



Frequently Asked Questions about Remedial Action Grant Rule Revision

from Ecology's Solid Waste and Financial Assistance and Toxics Cleanup Programs

General questions and answers about the rule revision:

Q: What is the purpose the Remedial Action Grant rule?

A: In general, the rule establishes requirements for grants to local governments so they can encourage and expedite cleanup activity. This is in accordance with RCW 70.105D.070 (3)(a) and (7).

Q: Why is Ecology proposing to amend the rule?

A: Ecology is proposing to amend the rule:

- To establish rules governing grant programs recently authorized under the Model Toxics Control Act (Washington's cleanup law - Chapter 70.105D RCW);
- To clarify the rules governing existing grant programs;
- To establish more specific rules governing the loan program; and
- To make remedial actions conducted under federal Superfund (CERCLA) orders eligible for grants.

Q: Who may be affected by the rule amendment?

A: Persons who may be affected by the rule amendment include:

- Local governments (e.g., cities, counties, and ports) who are eligible to receive remedial-action grants or loans under the rule; and
- People who are potentially affected by hazardous-waste contamination, including developers and private landowners.

Q: Is Ecology proposing to increase the amount local government may charge to their remedial action grants for overhead?

A: No, Ecology is not proposing to increase the overhead rate for the remedial action grant program.

The Department of Ecology's policy on overhead, along with administrative requirements for all grants and loans, is found in the *Administrative Requirements for Ecology Grants and Loans, Publication No. 91-18* (as amended). These requirements are applicable to all Ecology grants and are distinguished from requirements specific to an agreement or to a grant program. A grant program may set an overhead rate from zero to twenty-five percent. Currently the overhead rate is set at twenty-five percent of salaries and benefits for the remedial action grant program.

Aside from agency policy, funds spent for overhead are not spent directly on assessment and cleanup. With increasing demand for the funds, rising cleanup costs and an increasing number grant programs distributing the Local Toxics Control Account, there aren't enough grant dollars to fund all of the current need. Increasing the overhead rate would further decrease the Fund's effectiveness in producing environmental results.

Remedial actions conducted under CERCLA orders:

Q: Under the current rule, are local governments eligible to receive grants for remedial actions conducted under federal Superfund (CERCLA) orders?

A: No, under the current rule, local governments are not eligible to receive grants for remedial actions conducted under federal cleanup orders, including both unilateral administrative orders (UAO) and administrative orders on consent (AOC).

Superfund orders are issued under the federal cleanup law: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (amended in 1986).

Q: How is Ecology proposing to amend the rule?

A: Ecology is proposing to amend the rule to make local governments eligible to receive grants for remedial actions conducted under federal cleanup (CERCLA) orders. The order will need to be signed or acknowledged in writing by Ecology as a sufficient basis for granting funding under MTCA.

Ecology is also proposing to make local governments eligible to receive grants for federally ordered remedial actions issued prior to the effective date of the rule amendments. The local government would still need to submit an application within a limited period of time after the date the rule amendments go into effect.

Q: Why is Ecology proposing to make local governments eligible to receive grants for federally ordered remedial actions?

A: Ecology is proposing this change because:

- CERCLA orders (i.e., administrative orders on consent and unilateral administrative orders) are equivalent to MTCA orders (i.e., agreed orders and enforcement orders) that currently receive grant funding;
- The U.S. Environmental Protection Agency has increasingly used CERCLA orders instead of consent decrees for the oversight of the early phases of remedial actions;
- Local governments have increasingly requested state funding for remedial actions conducted under these orders;
- CERCLA orders are eligible to receive funding under the statute (MTCA) but are not eligible under the rule (remedial action grant rule) due to an administrative oversight;
- Correcting that oversight would reduce administrative costs and increase administrative flexibility for federal, state, and local governments.

Q: Why is Ecology proposing to make local governments eligible to receive grants for remedial actions conducted under CERCLA orders issued prior to the effective date of the rule amendments?

A: Until recently, local governments had applied for and received grants for federally ordered remedial actions because it was understood that the local governments were eligible under MTCA. However, that eligibility was not carried forward in the rule. To reflect both its prior intent and practice, Ecology is proposing to make eligibility retroactive, even if the local government had not previously applied for such funding.

Q: Would retroactive funding of remedial actions completed under a CERCLA order prior to the date of a grant agreement be a high priority for grant funding under the new rule?

A: No. One of the primary purposes of the grant program is to facilitate and expedite the cleanup of hazardous-waste sites and to reduce the hazard posed by those sites to human health and the environment. Consequently, the funding of remedial actions already completed under a CERCLA order would not have a high priority under the rule. Such funding would be considered retroactive but is a low priority.

Q: Will the proposed rule amendment affect the availability of funding?

A: The proposed rule amendment would not affect the amount of available funds, but it could provide local governments more administrative cleanup options and therefore greater access to grant funding for some of their cleanups. As a result, the amount of funding that may be available for specific projects could be limited by the increased demand and competition for that funding.

The account was never intended to fully fund all cleanups, only to help local governments offset expenses by sharing cleanup costs with them. Currently, most large cleanups (where this situation would apply) are only partially funded by grants, so we do not anticipate this amendment to have a significant effect on the availability or distribution of funds.

Loan Program:

Q: What is the Remedial Action Loan Program?

A: Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, Ecology is authorized to offer loans to local governments. Ecology previously developed guidelines to implement the loan program and is now proposing to adopt those guidelines as part of the rule. The loans can be used by local governments to provide local matches for remedial action grants to investigate and cleanup contaminated sites, including area-wide groundwater contamination.

Q: Under the existing guidelines, what are the eligibility requirements for obtaining a loan?

A: Under the existing guidelines, the loan applicant must:

- be a local government;
- meet the eligibility criteria for site study and remediation grants or area-wide groundwater remediation grants;
- have been required to conduct a remedial action by Ecology or the federal government;
- meet the “ability to pay” eligibility criteria;
- undergo a thorough third-party financial review to establish financial need for the loan, ability to repay the loan in a timely manner, and inability to obtain funds from any other source; and
- show that the site presents an immediate danger to human health and the environment.

Q: Under the existing guidelines, what can the loan be used for?

A: Under the existing guidelines, loans can be used by local governments to provide the required local match, for up to 50 percent of eligible project costs. Terms for each loan are negotiated individually and are based upon the findings on an independent financial review. Any loan amount must come from the same allocation used to fund the remedial action grants and be subject to the same prioritization process.

Q: Why a “limited” loan program?

A: Ecology does realize that a larger loan program would allow funds appropriated by the legislature to remain committed to remediation activities, extend the funds to cover more cleanups, and provide funds for economic redevelopment projects. However, upon a thorough analysis of the feasibility of a larger program, Ecology realized that at least 50 percent of the program funds would need to be allocated to loans to justify developing a full loan program and would require additional resources to administer.

Throughout the state, agencies struggle with limited resources to administer programs. Ecology was able to develop the limited loan program and continue to administer it with minimal additional resource needs, thus providing local government with some additional financial relief when the ability to get funds from other sources is limited or non-existent.

The analysis indicated that it would take at least six years before the capital started returning to the program for re-use. The ability for Ecology to provide competitive terms for loans in the financial arena was also questioned. Local governments would reasonably prefer a grant to a loan.

Methamphetamine Lab Assessment and Cleanup Grant Program:

Q: What is the methamphetamine lab grant program?

A: Under the Model Toxics Control Act (MTCA), local governments are eligible to receive grants from the Local Toxics Control Account for assessing and cleaning up methamphetamine (meth) production sites. MTCA does not allow the use of funds for the initial containment of such sites.

Q: How does Ecology propose to implement the methamphetamine lab grant program?

A: After funding was authorized under MTCA for assessing and cleaning up meth labs, Ecology developed guidelines and has been implementing the grant program for more than four years. Ecology wants to adopt the guidelines as part of the rule. The guidelines provide eligibility criteria and designate funding limits and eligible costs.

Q: Under the existing guidelines, what is the funding limit for the meth grant program?

A: Methamphetamine lab assessment activities will be funded 100 percent. Meth lab cleanup-action activities on public sites will be funded at 50 percent of eligible project costs.

Q: Under existing guidelines, how are meth lab grant funds prioritized?

A: Grant funding is prioritized statewide, by the level of the existing problem within the counties. The level of the countywide problem is determined by the number of meth labs responded to, both currently and under the

last grant agreement. The data used is collected by the Department of Ecology's Spill Response Program. In addition, Ecology determines the amount of the overall Remedial Action Grant funding to be set aside for meth labs. (Meth labs are the lowest priority of the programs funded under Remedial Action Grants.)

Q: Is Ecology proposing to include meth lab prevention activities as eligible for reimbursement under the Meth Lab grant program?

A: No. Ecology understands that local governments are under increasing pressure to deal with this illegal drug issue. Local governments have expressed interest in expanding the definition of assessment and cleanup to include drug prevention and education activities. MTCA specifies that meth lab grants be used for assessment and cleanup activities. The intent of MTCA is the assessment and cleanup of hazardous-waste sites. Expanding the scope of the use of these funds is not appropriate under rule.

Derelict Vessel Grant Program:

Q: What is the Derelict Vessel Grant Program?

A: Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, local governments are eligible to receive grants from the Local Toxics Control Account for the removal and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment.

Q: What is the funding limit for Derelict Vessel Grants?

A: Derelict Vessel grants may be issued for a maximum of \$25,000 per vessel. The grants require a 50 percent match from the local government.

Q: How does Ecology propose to implement the Derelict Vessel Grant Program?

A: After funding was authorized under MTCA for the cleanup of abandoned or derelict vessels more than two years ago, Ecology developed guidelines and has been implementing the grant program. Ecology is now proposing to adopt those guidelines as part of the rule. The guidelines provide eligibility criteria and designate funding limits and eligible costs. The guidelines also provide definitions for program-specific terms, including the term "abandoned or derelict vessel."

Q: Under the existing guidelines, what are considered eligible activities under the Derelict Vessel Grant Program?

A: Eligible activities are primarily those associated with the costs of hazardous-substance removal and disposal if the substances may cause a threat or potential threat to human health or the environment.

Independent Remedial Action Grant Program:

Q: Is Ecology proposing any change from the existing Independent Remedial Action Grant Program?

A: Yes, Ecology is proposing to raise the existing grant-funding cap for independent cleanups reviewed under a technical consultation from \$100,000 to \$200,000. This would allow local governments to recover up to \$200,000 of their cleanup costs.

Q: Why is Ecology proposing to increase the funding cap for Independent Remedial Action Grants?

A: Ecology is proposing to increase the funding cap because:

- Many local government cleanups are being conducted independently rather than under Ecology oversight (i.e., under an order or consent decree) to avoid additional administrative burdens and costs for both entities.
- The cost of conducting independent cleanups has increased over the past 10 years and can often cost several hundred thousand dollars to complete.
- An increase in grant funding will provide the means to expeditiously get less complex or smaller sites cleaned up and back into productive use and still allow local governments to recoup more of their costs.
- This will save tax- and rate-payer dollars.

Definitions:

Q: Under what circumstances is “source control” considered a remedial action and therefore eligible for funding.?

A: Under the current rule, the costs of “source control” are listed as not eligible for funding under the grant program. However, the term "source control" is not defined in the rule, and this has resulted in uncertainty about what costs are eligible under the rule.

The exclusion of source control costs was not intended to exclude eligible remedial action costs, but rather to highlight what is not a remedial action, and therefore not eligible for funding. The relevant question, therefore, is not whether an action represents “source control,” but whether the action is a “remedial action,” as defined under MTCA.

Actions required under a statute other than MTCA, such as source-control actions taken under a National Pollution Discharge Elimination System (NPDES) permit, are not “remedial actions” unless those actions are also specifically required under MTCA.

Q: Is Ecology proposing to define the term “source control” in the rule?

A: No. Rather than defining the term “source control,” Ecology is proposing to eliminate the use of the term in the rule. The determination that must be made is not whether the action represents “source control” but whether the action is a “remedial action,” as defined under MTCA. Such determinations must be made on a site-specific basis. Ecology is proposing to develop guidance to assist managers in making those determinations.

Q: What is “Innovative Technology”?

A: Innovative technologies are newly introduced, yet technically feasible, remedial treatments. They may not be established because they aren’t widely used under different site-specific conditions and, therefore, cost and performance data are limited.

Q: Does Ecology give greater preference to sites where the local governments use innovative technology?

A: Yes. Under the current rule, local governments can qualify for an additional 15 percent of eligible costs when they utilize treatment, recycling, and/or disposal as part or all of the cleanup activities under a site study and remediation grant. Innovative treatment technologies are given preference when deciding awards.

To provide greater clarity for local governments in obtaining the additional funding (clarifying the program intent), Ecology recently revised the guidelines to give clearer definition of the term “innovative technology.” Ecology now proposes to adopt this definition in the rule.

Information on Remedial Action Grant rule amendments can be accessed through Ecology’s Web site. The address is <http://www.ecy.wa.gov/programs/swfa/grants/ragrulerev.html>.

You can submit comments about any of our rule-related documents online at <http://www.ecy.wa.gov/programs/swfa/grants/ragcommentform.html>. If you would like to be placed on our mailing list for updates on the rule amendment go to <http://www.ecy.wa.gov/programs/swfa/grants/ragmailinglist.html>.

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