

Opinions on Independent Remedial Actions

What's new?

The Department of Ecology has made several revisions to the Voluntary Cleanup Program (VCP). Key changes include:

- Property-specific opinions. Ecology will now provide written opinions on proposed or completed cleanup actions at specific properties within a larger site.
- Revisions to boilerplate opinion letters for Site cleanup. Ecology will continue to provide written opinions on remedial actions or proposed remedial actions for entire Sites.
- Revisions to the application form and administrative letters. Ecology has updated the application, agreement, and various administrative letters based on implementation experience since 2006.

Ecology recognizes that some applicants are currently preparing applications using the 2006 form. Ecology will accept applications using the 2006 form until August 15. After August 15, the new application form must be used.

Legislative authority

Under the Model Toxics Control Act (MTCA), Ecology may provide to a client an advisory opinion concerning: (1) Whether the planned or completed independent remedial actions at a Site meet the substantive requirements of MTCA, and (2) whether further remedial action is necessary at the Site to meet those requirements.

The Washington Legislature amended MTCA in 2007 to clarify Ecology's authority to provide written opinions on remedial actions performed on individual Properties within a larger cleanup Site. When providing Property-specific opinions, Ecology must also provide an opinion on the status of the entire Site.

FOR MORE INFORMATION

For more information about Ecology's Voluntary Cleanup Program (VCP) or Opinions on Independent Remedial Actions, visit the VCP web site.

Go to:

www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm

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Special accommodations:

If you need this publication in an alternate format, call the Toxics Cleanup Program at 360-407-7170. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

What are Independent Remedial Actions?

“Remedial Actions” are actions that are conducted under MTCA, Chapter 70.105D RCW. These actions identify, eliminate, or minimize any threat (or potential threat) posed by hazardous substance(s) to human health or the environment at a Site.

“Independent Remedial Actions” are remedial actions that are conducted without Ecology’s direct oversight or approval. These actions are not required by or defined by an order, agreed order, or consent decree.

How will Ecology help me conduct an Independent Remedial Action?

Ecology provides informal advice and assistance (technical consultations) upon request to persons who conduct independent remedial actions through the VCP.

What types of services are available from Ecology under the VCP?

Under the VCP, Ecology provides informal advice and assistance on the administrative and technical requirements of MTCA. For example, Ecology will assist VCP Customers in identifying applicable regulatory requirements and applying those requirements at a Site or Property.

Ecology will also review remedial actions that clients have proposed or conducted at a Site or Property and provide an opinion as to whether those remedial actions would meet the applicable regulatory requirements of MTCA. When requested, Ecology will provide those opinions in writing.

Ecology **will not provide** advice or assistance to determine answers to any of these questions:

- Ownership,
- Liability,
- Financial responsibility,
- Allocation of financial responsibility among liable persons, or
- Substantial equivalence (i.e., whether independent remedial actions are the substantial equivalent of Ecology-conducted or Ecology-supervised actions. This determination is made by the court.).

Please note that all technical consultations provided under the VCP, whether verbal or written, are advisory only. As discussed below, written opinions do not resolve a person’s liability under MTCA.

Will Ecology provide opinions on proposed Remedial Actions?

YES. Under the VCP, Ecology will provide opinions on proposed remedial actions, including:

- Remedial investigation work plans.
- Cleanup action plans either for Property cleanups or for Site cleanups.

What types of opinions will Ecology provide on cleanups?

The type of opinion letter Ecology provides will depend on whether the cleanup action addresses the whole Site or only parcel(s) of real property within the Site. See the diagram on page 4. By request, Ecology will provide written opinions on:

- **Site Cleanup:** If your cleanup actions address the whole Site defined by contamination, then Ecology will provide an opinion letter with one of the following determinations:
 - No Further Action (NFA) needed on the Site.
 - Partial Sufficiency (PS).
 - Further Action (FA) needed on the Site.
- **Property Cleanup:** If your cleanup actions address only one of several parcels of real property located within the Site, then Ecology will provide an opinion letter with one of the following determinations:
 - No further action (NFA) needed on the Property.
 - Further action (FA) needed on the Property.

Does Ecology use boilerplate letters to provide opinions on cleanups?

YES. Ecology uses boilerplate letters to provide opinions on cleanups, both proposed and completed.

How many different opinion letters has Ecology developed?

Ecology developed nine different boilerplate opinion letters. View the boilerplate opinion letters on Ecology's website: <http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm>.

Will Ecology use other types of letters to provide opinions on cleanups?

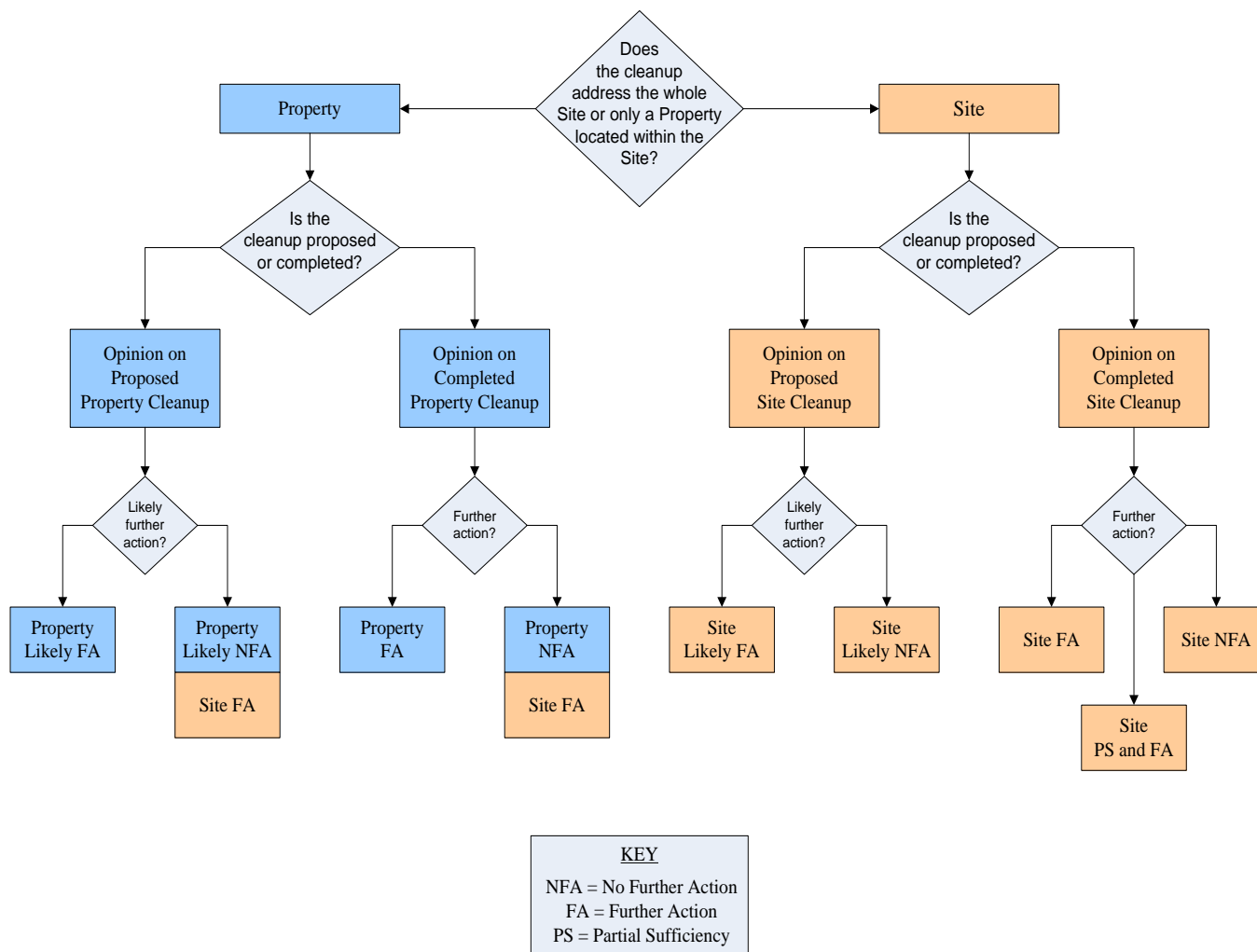
NO. For an opinion on a cleanup, Ecology will always use one of those boilerplate letters. Ecology will not issue other types of Opinion letters nor modify the boilerplate letters.

How will Ecology decide which boilerplate letter to issue to provide an opinion on my cleanup?

The boilerplate letter that Ecology will use to provide an opinion on your cleanup depends on the answer to the following three questions:

- Does your cleanup action address the whole Site or only a Property within the Site?
- Is your cleanup activity completed or is your cleanup in the proposal or planning stage?
- Is further remedial action necessary at the Site?

This flowchart illustrates the logic process Ecology uses to select the appropriate boilerplate letter that we will use to provide an informal opinion on your cleanup.



KEY
 NFA = No Further Action
 FA = Further Action
 PS = Partial Sufficiency

Does a VCP Opinion letter resolve my liability to the state under MTCA?

NO. The written opinion – even an NFA letter– does not resolve a person’s liability to the state under MTCA. Ecology does not have the authority to settle with any person potentially liable under MTCA, except in accordance with RCW 70.105D.040(4).

Does my receipt of a “No Further Action” opinion letter protect me from contribution claims by third parties for matters addressed by the opinion?

NO. The written opinion – even an NFA letter– does not protect a liable person from contribution claims by third parties. To obtain protection from contribution claims, a person must enter into a consent decree with Ecology.