ineligible costs for Area-wide Groundwater Investigation Grants include:

- The cost of developing the grant application or negotiating the grant agreement;
- The cost of dispute resolution under the grant agreement;
- Retroactive costs, except as provided for in the next subsection;
- Natural resource damage assessment and restoration costs and liability for natural resource damages under Chapter 70.105D RCW or the federal cleanup law;
- Site development and mitigation costs not required as part of the remedial action;
- Legal costs including, but not limited to, the costs of seeking client advice; pursuing cost recovery; contribution or insurance claims 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
- In-kind contributions.

8.5 Retroactive Costs under Area-wide Groundwater Investigation Grants

Retroactive costs are eligible for reimbursement if the costs were incurred under a prior Area-wide Groundwater Investigation Grant agreement and were not reimbursed under that prior agreement,³⁸ and the costs are eligible costs under this Guidance.

8.6 Match Requirements for Area-wide Groundwater Investigation Grants

Area-wide Groundwater Investigation Grants may be awarded for up to one hundred percent (100%) of eligible costs up to a maximum of \$500,000. Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities depending on availability of funding and other factors in Section 8.2 of this Guidance.

When a grant is awarded for less than 100% of eligible costs, the Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

8.7 Area-wide Groundwater Investigation Grant Contacts

Regional Office Contacts: Questions about grant availability, potential areas where Area-wide Groundwater Investigation Grants could be awarded, and ten-year plan submissions should be directed to the following Ecology Toxics Cleanup Program Regional Office Managers:

- For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima) the Regional Manager is Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.
- For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the Regional Manager is Mike Hibbler at 509-329-3568 or Mike.Hibbler@ecy.wa.gov.
- For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the Regional Manager is Bob Warren at 425-649-7054 or Bob.Warren@ecy.wa.gov.
- For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the Regional Manager is Rebecca Lawson at 360-407-6241 or Rebecca.Lawson@ecy.wa.gov.

Cleanup Project Managers: Projects receiving an Area-wide Groundwater Investigation Grant will be assigned an Ecology Cleanup Project Manager from the appropriate Regional Office.

³⁸ Such as due to lack of funding.

This person will be specified in the grant agreement or associated correspondence. See Chapter 2 for Ecology Cleanup Project Manager responsibilities.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs, and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions,** contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions,** contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

9.0 Safe Drinking Water Action Grants

The purpose of Safe Drinking Water Action Grants is to assist local governments in providing safe drinking water to persons served by private wells or public water systems that have been impacted by contamination from a contaminated site. An example would be paying for a stripping tower to treat water from a municipal well that has been impacted by solvent contamination. Another example would be extending public water to an area where private wells have been contaminated by a site.

The Washington State Departments of Ecology and Health (Health) both have roles regarding Safe Drinking Water Action Grants. Ecology and Health may identify impacted water supplies either through routine water supply monitoring or contaminated site studies. Once the impacted water supply is identified, Ecology can provide grant funding for safe drinking water and administers the grant. Where grants are awarded, the Department of Health provides technical oversight of work on public water systems to ensure state drinking water regulations are met.

9.1 Who Can Receive a Safe Drinking Water Action Grant?

To receive a Safe Drinking Water Action Grant, the Applicant must meet the following conditions:

- The Applicant must be a local government.
- The Applicant must be the owner or operator of a public water system or the Applicant must be applying on behalf of the owner or operator of a public water system (purveyor).³⁹
- Ecology has determined the drinking water source is affected or threatened by one or more contaminants originating from a contaminated site because:⁴⁰
 - The contaminant levels in the drinking water source exceed the maximum contaminant levels (MCL's) established by the State Board of Health in WAC 246-290-310;
 - The contaminant levels in the drinking water source exceed the cleanup levels established by Ecology under the Model Toxics Control Act cleanup regulation (WAC 173-340); or
 - The contaminant levels in the drinking water source don't currently exceed the MCLs or MTCA cleanup levels but these levels are threatened to be exceeded in the future;⁴¹

³⁹ A public water system is any Group A water system, as described in Chapter 246-290 WAC.

⁴⁰ Naturally occurring contaminants and contaminants originating from sources other than a MTCA site or from within the water system do not qualify for these grants. Examples are naturally occurring metals, bacterial contamination caused by septic systems, nitrates caused by manure application, and copper and lead introduced by the plumbing system.

- Health has determined the Applicant’s or purveyor’s water system that would be used to provide alternative water is in substantial compliance with applicable rules of the Washington State Board of Health or the Washington State Department of Health including:
 - Group A Public Water Supplies (Chapter 246-290 WAC) ⁴²
 - Water Works Operator Certification (Chapter 246-292 WAC)
 - Water System Coordination Act (Chapter 246-293 WAC)
 - Drinking Water Operating Permits (Chapter 246-294 WAC)
- If the provision of safe drinking water includes water line extensions, then the extensions must be consistent with the coordinated water system plan prepared under Chapter 70.116 RCW, and the plans for new development prepared under Chapter 36.70 RCW or Chapter 36.70A RCW for the geographic area containing the affected water supplies. These statutes generally mean that water lines cannot be extended to areas outside of the water supplier’s service area, and may also limit extensions beyond designated city limits and urban growth areas. Applicants proposing to do such extensions should coordinate closely with the Washington State Department of Health and Department of Commerce-Growth Management Program.
- The Applicant must not be required to conduct the safe drinking water action under order or decree.
- Projects designed to address the restoration of Puget Sound must not be in conflict with the action agenda developed by the Puget Sound Partnership under RCW 90.71.310.

9.2 What Criteria Will Ecology Use to Prioritize Applications for Safe Drinking Water Action Grants?

Ecology will use the following criteria to prioritize Safe Drinking Water Action Grants and determine the level of funding:

- Whether the Applicant has received a prior grant for the project and the performance of the Applicant under that grant and other remedial action grants. Projects that are already underway under a previous grant will receive priority for additional grant funding if this funding is needed to complete the project;
- The threat posed by the site to human health and the environment. Sites that pose a higher threat will receive a higher priority for funding. For example, sites with a higher hazard ranking under MTCA will typically receive higher funding priority. For sites that haven’t yet been ranked by Ecology, Applicants should consider including in their application sufficient information to rank the site;

⁴¹ For example, the water supply is within or down gradient of a contaminant plume; or the water supply, if pumped at its full permitted potential, would draw in contamination.

⁴² NOTE: Group B water systems (generally small private water systems) are not authorized to receive Safe Drinking Water Grants.

- Whether the drinking water serves a highly impacted community;
- The ability of the grant to expedite the provision of safe drinking water. Sites where the local government can demonstrate that a lack of local funding or ability to obtain financing is significantly delaying the provision of safe drinking water will receive a higher priority;
- The per capita cost of providing safe drinking water;
- The readiness of the Applicant to start and complete the work to be funded by the grant;
- The ability of the grant to leverage other public or private funds. Grants that are accompanied by a larger local investment that either reduces the match or expands the scope of work beyond that funded by the grant will receive a higher priority;⁴³
- Consistent with MTCA's preference for permanent cleanups, applications that provide for treatment of contaminated groundwater will generally be favored for a higher match over applications that only provide alternative water; and
- In rural areas where extension of a public water system is not practical, point of entry water treatment systems will be preferred over point of use treatment.⁴⁴



Figure 9.1 Water treatment systems for contaminated public wells and connecting affected homeowners to a public water supply are examples of uses of Safe Drinking Water Grants

⁴³ This can be local monies, other state or federal grants, private funds, insurance settlements or funds from contribution actions.

⁴⁴ Point of entry treatment means the treatment is for water supplying the entire house; point of use means the treatment is provided at the location the water is used, such as a filter at the kitchen sink.

9.3 Eligible Costs under Safe Drinking Water Action Grants

Ecology's Grant Financial Manager has final approval authority for all grant-related costs. The grant agreement must be signed by both the Recipient and Ecology for any costs incurred under a new agreement to be eligible for reimbursement. Applicants can only be reimbursed for costs of implementing a work plan approved by the Cleanup Project Manager. As described in Chapter 11 of this Guidance, all costs must be properly documented and conditionally eligible costs must be pre-approved by the Grant Financial Manager.

Eligible costs under Safe Drinking Water Action Grants must be reasonable and necessary to provide safe drinking water to persons whose water supply has been impacted by a contaminated site. Examples of eligible activities and related costs include:

- Water supply source development and replacement, including well replacement, pumping and storage facilities, source meters and reasonable appurtenances;
- Transmission lines between major systems components, including interties with other water systems;
- Treatment equipment and facilities, including air stripping towers, package treatment plants, point-of-use treatment systems, and similar approaches;
- Distribution lines from major system components to system customers or service connections;
- Bottled water as an interim action;
- Fire hydrants;
- Service meters;
- Project inspection, engineering and administration;
- Individual service connections including any connection fees and charges;
- Drinking water well decommissioning under WAC 173-160-381;
- Other costs identified by the Department of Health as necessary to provide a system that operates in compliance with federal and state standards; and
- Grant administration consistent with [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002.

Some costs related to these activities may not be reimbursable under the grant, or may only be eligible under certain conditions. Conditionally allowable costs are identified in Chapter 11 and Ecology Publication Number 14-01-002, and must be approved in advance by Ecology's Grant Financial Manager. Costs not allowed are the responsibility of the Recipient.

9.4 Ineligible Costs under Safe Drinking Water Action Grants

Ineligible costs for Safe Drinking Water Action Grants include:

- The cost of developing the grant application or negotiating the grant agreement;

- The cost of dispute resolution under the grant agreement;
- The cost of over sizing or extending a water system for future development;
- The cost of individual service connections for undeveloped lots;
- Local improvement district assessments;
- Operation and maintenance costs;
- Natural resource damage assessment and restoration costs and natural resource damages and liability for natural resource damages under Chapter 70.105D RCW or the federal cleanup law;
- Legal costs including, but not limited to, the costs 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
- In-kind contributions.

9.5 Retroactive Cost Eligibility under Safe Drinking Water Action Grants

Retroactive costs are eligible for reimbursement if the costs were incurred under a prior Safe Drinking Water Action Grant agreement and were not reimbursed under that prior agreement,⁴⁵ and the costs are eligible costs under this Guidance.

9.6 Financial Match Requirements for Safe Drinking Water Action Grants

Safe Drinking Water Action Grants may be awarded for up to ninety percent (90%) of eligible costs with no limitation on the amount of the grant. Ecology may make grant offers below the maximum eligible state share and choose to fund all or part of grant-eligible activities depending on availability of funding and other factors in Section 9.2 of this Guidance.

When a grant is awarded for less than 100% of eligible costs, the Recipient must fund that portion of the eligible costs not funded by Ecology (i.e., provide grant match). In-kind contributions cannot be used for grant match.

9.7 Safe Drinking Water Action Grant Contacts

Regional Office Contacts: Questions about grant availability, potential areas where Safe Drinking Water Action Grants could be awarded, and ten-year plan submissions should be directed to the following Ecology Toxics Cleanup Program Regional Office Managers:

⁴⁵ Such as due to lack of funding.

- For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima) the Regional Manager is Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.
- For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the Regional Manager is Mike Hibbler at 509-329-3568 or Mike.Hibbler@ecy.wa.gov.
- For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the Regional Manager is Bob Warren at 425-649-7054 or Bob.Warren@ecy.wa.gov.
- For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the Regional Manager is Rebecca Lawson at 360-407-6241 or Rebecca.Lawson@ecy.wa.gov.

Cleanup Project Managers: Projects receiving a Safe Drinking Water Action Grant will be assigned an Ecology Cleanup Project Manager from the appropriate Regional Office. This person will be specified in the grant agreement or associated correspondence. See Chapter 2 for Ecology Cleanup Project Manager responsibilities.

Grant Financial Managers: For questions related to the grant application and grant agreement, eligible costs, and general grant administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions,** contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions,** contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

10.0 Oversight Remedial Action Loans

The purpose of Oversight Remedial Action Loans is to supplement local government funding and funding from other sources to meet the match requirements for Oversight Remedial Action Grants. The loans are intended to encourage and expedite cleanup of contaminated sites. They are also intended to lessen the impact of the cleanup cost on ratepayers and taxpayers by providing low interest loans for grant match when the local government has insufficient resources to cover the match.

10.1 Types of Oversight Remedial Action Loans

There are two different types of Oversight Remedial Action Loans:

Standard Loans. A Standard Loan is a below-market rate loan for up to a 20 year repayment period.

Extraordinary Financial Hardship Loans. An Extraordinary Financial Hardship Loan is a below market rate loan with deferred terms and conditions for repayment. The deferred terms and conditions may not be indefinite and the loan must be approved by the Director of the Department of Ecology or his/her designee.

In both cases, Ecology may award an Oversight Remedial Action Loan for up to the full amount of the required grant match. If less than the full amount of the match is awarded, the Applicant is responsible for the remaining match. The Applicant is also responsible for any ineligible costs.

10.2 Who Can Receive an Oversight Remedial Action Loan?

For the purposes of an Oversight Remedial Action Loan, a project consists of remedial actions conducted under an order or decree at a single site. A project may extend over multiple biennia. Ecology may provide more than one loan for a project. To be eligible for a loan, a project must meet all of the following requirements:

- The Applicant must be a local government;
- The Applicant must have been awarded (or be in the process of being awarded) an Oversight Remedial Action Grant and have met the qualifications to have received that grant;
- The Applicant must demonstrate the following to Ecology's satisfaction. Ecology may require an independent third party financial review to support the demonstration:
 - For a Standard Loan, its financial need for the loan and ability to repay the loan.
 - For an Extraordinary Financial Hardship Loan, its financial need for the loan, inability to repay the loan under present circumstances, and ability to repay the loan in the future.

10.3 What Criteria Will Ecology Use to Prioritize Applications for Oversight Remedial Action Loans?

Ecology will use the same criteria that are used for Oversight Remedial Action Grants in Chapter 6 to determine priorities for Oversight Remedial Action Loans.

10.4 Eligible and Ineligible Costs

Eligible and ineligible costs are the same as those for Oversight Remedial Action Grants in Chapter 6.

10.5 Retroactive Costs for Oversight Remedial Action Loans

Eligible retroactive costs are the same as those for Oversight Remedial Action Grants in Chapter 6.

10.6 Repayment of Oversight Remedial Action Loans

Standard Loans

For a Standard Loan, the following terms and conditions will apply:

- If the repayment period is less than or equal to five years, then the interest rate will be thirty percent of the average market rate,⁴⁶ as published in the bond buyers index for tax-exempt municipal bonds as of July 1st of each odd-numbered year.
- If the repayment period is more than five years and less than or equal to twenty years, then the interest rate will be sixty percent (60%) of the average market rate.
- Interest will begin to accrue on each disbursement as it is paid to the Recipient.
- Other terms and conditions as specified in the loan agreement.

Extraordinary Financial Hardship Loans

For an Extraordinary Financial Hardship Loan, Ecology can adjust the loan terms and conditions for Standard Loans or defer repayment of the loan. This will be based on the Applicant's demonstration of inability to repay the loan under their present financial circumstances and how this situation may change in the future. The loan deferral terms and conditions may change depending on a periodic review of the Recipient's ability to pay. Loan repayment may not be deferred indefinitely.

⁴⁶ "Average market interest rate" means the daily market rate published in the bond buyer's index for tax-exempt municipal bonds as of July 1st of each odd-numbered year.

10.7 Oversight Remedial Action Loan Contacts

Regional Office Contacts: Questions about Oversight Remedial Action Loan availability and ten-year plan submissions should be directed to the following Ecology Toxics Cleanup Program Regional Office Managers:

- For counties in the **Central Region** (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan and Yakima) the Regional Manager is Valerie Bound at 509-454-7886 or Valerie.Bound@ecy.wa.gov.
- For counties in the **Eastern Region** (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman) the Regional Manager is Mike Hibbler at 509-329-3568 or Mike.Hibbler@ecy.wa.gov.
- For counties in the **Northwest Region** (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom) the Regional Manager is Bob Warren at 425-649-7054 or Bob.Warren@ecy.wa.gov.
- For counties in the **Southwest Region** (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum) the Regional Manager is Rebecca Lawson at 360-407-6241 or Rebecca.Lawson@ecy.wa.gov.

Cleanup Project Managers: Projects receiving an Oversight Remedial Action Loan will be assigned an Ecology Cleanup Project Manager from the appropriate Regional Office. This person will be specified in the loan agreement or associated correspondence. See Chapter 2 for Ecology Cleanup Project Manager responsibilities.

Grant Financial Managers: For questions related to the loan application and loan agreement, eligible costs, and general loan administration, contact Ecology's Grant Financial Managers:

- **For counties in the Northwest and Central Regions,** contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions,** contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

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11.0 Financial and Grant Management

This chapter describes the financial aspects of managing a remedial action grant. It is intended to provide more in-depth information about financial and grant management issues, and address some common questions that arise during implementation of these agreements. It supplements information contained in Ecology's administrative requirements for all grants and loans titled: [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002. It also supplements any project-specific terms and conditions outlined in the grant agreement, scope of work or other requirements specified in an order or decree or VCP agreement. The following topics are addressed in this chapter:

- Issues related to eligible costs specific to remedial action grants
- Billing and documentation requirements.

11.1 Ecology Administration of Grants and Loans (EAGL)

All Ecology grants and loans, including remedial action grants, are now being administered through a new online grant management system called the Ecology Administration of Grants and Loans or "EAGL." EAGL is a comprehensive web-based grant and loan management system that allows Ecology's grant and loan clients to complete grant applications, submit payment requests with progress reports, submit closeout and equipment reports, and request amendments online.

To gain access to the EAGL system, Applicants must first register through Secure Access Washington (SAW). Once an account has been established, Applicants and Recipients can login and use EAGL to apply for and manage their grants.

Create a SAW account at <https://secureaccess.wa.gov/ecy/eagl>.

For more information on the EAGL system, see <http://www.ecy.wa.gov/funding/EAGL.html>.

If you need assistance with EAGL, contact one of the following Ecology Grant Financial Managers:

- **For counties in the Northwest and Central Regions**, contact Lydia Lindwall at 360-407-6210 or Lydia.Lindwall@ecy.wa.gov.
- **For counties in the Southwest and Eastern Regions**, contact Dan Koroma at 360-407-7187 or Dan.Koroma@ecy.wa.gov.

As noted in Chapter 1, persons interested in applying for a grant should first contact the appropriate Regional contact to discuss funding options. An application for a grant should not be completed in EAGL until Ecology notifies you that your project has been awarded funding and your Ecology Grant Financial Manager has requested that you complete an application.

11.2 Cash Management

Ecology generally funds remedial action grants by each major phase of remedial action (remedial investigation, feasibility study, and cleanup). To better manage cash flow and provide the most grant funds possible to Applicants who are ready to proceed with cleanups, grants are generally awarded only for work expected to be accomplished within the biennium.

Ecology's Toxics Cleanup Program Management Team meets quarterly to review actual expenditures to date and projected future expenditures. If a project becomes significantly delayed, unspent funds may be allotted to another project.

For projects where work will continue for more than one biennium, if significant progress⁴⁷ has been made, a new grant agreement will be prepared providing funding for next biennium's activities.

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

11.3 Amendments

After Ecology's Grant Financial Manager establishes the grant budget, amendments to change the length of the agreement, or increase or decrease the budget, may be considered. However, Ecology does not promise or guarantee such amendments.

If a change is needed, the Recipient must request the change in writing to Ecology's Grant Financial Manager. Once approved, the amendment process can begin.

The Ecology Grant Financial Manager can redistribute funds among the grant tasks without performing an amendment. However, it is the Recipient's responsibility to make the redistribution request in writing (email is fine) to Ecology's Grant Financial Manager before the change will be made.

11.4 Eligible Costs - General

The scope of work must be approved by Ecology's Grant Financial Manager and Ecology's Cleanup Project Manager. For sites under an order or decree, the scope of work in the grant agreement must be consistent with that required by the order or decree. All requests for reimbursement must be reasonable and necessary to perform the scope of work established in the grant agreement.

⁴⁷ A grant does not need to be fully expended to qualify for funding the next biennium. "Significant progress" is a qualitative assessment based on a comparison of work actually completed and funds expended to that described in the grant agreement. It will consider factors such as unanticipated delays due to permits or public involvement, Ecology's contribution to review deadline delays, and actual conditions encountered at the site being more complex than expected.

Only eligible cash expenditures are reimbursable. In general, an eligible cost is:

- Necessary to complete the scope of work specified in the grant agreement.
- Reasonable for the task.
- Incurred after the effective date of the agreement and before the expiration date of the agreement. Costs incurred prior to the effective date of the agreement are at the sole expense of the Recipient. For some grants, some retroactive costs are allowed. See the discussion under specific grants for allowable retroactive costs.
- An allowable cost as described in the agreement, WAC 173-322A, this Guidance, and Ecology Publication Number 14-01-002.
- Consistent with the standard business practices of the Recipient. A cost is not eligible if it is computed differently than costs incurred in any other Recipient activity.
- Properly documented.

Ecology's Grant Financial Manager Determines Cost Eligibility

While Ecology's Cleanup Project Manager knows the technical and regulatory requirements under MTCA, they do not necessarily know all the requirements related to grant expenditures. Therefore, only Ecology's Grant Financial Manager can determine if a cost is eligible under the grant. If you have any questions about whether you can bill a specific cost to the grant, you must ask the Ecology Grant Financial Manager.

Recipients are responsible for understanding the terms of their agreement, the grant rules, and Guidance related to the eligibility of a cost, prior to making purchases and billing them to the grant.

Recipients are also fully responsible for paying any cost Ecology's Grant Financial Manager does not allow, even if the Recipient did not understand the cost was not eligible, or a contractor or other representative approved or purchased the item without the Recipient's knowledge or approval.

Example: The Recipient buys a computer and bills it to the grant without asking Ecology's Grant Financial Manager. Ecology's Grant Financial Manager determines the computer was not needed to complete the scope of work and therefore was not an eligible cost. The Recipient bears the entire cost of the item and cannot count it as match for the grant.

Reasonable Costs

Ecology reserves the right to reject costs as excessive, even when work is fully approved from a technical standpoint. As a result, some expenses may be reimbursed at less than the allowable percentages or not allowed at all.

Examples: Consultant rates in excess of average market rates charged by other firms with similar expertise. A \$3,000 GPS unit is purchased when another is available for \$500 that would perform the duties required at the site. Six cameras are purchased when one would do the job.

11.5 Eligible Costs – Specific Issues

For the purposes of this Guidance, “grant-eligible costs” are also called “eligible costs.” While the scope of work will be identified in the grant agreement, there are often specific issues related to eligible costs that may arise during grant implementation. When there is a question about what is an eligible cost, the Recipient should first review [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002. The following section also discusses issues that often arise specific to remedial action grants. If you still have questions about whether a cost is eligible, contact Ecology’s Grant Financial Manager.

Administrative Costs

Administrative costs that are incurred as part of normal administrative approval processes for approval of contracts or payment of bills are eligible costs. For example, time spent preparing documents, or participating in briefing meetings with elected officials who need to approve a contract related to the grant, are eligible costs.

Direct Expenses

Direct costs are eligible costs. These are costs that can be identified specifically with a particular task for the project, such as:

- Compensation for employee time devoted to the project
- Cost of materials used specifically for the project
- Cost of services furnished for the project by other entities such as consultants or other agencies or programs.

Monitoring Costs

The installation of monitoring systems and up to one year of post-construction monitoring are eligible costs.

Operating and Maintenance Costs

Operating and maintenance costs incurred up to the first year after completion of construction are eligible costs. When a determination of whether construction has been completed is not apparent, Ecology will use EPA’s guidance entitled “Closeout Procedures for National Priority List Sites” to determine eligible costs. This guidance can be found at http://epa.gov/superfund/programs/npl_hrs/closeout/index.htm.

Overhead

Overhead costs are those incurred for a common purpose and not readily identifiable with a particular task. These include costs incurred by the Recipient, as well as costs incurred by others who supply goods, services or facilities to the Recipient. These costs should be proportioned between the grant and other non-grant related usage. Examples of overhead items are:

- Cost of utilities for a facility shared by a project and other Recipient activities.

- Cost of maintaining a department that provides services to a project as well as other Recipient activities (e.g., equipment replacement and reserve charges; fiscal office; human resources office; a warehouse to store equipment or samples). Reminder: legal expenses are not grant eligible.
- Cost of supervisory personnel who oversee project activities as well as other Recipient activities.

The Recipient may charge for overhead to cover costs that are not typically direct billed. Allowable overhead is up to twenty-five percent (25%) of salaries and benefits for employees directly billing to the project. Note that the 25% is a maximum amount. If the normal overhead rate for employees is 20%, then the grant should not be billed for more than 20% overhead.

Computing Overhead Charges

There is no universal rule for classifying certain costs as either “direct” or “overhead.” A cost may be direct with respect to some of the Recipient’s functions, but overhead with respect to the project.

It is essential only to treat each item consistently throughout the project either as a direct or an overhead cost as follows:

- The Recipient may direct bill all allowable costs that can be specifically identified with the project.
- The Recipient must compute the direct charges in the same way as those charges would be computed if the costs were related to any other Recipient activity.
- Overhead charges must be reported on the same billing as the salaries and benefits on which they are based. They must be reported as a separate line item.
- Some projects are subject to state or federal laws that limit the amount of eligible overhead costs. In such cases, the ineligible amount may not be charged to another Ecology project.

Example 1: If the Recipient's motor pool normally bills vehicle mileage back to individual jobs, mileage applied to the project may be direct billed. Otherwise, it should be included in the overhead charge.

Example 2: "Communication" is typically included in the overhead rate, and is intended to cover the telephone/cellphone charges associated with maintaining service for project administration. Long distance calls directly associated with the project may be direct billed.

Example 3: Insurance, such as the project portion of the Recipient's regular fire and liability insurance, is included in the overhead, while the cost of an insurance policy taken out specifically for the project may be direct billed.

Costs Typically Included in the Overhead Rate

- Communication (basic telephone, cell phone, pagers, internet connections, facsimile (fax) and postage charges)

- Capital outlays (costs of shared real property, equipment, easements)
- Office furnishings and operating supplies
- Insurance (fire, casualty, theft, bonds, liability, etc.)
- Intergovernmental services (costs charged by other governmental entities for services rendered jointly to the project as well as to other Recipient activities, such as equipment replacement and reserve fund charges; fiscal support services; janitorial services; human resources; police or fire protection during construction)
- Miscellaneous (dues; subscriptions; memberships; laundry; information and credit services; printing and binding)
- Office stationery supplies
- Operating rentals and leases
- Repairs and maintenance (labor and supplies to repair or maintain real or personal property)
- Small tools and minor equipment for administrative use (calculators, fax machines, telephones, etc.)
- Utilities.

Per Diem

When on travel status, per diem is an eligible cost for the Recipient. The costs must be at the state per diem rate. Reasonable consultant expenses for meals are also an allowable grant expense. Consultants may bill for meals or per diem only if they are on travel status.

Ecology's Grant Financial Manager may deny any consultant expenses that are deemed excessive or inappropriate (e.g., alcohol, room service, high-end restaurants, etc.). Itemized receipts are required for meals and hotels. A charge card receipt with just the total payment amount is not acceptable documentation; the detailed receipts are required.

Permit Fees

Fees for permits necessary to complete remedial actions are an eligible cost. This includes local, state (including Ecology issued permits) and federal permits. However, Ecology and EPA oversight costs for orders and decrees and VCP charges are not eligible costs (see Section 11.7).

If remedial actions being conducted under an order or decree are exempt from a local, state, or federal permit, any equivalent fee charged by the permitting agency to identify applicable, relevant and appropriate requirements (ARARs) are eligible costs.

For some sites, to complete the work within the biennium, it may be necessary to pay an extra fee for expedited permit review. These expedited fees are also eligible costs.

Fees for permits related to redevelopment of a site are not eligible costs.

Supplies

Supplies are tangible personal property other than tools or equipment. Supplies are either direct billed or are considered an overhead expense. Supplies or materials needed to perform the scope of work in the agreement are a grant-eligible cost. Under most grant agreements, these costs are part of overhead expenses but they can be directly billed if they are used only for grant related activities.

Example: If you purchase toner for your office printer, this is an overhead expense. If you have a project office with a dedicated project printer, the toner may be direct billed.

11.6 Conditionally Eligible Costs

Conditionally eligible costs are costs that may be grant-eligible if they meet certain conditions. All conditionally eligible costs require prior approval of Ecology's Grant Financial Manager. Failure to obtain prior approval may result in the Recipient having to pay for these costs out of pocket and unable to count them as grant match. The following section discusses specific issues related to conditionally eligible costs that often arise during the administration of remedial action grants.

Amenity Replacement Costs

Costs of replacing amenities on the site such as trash and recycle bins, sidewalks, benches, lighting, turf, picnic tables, and drinking fountains, may be allowed if these amenities were destroyed as a result of cleanup construction. Recipients must provide up-front documentation about why these amenities need to be replaced and receive prior approval from Ecology's Grant Financial Manager.

Computer Purchases

Computer purchases (and associated software) are a conditionally allowable cost. In some cases—typically long-term cleanups—computers are an allowed direct expense. Recipients must obtain written approval from Ecology's Grant Financial Manager to purchase computers that will be directly billed to the grant. Any costs incurred for computers or software purchased without Ecology's Grant Financial Manager's written approval are the Recipient's responsibility.

To request written approval from Ecology's Grant Financial Manager, the Recipient must submit a justification for the purchase in writing (email is fine) that includes:

- The work tasks to be performed on the computer.
- A detailed price quote for the system that itemizes the components being requested for the purchase and any requested software or peripherals.
- The amount of time the user or users are assigned to grant tasks.
- The share of the total purchase price requested for grant funding.

Equipment

Equipment means tangible, nonexpendable, personal property that has a useful life of more than one year and an acquisition cost of at least \$5,000 per functional unit or system. Some tools can fall into the equipment category because of their cost. Once an item exceeds the \$5,000 threshold, additional requirements govern its acquisition, use, and disposition. See [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002 for more guidance on larger costs.

Example: The Recipient provides a break space for employees working at their regular office. The Recipient purchases a coffee pot, refrigerator and tables for the break area. Ecology's Grant Financial Manager may determine these expenses are not appropriate to bill to the grant agreement.

Groundbreaking and Cleanup Completion Ceremonies

The costs of hosting a groundbreaking ceremony or one commemorating the completion of a cleanup are generally not grant eligible costs. It is possible that some light refreshments may be purchased with grant funds for these events with prior written approval by Ecology's Grant Financial Manager. If allowed by Ecology's Grant Financial Manager, the requirements for light refreshments apply.

Light Refreshments

Light refreshments for public meetings required in the scope of work of the agreement are conditionally allowable costs. The Recipient must request approval to provide light refreshments prior to incurring any expense. The following documentation requirements must be followed to receive reimbursement for light refreshments:

Pre-Meeting

1. Written request that contains an explanation for the purpose of the meeting
2. Meeting agenda or description of purpose
3. Draft budget (expense itemization)

Post-Meeting

1. Sign-in sheet / attendance list
2. Final vendor receipt or invoice

Negotiation Costs

Technical and administrative costs incurred by the Recipient during negotiations on an agreed order or consent decree may be eligible for grant reimbursement (legal costs are not grant-eligible). Costs related to discussion of an enforcement order are not eligible costs.

These costs must be incurred within 60 days of start of negotiations on an agreed order or within 120 days of start of negotiations on a consent decree. Recipients should receive a notice from Ecology that this time period has begun. If not, the Recipient should request such a notice.

The Ecology Project Manager must agree the costs incurred were appropriate, reasonable, and necessary to develop the technical aspects of the order/decreed (such as the scope of work).

Examples of grant-eligible costs: Staff time or consultant costs to develop a scope of work, public participation plan, or sampling and analysis plan to be attached to the order or decree.

Overtime and Overtime Differential

Overtime is a conditionally allowable expense. The Recipient must send Ecology's Grant Financial Manager a written request for approval before working the overtime. Ecology's Grant Financial Manager must approve this request in writing. If overtime is not requested in advance, the Recipient may not request payment for overtime hours.

Overtime Differential is any increase in pay over the standard pay rate that is provided to compensate an employee for hours worked in excess of the standard work day or week. Overtime differential is also a conditionally allowable expense. However, it is seldom allowed.

Overtime differential may be allowable only when one hundred percent (100%) of an employee's time is spent on grant activities. Because it is conditionally allowable, the Recipient must send Ecology's Grant Financial Manager a written request for approval before incurring the obligation, and Ecology's Grant Financial Manager must approve this request in writing.

Tools

Tools are tangible personal property having a useful life of more than one year and an acquisition cost of less than \$5,000 per functional unit. Tools are a conditionally allowable cost. They require written approval from Ecology's Grant Financial Manager. Considerations typically include the following:

- Is the tool required to perform the scope of work in the agreement?
- Is the cost reasonable?
- Is the price of the tool the most economical means of accomplishing the task or work?
- Will the Recipient maintain ownership/possession of the tool?

If tools are purchased without approval by Ecology's Grant Financial Manager prior to the purchase, the Recipient may be responsible for all costs.

Ecology may purchase tools for Recipients but not for private individuals such as contractors. Ecology expects that contractors arrive trained and equipped to do the job for which they were hired.

Training

Recipient staff training is a conditionally allowable cost. Recipient training must be directly related to the project and necessary to carry out the scope of work, such as Hazardous Waste Safety training.

Travel associated with approved training for the Recipient is allowable if authorized by Ecology's Grant Financial Manager in advance. Communicate with Ecology's Grant Financial Manager to discuss your training and any associated travel needs prior to incurring any expense. Failure to do so could result in the expenses being denied. Training costs may be prorated when a Recipient only works part time on grant activities.

The grant will not reimburse any form of consultant training. Consultants should be prepared to perform the duties for which they are being hired. If the Recipient agrees to fund consultant training, as a point of cost negotiation or for any other reason, the Recipient is responsible for these costs and will not receive reimbursement under the grant.

Working Lunches

Recipient working lunches are a conditionally allowable cost. The Recipient must submit a written request for working lunches prior to incurring expenses. Consultant working lunches are not grant-eligible unless the Recipient obtains written approval from the Ecology Grant Financial Manager prior to the event.

Ecology's Grant Financial Manager may approve expenses for Recipients consistent with how Ecology approves working lunches for Ecology staff. Please refer to Ecology Publication Number 14-01-002 for more information.

11.7 Ineligible Costs

Ineligible costs are costs that are not eligible for reimbursement under the grant and cannot be used for grant match. The following section discusses specific issues related to ineligible costs that often come up in administration of remedial action grants.

Contingencies, Rising Costs and Change Orders

Grant agreements are written for a set amount. Contingencies are not allowed.

In general, agreements will not be adjusted for increased labor or material costs due to delays in completing the work or an underestimate of costs to complete the scope of work or change orders.

Ecology *may* adjust a grant when new site information results in the need for additional investigation or cleanup to comply with MTCA. Such reimbursements will be subject to availability of funding.

Dispute Resolution Costs

Technical, legal and administrative expenses incurred by the Recipient to challenge an Ecology decision, such as the costs of dispute resolution under an order or decree, are not grant-eligible costs.

Ecology and EPA Oversight Costs

Costs that Ecology or EPA charges Recipients for site management oversight (cost recovery) under the terms of orders or consent decrees are not grant-eligible costs.

Ecology Voluntary Cleanup Program (VCP) Charges

Ecology's charges for VCP reviews or technical consultations are not grant-eligible costs.

Grant Application Development

Costs of preparing a grant application are not grant-eligible costs.

Legal Expenses/Attorney Fees

Legal expenses or attorney fees of any kind are not grant-eligible costs.

Lobbying Costs

Lobbying is not a grant-eligible cost. Costs for entertaining or attempting to influence dignitaries or elected officials are not grant-eligible costs. Costs for discussing the project with elected officials that do not have contract approval authority are not grant-eligible costs. This includes contacts with legislators to urge project funding.

Monitoring Costs

Monitoring costs incurred after the first year of completion of the cleanup action are not grant-eligible costs.

Natural Resource Damage Assessment Costs and Natural Resource Damages

Costs related to development of Natural Resource Damage Assessments (NRDA) and fees for damages to the environment or work required in lieu of fees under Natural Resource Damage (NRD) settlements are not grant-eligible costs. Cleanup and habitat restoration work required under a state or federal NRD settlement are not grant-eligible costs.

Operating and Maintenance Costs

Operating and maintenance costs incurred after the first year of completion of the cleanup construction are not grant-eligible costs.

Penalties and Late Fees

Penalties or late fees assigned to the Recipient are not grant-eligible costs. For example, the Recipient pays an invoice late and a contractor charges a late fee. This cost is not eligible for reimbursement under a remedial action grant.

A penalty issued by Ecology for failure to comply with an order or decree is not a grant-eligible cost.

Retroactive Costs

As a general rule, costs incurred before the effective date of the grant agreement are not grant-eligible costs. There are exceptions for Oversight Remedial Action Grants and Independent Remedial Action Grants. See the applicable sections of this Guidance for discussion of eligible retroactive costs under these grants.

Withholding

Withholding of proportional payment until all work is satisfactorily completed is not a grant-eligible cost until it has been paid to the consultant/contractor. Costs must have been incurred to be reimbursable.

Even though funds may be paid into an escrow or other account for payment once the contract terms are satisfied, it is possible the Recipient may not pass those funds on to the consultant. Because of this, withholding costs are only billable to the grant once the funds have been paid to the consultant/contractor.

11.8 Performance Monitoring

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

The objectives of performance monitoring are to determine if the Recipient is:

- Carrying out the scope of work described in the executed agreement.
- Administering the program in an effective, timely manner in accordance with the schedule and budget in the executed agreement.
- Complying with the scope of work and the Special and General Terms & Conditions of the grant agreement, as well as [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002, the remedial action grants regulation, Chapter 173-322 WAC, and this Guidance.

Ecology's Grant Financial Manager monitors performance through your progress reports and final performance evaluation documents. Ecology's Grant Financial Manager may conduct on-site inspections or request deliverables during the course of your agreement.

11.9 Payment Requests and Documentation Requirements

Remedial action grants are provided on a cost reimbursement basis. This means a cost or obligation must be incurred before it is eligible for reimbursement under a remedial action grant.

[Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002, establishes the administrative requirements for all grants administered through Ecology. The document describes requirements for financial management, reporting expenditures and income, contracting, procurement, and records retention.

The General Terms and Conditions for Ecology grants and loans is an addendum to each grant issued by Ecology. Contact your Ecology Financial Grant Manager for the latest version of the General Terms and Conditions in EAGL. If this document is amended during the biennium, the version in effect on the date your agreement is signed will apply. **The General Terms and Conditions are not negotiable.**

Time Limit for Billing

Requests for reimbursement and adequate documentation of eligible costs incurred after the agreement signature date must be submitted to Ecology within 120 days of incurring the costs.

Billing Forms

All payment requests must be submitted on agency approved forms.

All new grants will be managed through EAGL. Invoicing and progress reporting forms must be submitted through EAGL. If your grant was issued through EAGL, please consult with your Grant Financial Manager for assistance with submitting payment requests/progress reports.

For grants issued outside EAGL, Ecology forms A-19, B2 and C2 will continue to be used until these grants are brought into EAGL. These forms can be found online under “Tools for Getting Reimbursed” at <http://www.ecy.wa.gov/funding/manage-funding.html>. There is also a step-by-step process outlining how to properly complete payment request forms (RAG Recipient Payment Request Checklist) available at <http://www.ecy.wa.gov/biblio/ecy070365.html>.

Each payment request must include a project progress report. A final project report must be submitted with the last payment request. The required Progress Report template can be found in EAGL and online at <http://www.ecy.wa.gov/biblio/ecy070107.html>.

The [*Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL*](#), Ecology Publication Number 14-01-002, provides additional information about financial requirements for payment requests.

Documentation of Remedial Action Costs

All costs must be properly documented remedial action costs to be considered eligible for reimbursement. The Recipient must submit all supporting documentation to Ecology’s Grant Financial Manager for all expenses, including Recipient’s salary and benefits. This includes contractor and subcontractor invoices and receipts, accounting records or any other form of record that establishes the appropriateness of an expense. Receipts for supplies or meals must be itemized. A charge card receipt with only a total payment amount is not acceptable documentation.

- At a minimum, supporting documentation must include:
 - Description of the item or services purchased
 - Name of vendor
 - Date of cost incurred

- Invoice number
 - Invoice date
 - Serial, vehicle identification number (VIN), or other identifying number (for equipment or vehicles costing \$5,000 or more)
 - Cost and quantity for each line item or service
 - Tax
 - Total cost
 - Note associating the cost to the grant site (can be handwritten on invoice by Recipient), and
 - Task number that cost is being billed to.
- For salary and benefit costs, document the hours using Ecology’s Form E found at <http://www.ecy.wa.gov/funding/manage-funding.html> or use a printout from your accounting system that shows equivalent information found on Form E. If you are managing your grant in EAGL, you will complete Form E and upload it into EAGL, along with other backup documentation. Documentation must be presented for each day worked, not in a summary rolled up into pay periods, and include:
 - The name of employee charging to the grant and salary and benefits rate
 - For each employee: the hours worked each day (by date) by grant task
 - For each employee: total salary and benefit cost.
 - All costs must be supported with appropriate backup documentation and submitted with each payment request. Documentation includes receipts, invoices, mileage logs, printing and mailing logs, phone bills, timesheets, etc.

Example: If you are billing for mileage, you need to provide the number of miles driven, the cost per mile, and the total cost.

- Backup documentation should organizationally follow the receipt or invoice to which it relates. The documentation must be organized and labeled in such a manner that Ecology’s Grant Financial Manager can determine which expenses are being claimed. If the backup documentation is disorganized to the extent that Ecology’s Grant Financial Manager cannot locate the appropriate information in a timely manner, the payment request will be returned to the Recipient for reorganization.
- Fixed Price or Lump Sum contracts often used in public works contracting also require backup documentation to support charges. This includes trip tickets for contaminated soil disposal, subcontractor invoices, sampling and analysis bills, and receipts for supplies and expenses.
- Withholding of proportional payment until all work is satisfactorily completed cannot be billed to a grant until it has been paid to the consultant/contractor. Costs must have been incurred to be reimbursable. Backup documentation of contractor payments often includes copies of emails or memos from the Recipient to the bank approving the release

of the funds, and copies of financial transactions or a letter from the bank showing release of funds to the contractor. An invoice from the consultant billing for the withholding, and a warrant from the Recipient showing payment of the withholding, are also acceptable documentation.

- Backup documentation includes backup on subcontractor billings.

Example: Your prime contractor subcontracts a portion of the work, and the subcontractor rents a piece of equipment to excavate a pit. If you wish to receive reimbursement for the rental, you must submit the rental invoice. If the subcontractor purchases supplies, you must have an itemized receipt for the supplies. Please refer to [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002, which states that you must “Maintain appropriate supporting documentation. This includes canceled checks, invoices, purchase receipts, payrolls, time and attendance records, contract award documents, and vouchers sent to Ecology.”

Removing Ineligible Costs

If your Ecology Grant Financial Manager tells you a cost is not grant eligible, please do not include the item on any future payment requests. Recipients are responsible for submitting payment requests for eligible expenses.

Payroll and Personnel Information

Personnel working on grant activities must be identified by the time you submit your first payment request. You must provide your Ecology Grant Financial Manager a list of personnel who will charge time to the grant. Please provide staff names; their job classifications and a brief explanation of their duties and responsibilities performed on grant activities; the percentage of time they will work on grant activities; and the salary and benefits rate for each employee.

Prior Approvals

Some costs require prior approval from the Ecology Grant Financial Manager. Refer to the discussion in Section 13.4 of this Guidance and in the [Requirements for Ecology Grants and Loans](#) (Ecology Publication Number 91-18) for more information on prior approval requirements.

Automobile

Fleet Costs and Mileage

The billing method for automobile/fleet costs needs to be clearly established for the Ecology Grant Financial Manager and remain consistent throughout the grant. This method also needs to be consistent with how the Recipient typically manages their automobile/fleet expenses. It cannot be created specifically for purposes of the grant.

Example: If the Recipient’s motor pool normally bills vehicle mileage back to individual jobs, mileage associated with the grant project may be direct billed at the state mileage rate. Included in the mileage reimbursement are the costs of vehicle maintenance and repairs, gasoline, and

insurance. Mileage logs must be provided as backup documentation. If documentation is not provided, the costs will be considered part of the overhead rate.

The state mileage rate is also applicable to any mileage billed by consultants.

Example: If a consultant bills the Recipient \$0.65 per mile and the state rate is less, the Recipient will be reimbursed at the state rate. Any cost above the amount allowed is the Recipient's responsibility. The consultant must also provide mileage logs to document costs.

Rental Cars

If the Recipient or a Recipient's consultant leases a rental car, the invoice should include the miles driven and the time period of the rental. Ecology may ask the Recipient to provide the project hours worked by the individual who used the car. If the employee/consultant did not work fulltime on grant activities during the period the car was leased, Ecology's Grant Financial Manager will only approve a prorated share of the rental/lease cost. Original gasoline receipts must be provided unless otherwise approved by Ecology's Grant Financial Manager.

12.0 Reporting

12.1 Technical Reports

Any technical reports required under the grant should be submitted to the cleanup project manager for review as specified in the order or decree or grant contract. A copy should be provided to Ecology's Grant Financial Manager.

All sampling data generated during remedial actions must be entered into Ecology's Environmental Information Management system (EIM). Payments may be withheld if the data has not been properly entered into EIM.

12.2 Ten-Year Cost Forecast

As discussed in Chapter 1, Ecology is required to submit to the Legislature every two years a ten-year projection of remedial action grant needs. The purpose of the ten-year cost forecast is to inform decision makers about the full extent of cleanup funds needed statewide. Every two years, Ecology will solicit cost estimates from local governments. These estimates will be used to build Ecology's budget, so it is essential that both Applicants and Recipients provide timely information for this report. During each biennium, Recipients are also asked to update their forecasted need quarterly as more accurate cost estimates are developed.

The ten-year forecast form, Publication Number ECY 070-352 can be found on Ecology's website at <http://www.ecy.wa.gov/biblio/ecy070352.html>.

12.3 Progress Reports

The Recipient must complete progress reports and submit one with each payment request (or at least quarterly, if no payment requests are submitted). Progress reports describe actions and accomplishments in meeting project milestones, and include a certification that sampling results have been submitted to Ecology as required. Ecology's Grant Financial Manager and Cleanup Project Manager review progress reports to learn how the activities are proceeding, the reasons for any delays or cost overruns, and if any changes took place in the project, project staff, or contractors. Quarterly progress reports must include information on the status of pending cost recovery actions and insurance claims.

Ecology's Grant Financial Manager cannot process a payment request without a progress report for that billing period.

Progress reports must be submitted on an approved report form:

- If your grant is being managed through EAGL, the progress report form is part of the payment request process and found in EAGL. Consult the EAGL External Users Manual or ask your Ecology Grant Financial Manager for assistance.

- If your grant is being managed outside EAGL, the Progress Report forms are found on TCP's Remedial Action Grants & Loans website under "Project Management Information" at <http://www.ecy.wa.gov/programs/tcp/grants/explore-tcp.html>.

12.4 Final Project Reports

A final project report must accompany the final payment request. All final payment requests must be submitted within 45 days of the end of the agreement to ensure payment. The final project report is completed by the Recipient.

Final project reports summarize the entire project and its outcomes, and include the following:

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

The final project report must be submitted in a specific format:

- If your grant is being managed within EAGL, the grant closeout process is completed through EAGL. Consult with the EAGL External Users Manual or ask your Ecology Grant Financial Manager for assistance.
- If your grant is being managed outside EAGL, the templates for the final project report can be found at <http://www.ecy.wa.gov/biblio/ecy070293.html>.

12.5 Annual Financial Statement

Ecology's Grant Financial Manager may ask for documentation of the Recipient's annual financial statement. Ecology's Grant Financial Manager may review this statement to provide Ecology with information regarding potentially liable party contributions and insurance settlements that could affect grant funding.

12.6 Audits

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

Appendix A: Acronyms

AMR	Average Market Rate
ASTM	American Society for Testing Materials
CAP	Cleanup Action Plan
DNR	Washington State Department of Natural Resources
EAGL	Ecology Administration of Grants and Loans
EIM	Environmental Information Management
HB 2072	House Bill 2072
IPG	Integrated Planning Grant
ISIS	Integrated Site Information System
MCL	Maximum Contaminant Level
MTCA	Model Toxics Control Act
NFA	No Further Action
NRDA	Natural Resource Damage Assessment
NRD	Natural Resource Damage
PLP	Potentially Liable Person (MTCA term)
PRP	Potentially Responsible Party (Federal Cleanup Law term)
RCW	Revised Code of Washington (Statute)
SAW	Secure Access Washington
SB 5296	Senate Bill 5296
TCP	Ecology's Toxics Cleanup Program
VCP	Voluntary Cleanup Program
VIN	Vehicle Identification Number
WAC	Washington Administrative Code (Rule)
%	Percent

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Appendix B: Chapter 173-322A WAC, Remedial Action Grants and Loans

[Chapter Listing](#) [From Code Reviser's website, last updated 8/29/2014]

WAC Sections

173-322A-010	Purpose and authority.
173-322A-020	Relation to other laws and rules.
173-322A-100	Definitions.
173-322A-200	Funding cycle.
173-322A-210	Funding priorities.
173-322A-220	Fiscal controls.
173-322A-300	Site assessment grants.
173-322A-310	Integrated planning grants.
173-322A-320	Oversight remedial action grants.
173-322A-325	Oversight remedial action loans.
173-322A-330	Independent remedial action grants.
173-322A-340	Area-wide groundwater investigation grants.
173-322A-350	Safe drinking water action grants.

173-322A-010

Purpose and authority.

(1) This chapter recognizes that:

(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](#) (4) and (8).

(3) The purpose of the remedial action grants and loans program established by this chapter is to 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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-010, filed 8/29/14, effective 9/29/14.]

173-322A-020

Relation to other laws and 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 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.

[Statutory Authority: Chapter

[70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-020, filed 8/29/14, effective 9/29/14.]

173-322A-100

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](#).

(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 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 twenty-four-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 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 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 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.

(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](#) or [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.

(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.

(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](#).

(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 the conditions that exist at the hazardous waste site. 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.

(31) "**Local government**" means any political subdivision 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](#).

(32) "**No further action determination**" or "**NFA determination**" means a written opinion issued by the department under WAC [173-340-515](#)(5) 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).

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

(35) "**Partial funding**" means funding less than the maximum department share allowed under this chapter.

(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](#).

(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) "**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.

(40) "**Public water system**" means a Group A water system as defined in WAC [246-290-020](#).

(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.

(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.

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

(47) "**Retroactive costs**" means costs incurred before the agreement signature date.

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

(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.

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

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-100, filed 8/29/14, effective 9/29/14.]

173-322A-200

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 multiennial 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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-200, filed 8/29/14, effective 9/29/14.]

173-322A-210

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.

173-322A-220

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) **Funding discretion.** 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) **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.

(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.

(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.

(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.

(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, potentially liable persons bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a 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](#).

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-220, filed 8/29/14, effective 9/29/14.]

173-322A-300

Site assessment grants.

(1) **Purpose.** 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) **Project eligibility.** To be eligible for a site assessment grant, a project must meet all of the following requirements:

- (a) The applicant must be a local health district or department;
- (b) The department has agreed the applicant may conduct initial investigations or site hazard assessments on its behalf; and
- (c) The scope of work for initial investigations and site hazard assessments must conform to WAC

[173-340-310](#) and [173-340-320](#) and applicable department guidelines.

(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:

- (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.** 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;
- (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 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.**

(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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-300, filed 8/29/14, effective 9/29/14.]

173-322A-310

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 the cleanup of the hazardous waste site;
- (g) The ability of the grant to leverage other public or private funding for the 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. 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;
- (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 than one project.

(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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-310, filed 8/29/14, effective 9/29/14.]

173-322A-320

Oversight remedial action grants.

(1) **Purpose.** The purpose of oversight remedial action grants is to provide funding to local governments that 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) **Project 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. To be eligible for a grant, a project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site;

(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

(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) **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 the cleanup of the hazardous waste site;
- (g) The ability of the grant to leverage other public or private funding for the 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.

(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 oversight remedial action grant include, but are not limited to, reasonable costs for the following:

- (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 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 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) Retroactive costs, except as provided under subsection (6) of this section;
- (v) 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;
- (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, 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
- (ix) In-kind contributions.

(6) **Retroactive cost eligibility.** 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 start of negotiations for 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.

(7) **Funding 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.

(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.

(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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-320, filed 8/29/14, effective 9/29/14.]

173-322A-325

Oversight remedial action loans.

(1) **Purpose.** The purpose of oversight remedial action loans is to supplement local government funding and funding from other sources to meet the recipient share requirements for oversight remedial action grants under WAC

[173-322A-320](#). The 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.** 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 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) **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 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 oversight remedial action loans shall be the same as the eligible costs for oversight remedial action grants under WAC [173-322A-320\(5\)](#).

(7) **Retroactive cost eligibility.** The eligibility of retroactive costs for oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants under WAC [173-322A-320\(6\)](#).

(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, 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, 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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-

173-322A-330

Independent remedial action grants.

(1) **Purpose.** The purpose of independent remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites independently under the voluntary cleanup program. 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 the cleanup of a hazardous waste site or property under the voluntary cleanup program.

(3) **Project 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 a grant, the project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site;

(c) For post-cleanup reimbursement grants, the applicant must have completed independent remedial actions at the hazardous waste site or property and received a no further action 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

(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.

(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 redevelopment 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 the cleanup of the hazardous waste site;
- (g) The ability of the grant to leverage other public or private funding for the 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:

- (i) Project eligibility under subsection (3) of this section; 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 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.

(6) **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 independent remedial action grant include, but are not limited to, reasonable costs for the following:

- (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 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 voluntary cleanup program or the grant agreement;
- (iii) Retroactive costs, except as provided under subsection (7) of this section;
- (iv) Cost of technical consultations provided by the department under the voluntary cleanup program, including reviews of reimbursement requests;
- (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, 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
- (viii) In-kind contributions.

(7) **Retroactive cost eligibility.** 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.

(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 the 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.

(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.

(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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-330, filed 8/29/14, effective 9/29/14.]

173-322A-340

Area-wide groundwater investigation grants.

(1) **Purpose.** 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) **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 a grant, a project must meet all of the following requirements:

- (a) The applicant must be a local government;
- (b) The project must involve the investigation of known or suspected area-wide groundwater contamination;
- (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).

(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 the cleanup of the hazardous waste sites;
- (g) The ability of the grant to leverage other public or private funding for the 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.

(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 area-wide groundwater investigation grant include, but are not limited to, the reasonable costs for the following:

- (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 investigation 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) 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, 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, the cost of defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
- (vii) 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.** 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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-340, filed 8/29/14, effective 9/29/14.]

173-322A-350

Safe drinking water action grants.

(1) **Purpose.** The purpose of safe drinking water action grants 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) **Project 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 grant, a project must meet all of the following requirements:

- (a) The applicant must be a local government;
- (b) The applicant must be a purveyor 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, including chapter [246-290](#) WAC (Group A public water supplies), chapter [246-292](#) WAC (Waterworks operator certification), chapter [246-293](#) WAC (Water System Coordination Act), and chapter [246-294](#) WAC (Drinking water operating permits);
- (d) The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;
- (e) The department of ecology has determined that the drinking water source:
 - (i) Exhibits levels of hazardous substances that exceed the maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC [246-290-310](#);
 - (ii) Exhibits levels of hazardous substances that exceed the cleanup levels established by the department of ecology under Part VII of chapter [173-340](#) WAC; or
 - (iii) Is threatened to exceed the levels of hazardous substances identified in (e)(i) or (ii) of this subsection;
- (f) If the safe drinking water action includes water line extensions, the extensions must be consistent with the coordinated water system plan prepared under chapter [70.116](#) RCW and any plans for new development prepared under chapter [36.70](#) or [36.70A](#) RCW 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) **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;
- (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.** 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 safe drinking water action grant include, but are not limited to, 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 interties 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;

(x) Drinking water well decommissioning under WAC [173-160-381](#); and

(xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards.

(b) **Ineligible costs.** Ineligible costs for a safe drinking water action 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) 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;

(vii) Operation and maintenance costs;

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

(ix) Legal costs including, but not limited to, the costs 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

(x) 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) **Funding of eligible costs.**

(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.

[Statutory Authority: Chapter [70.105D](#) RCW. WSR 14-18-060 (Order 13-09), § 173-322A-350, filed 8/29/14, effective 9/29/14.]