

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

CONCISE EXPLANATORY STATEMENT
for the
Amendments
to
Chapter 173-322 WAC
Remedial Action Grants and Loans

Washington State Department of Ecology
Solid Waste and Financial Assistance Program

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List of Acronyms and Abbreviations

CES	Concise Explanatory Statement
Ecology	Department of Ecology
MTCA	Model Toxics Control Act
RAGL	Remedial Action Grants and Loans
RCW	Revised Code of Washington
WAC	Washington Administrative Code

Chapter 1 Introduction

1.1 Purpose

The Washington Administrative Procedure Act requires that an agency proposing a rule, or proposing changes to a rule, keep the public informed. According to RCW 34.05.325(6)(a), the agency must prepare a concise explanatory statement (CES) of the rule:

- (i) Identifying the agency's reasons for adopting the rule;
- (ii) Describing the differences between the text of the proposed rule ... and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

The agency must prepare the CES prior to final rule adoption. The agency must provide the statement to any person upon request or from whom the agency received comment (RCW 34.05.325[6][a],[b]). This document is the CES for the amendments to chapter 173-322 WAC, Remedial Action Grants and Loans. This CES relies on documentation found in the rule-making file. (Regarding information in the file, please contact Michelle Payne at 360-407-6129.)

1.2 Background

In November 1988, the voters of the State of Washington passed Initiative 97. This was the Model Toxics Control Act (MTCA), chapter 70.105D RCW, and it became effective March 1, 1989. The law establishes the basic authorities and requirements for cleaning up contaminated sites in a manner that will protect human health and the environment.

As a general declaration of policy, MTCA states 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. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations (RCW 70.105D.010[1]).

The statute further states that:

A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and the environment (RCW 70.105D.010[2]).

The law recognizes that “[t]he costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers.” It also declares its purpose to be “to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state’s land and waters” (RCW 70.105D.010[2]).

To help accomplish those goals, MICA created the state toxics control account and the local toxics control account in the state treasury. MICA divides revenue collected from the hazardous substance tax between these two accounts (RCW 70.105D.070). MICA specifically directs that Ecology use the moneys deposited in the local toxics control account to provide grants or loans to local governments. These grants will be for the following purposes in descending order of priority:

- (i) Remedial actions;
- (ii) Hazardous waste plans and programs under chapter 70.105 RCW;
- (iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- (iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and
- (v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment (RCW 70.105D.070[3][a]).

MICA also directs Ecology to “adopt rules for grant and loan issuance and performance” (RCW 70.105D.070[7]). The rule carries out the program of remedial action grants and loans for local governments established by MICA. “Local government” generally means a city, town, or county as referenced in RCW 70.95.030 and 70.105.010.

To achieve the intended outcomes of MICA, Ecology adopted chapter 173-322 WAC, Remedial Action Grants and Loans, in 1990. Ecology amended the rule in 1993, 2001, and 2005. The program’s intent is to encourage and speed up the cleanup of hazardous waste sites. The program also intends to lessen the impact of the cleanup on local taxpayers. Local governments use the grants and loans to supplement funding from other sources.

1.3 Purpose and Overview of the Rule Amendments

Ecology is amending chapter 173-322 WAC, Remedial Action Grants and Loans, for the following reason:

To carry out a new Extraordinary Financial Hardship loan program: The proposed amendments will create a new Extraordinary Financial Hardship loan program. Ecology needed to revise the rule so it provides for an Extraordinary Financial Hardship loan program. These loans will have deferred terms and conditions that may not be indefinite. Local governments cannot receive Extraordinary Financial Hardship loans unless the Department of Ecology’s director approves their applications.

The anticipated revisions will affect small governmental entities with limited finances and will allow more loan options.

The hardship loans differ from the regular loans in two requirements. The first is the applicant's complete inability to repay the loan under present circumstances (from any source of funding, whether insurance, bonds, taxes, etc.). The other is that deferred terms and conditions need the Director's approval. Other changes envisioned are minor and involve definition and reference clarifications.

Ecology has revised the following sections:

WAC 173-322-020 Definitions

WAC 173-322-130 Loans

1.4 Public Involvement Process

Ecology conducted public involvement and outreach efforts throughout the rule-making process. Those efforts included developing and updating a Web page that provided the public with information on rule-making activities and the opportunity to comment on the rule-making process. Ecology also met individually with representatives of local governments and prepared briefing materials for local government organizations. Throughout the rule-making process, the agency developed and updated informational materials.

On November 21, 2006, Ecology filed with the Office of the Code Reviser proposed amendments to chapter 173-322 WAC, Remedial Action Grants and Loans (CR 102 Form). The Washington State Register published these proposed rule amendments on December 6, 2006, in Issue #06-23-122. Ecology also mailed a focus sheet containing public involvement information to over 1,380 interested persons and organizations, including counties, cities, ports, and other local governments. The proposed rule amendments were subject to a 64-day formal comment period, which ended on January 25, 2007. Three (3) parties responded with written comments during this period.

One public hearing took place on the proposal. The Washington State Register published legal notices of this hearing on December 6, 2006 (WSR 06-23-122). Ecology also mailed a printed notice of hearing dates to over 1,380 interested persons and organizations, including counties, cities, ports, and other local governments. The agency based its mailings on lists of interested persons maintained by the Solid Waste and Financial Assistance Program. Ecology also published a notice of the hearing date on its Web page at http://www.ecy.wa.gov/programs/swfa/grants/rag_ammend.html and on its Public Events Calendar.

Ecology held the following public hearing on the proposal:

January 17, 2007
1:00 p.m.
Washington State Department of Ecology
Headquarters Office
300 Desmond Drive
Lacey, WA

No members of the public attended the hearing. No one provided oral or written comments during the hearing.

1.5 Changes to the Proposed Rule Amendments

In response to comments on the proposed amendments to chapter 173-322 WAC, Remedial Action Grants and Loans, Ecology made *no* changes to the proposed rule. There is no difference between the text of the proposed rule and the text of the rule as adopted.

Appendix B is the proposed rule text as filed with the CR 102 Form, Proposed Rule Making, and as adopted.

1.6 Organization and Format of the Document

We based our arrangement of the CES on the amended section of the rule. The CES provides a brief overview of the changes to that section and then responds to any comments received on that section.

The CES responds to comments received on the proposed rule amendments. Ecology received comments in writing. Three (3) parties submitted comments on the proposal. (See Appendix A for text of those comments.) Ecology reviewed the comments received and identified one (1) central concern that these three comments shared. Please note that the comments incorporate by reference any attachments.

The CES responds to the identified comments in a question and answer format. We grouped the three (3) comments into a generalized question. Ecology's response to those comments follows the generalized question.

Appendix A – Comments on the Proposed Rule Amendments presents the list of persons who commented on the proposed rule amendments and the text of those comments.

Appendix B – Proposed Rule Amendments presents the text of the proposed rule. Ecology made no changes to the proposed rule and adopted it as the final rule.

Chapter 2 Definitions

2.1 Overview of Amendments

To address “general housekeeping” issues, Ecology revised WAC 173-322-020, Definitions. The revision clarifies the definition of “Director” to mean the director of the Department of Ecology.

2.2 Response to Comments

Ecology received several comments about eligibility requirements for remedial action grants and loans. These people based their comments on the definition section. We have addressed those comments below in a question and answer format.

For a complete transcript of relevant comments, please refer to Appendix A.

- (1) **Can Ecology amend the rule so that tribal governments are included as eligible for remedial action grants and loans? *In the current rule language tribal governments are not included. Since many tribes are buying property and some of the property requires clean up before use, tribes are a logical extension of the application.***

Swinomish Tribal Community
Swinomish Planning Office
Lower Elwha Tribe

Citations: WAC 173-322-010, WAC 173-322-020,
RCW 70.95.030, RCW 70.105.010.

Response: No

The proposed rule establishes requirements for a program of grants and loans to “local governments” for remedial action pursuant to RCW 70.105D.070 (3) (a) and (7). The relevant statutes and regulation define “local government” to mean a city, town, or county. (See RCW 70.95.030 and 70.105.010, and WAC 173-322-020.) Our legal review shows that this definition of local governments does not include tribes for purposes of remedial action grants and loans.

In addition, tribes are generally considered sovereign nations. Case law, commentaries, and other information generally tend to suggest that there is separation and that local governments and tribes are not the same kind of entities. Therefore, changes in eligibility requirements for remedial action grants and loans would require a change to this rule’s authorizing statute.

Chapter 3 Loans

3.1 Overview of Amendments

To carry out a new loan program, Ecology made several changes to the rule to include two different types of loans: a standard loan and an extraordinary financial hardship loan. The two types of loans have different applicant eligibility requirements and different terms and conditions for repayment based on the applicant's ability to repay the loan.

A standard loan is a loan that includes the terms and conditions for repayment. Applicants for the standard loan must demonstrate financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source.

An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Only the Director can approve any such loan. An applicant for the extraordinary financial hardship loan program must demonstrate all of the following hardships:

- Financial need for the loan.
- Inability to repay the loan under present circumstances.
- Inability to obtain funds from any other source.
- Inability to bond or raise its tax base.

For extraordinary financial hardship loans, Ecology can defer the repayment terms and conditions. Deferred terms are dependent on periodic review of the applicant's ability to pay.

3.2 Response to Comments

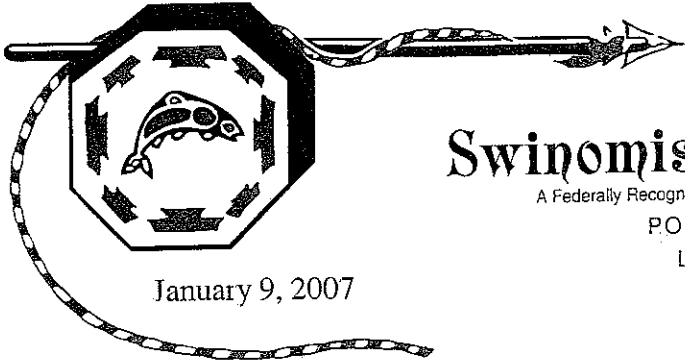
Ecology received no comments about the amendments to WAC 173-322-130

Appendix A

Public Comments on the Proposed Rule Amendments

**List of Commentors
and
Table of Contents**

#	Name	Affiliation	Address	Document Type	Pages
1	Brian Cladoosby, Chairman	Swinomish Tribal Community	PO Box 817 La Conner, WA 98257	Letter	1
2	Jamie Donatuto	Swinomish Planning Office	PO Box 817 La Conner, WA 98257	Electronic (online) comment form	1
3	Larry Dunn, Cleanup Coordinator	Lower Elwha Tribe	2851 Lower Elwha Road Port Angeles, WA 98363	Electronic (online) comment form	1



Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

P.O. Box 817 • 11404 Moorage Way
LaConner, Washington 98257

January 9, 2007

To: Diane Singer, Remedial Action Grants/ Loan Grants Manager
Washington State Department of Ecology

From: Brian Cladoosby, Chairman
Swinomish Tribal Community

Re: Rule Amendment for Chapter 173-322, WAC

Dear Ms. Singer:

I am writing to comment on the proposed rule amendment for WAC Chapter 173-322 on remedial action grants and loans. As the rule is currently written, tribal governments are not eligible for remedial action grants and loans. I urge you to amend the rule so that tribal governments are included.

As I am sure you are well aware, there is a pressing need for remedial action on many tribal lands and these grants and loans would help shoulder the heavy burden of expensive cleanup, often for contamination created without the knowledge or consent of tribes. Moreover, many tribes are buying property and some of the property requires remediation before use, so I see tribal eligibility for funding as a logical extension of the application.

Thank you for your time

Sincerely,

A handwritten signature in cursive script that reads "Brian Cladoosby".

Brian Cladoosby, Chairman
Swinomish Tribal Community
PO Box 817
La Conner, WA 98257

Received
JAN 12 2007
Dept. of Ecology
SWFAP

Received
JAN 12 2007
Dept. of Ecology
SWFAP

Comment # 2

Name: Jamie Donatuto
Affiliation: Swinomish Planning Office
Email: jdonatuto@swinomish.nsn.us
Address: PO Box 817
La Conner, WA 98257
Date/Time of Comment: 12/29/2006 2:02:58 PM
Document type: Electronic (online) comment form

Comment:

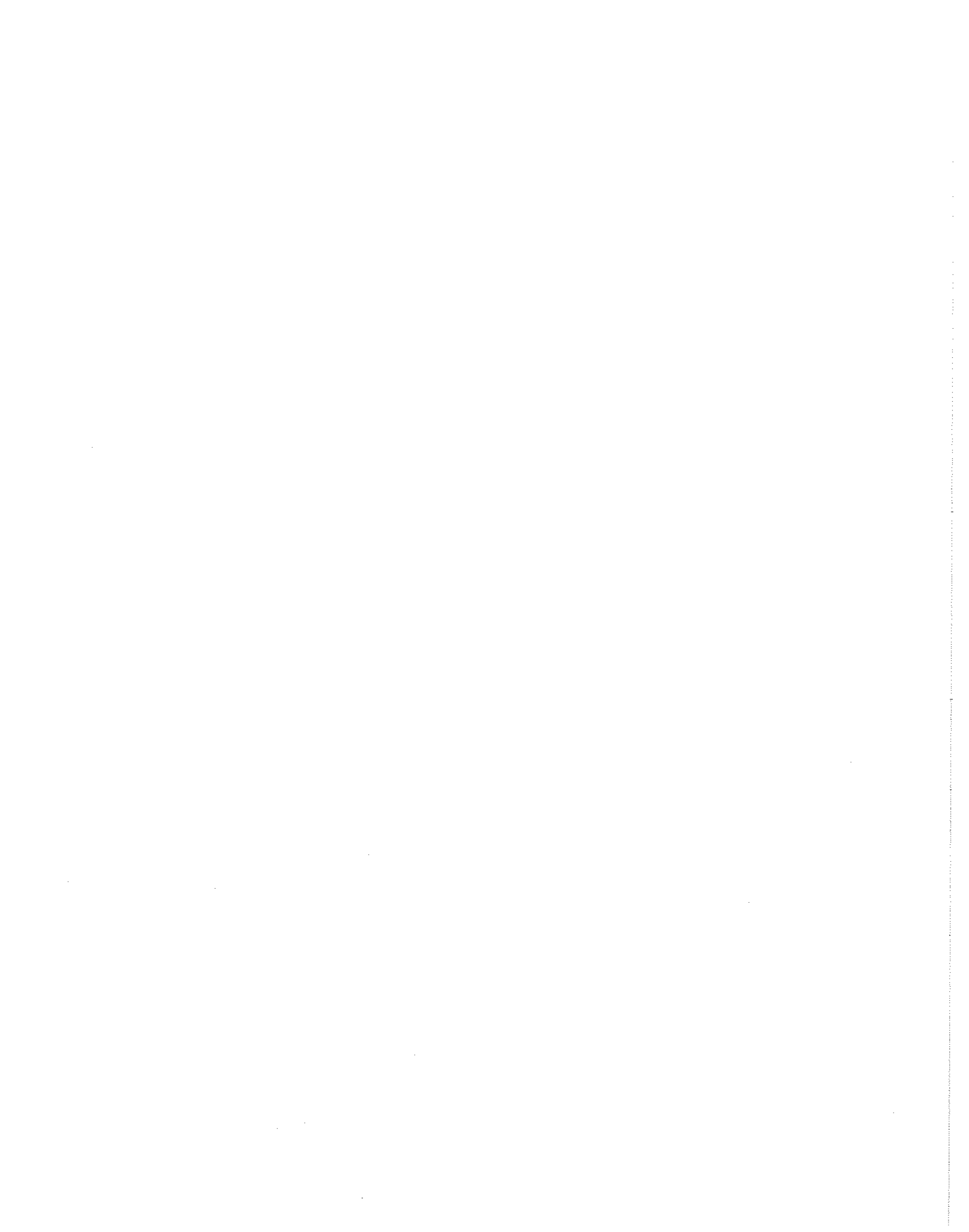
I am writing to ask that tribal governments be included as eligible. In the current grant language tribal governments are not included. Since many tribes are buying property and some of the property requires clean up before use I see tribes as a logical extension of the application. Please include tribes in the amendment. Thank you.

Comment # 3

Name: Larry Dunn
Affiliation: Lower Elwha Tribe
Email: larry.dunn@elwha.nsn.us
Address: 2851 Lower Elwha Road
Port Angeles, WA 98363
Date/Time of Comment: 12/22/2006 10:29:34 AM
Document type: Electronic (online) comment form

Comment:

As Washington State has numerous tribes within it's boundries and many are currently purchasing lands including those which toxic waste history could you include them in your definition of governments to which the remedial action grants and loans may be made. This would be a more equitable situation because any clean up actions by tribes do effect the local community and state in a positive way. Tribes are very concerned about polution and water and as stuards of such would be good grantees most though do not have the financial ability to take on larger clean ups with out assistance.



Appendix B

Proposed Rule Amendments

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

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

"Area-wide ground water contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-350 through 173-340-390.

"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.

"Decree" or "consent decree" means a consent decree issued under WAC 173-340-520 or the federal cleanup law.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Economically disadvantaged county" means a county that meets the following criteria:

✎ The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

✎ The county is economically distressed, as defined by chapter ((43.165)) 43.168 RCW.

The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "Remedial Action Program Guidelines," Publication No. 99-505.

"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.

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

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

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

"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.

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

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

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

"Interim action" means a remedial action conducted under WAC 173-340-430.

"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.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Methamphetamine lab site assessment" means the actions taken by a local health department or district under WAC 246-205-520 through 246-205-560, including posting the property, inspecting the property, determining whether the property is contaminated, posting contaminated property, and notifying

occupants, property owners, and other persons with an interest in the contaminated property.

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

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

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

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

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

"Oversight remedial actions" means remedial actions conducted under an order or decree.

"Partial funding" means funding less than the maximum percentage of eligible costs allowed under this chapter.

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

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

"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)).

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

"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.

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

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

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

"Remedial investigation/feasibility study" or "RI/FS" means a remedial action that consists of activities conducted under WAC 173-340-350 intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390.

"Retroactive costs" means costs incurred before the date of the grant agreement.

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

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

"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.

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

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

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-130 Loans. (1) **Purpose.** This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans to supplement local government funding and funding from other sources to meet the match requirements for oversight remedial action grants. The intent of the loan program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Types of loans.** The loan program includes two different types of loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different applicant 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.

(3) **Applicant eligibility.** To be eligible for a loan, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);

(c) The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from ((any)) other sources. The financial review shall be conducted at the direction and cost of the department(~~;~~ and). Based on that financial review, the applicant must demonstrate the following:

(i) For a standard loan, its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source;

(ii) For an extraordinary financial hardship loan, its financial need for the loan, inability to repay the loan under

present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;

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

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

~~((3))~~ (4) **Application process.**

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

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

(i) Sufficient evidence to demonstrate the following:

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

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

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

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

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

~~((4))~~ (5) **Application evaluation and prioritization.**

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

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

(c) The department will fund the loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds allocated for oversight remedial action grants and loans exceeds the amount of funds

available, the department will prioritize the associated grant and loan applications together using the criteria set forth in WAC 173-322-070(5).

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

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

~~((7))~~ (8) Funding and repayment.

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

(b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant.

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

(d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department. For extraordinary financial hardship loans, the repayment terms and conditions can be deferred. Deferred terms are dependent on periodic review of the applicant's ability to pay. Deferred terms and conditions may not be indefinite.

