



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Rule Implementation Plan**

**Chapters 173-322 and 173-322A WAC**

**Remedial Action Grants and Loans**

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For more information contact:

Toxics Cleanup Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Phone: 360-407-7170

Washington State Department of Ecology - [www.ecy.wa.gov](http://www.ecy.wa.gov)

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

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# Purpose

The Department of Ecology (Ecology) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

# Introduction

Ecology provides remedial action grants and loans to communities throughout the state to facilitate the cleanup and reuse of contaminated publicly owned lands and to lessen the impact of those cleanups on local taxpayers. Funds for the grants and loans come from a tax on hazardous substances. The issuance of grants and loans was governed by Chapter 173-322 WAC.

On August 29, 2014, Ecology repealed Chapter 173-322 WAC and adopted new Chapter 173-322A WAC, Remedial Action Grants and Loans (AO #13-09). The new chapter modifies and replaces the repealed chapter. The purpose of this rule making is to:

1. Implement changes to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, passed by the Washington State Legislature in 2013 affecting the remedial action grant and loan program. The legislation establishes new funding priorities for the program and directs Ecology to make several changes to the program, including:
  - Enter into extended grant agreements with local governments for projects exceeding \$20 million and occurring over multiple budget cycles. Such projects would receive priority for grant funds.
  - Provide integrated planning grants to local governments for studies that facilitate the cleanup and reuse of contaminated sites.
  - Eliminate methamphetamine lab site assessment and cleanup grants and derelict vessel remedial action grants as separate types of grants.
  - Provide area-wide groundwater remedial action grants without requiring local governments to be a potentially liable person or seek reimbursement of grant funds from such persons.
  - Enter into grant agreements with local governments before they acquire or secure access to a property, provided they include a schedule.
  - Provide periodic reimbursement of the costs of independent remedial actions.
  - Implement cash management principles to ensure budgeted funds are put to work.
2. Make other appropriate changes to the requirements governing remedial action grants and loans (such as updating funding limits and recipient match requirements).
3. Streamline existing requirements, improve rule clarity, and improve consistency with other requirements in this chapter or with other state and federal laws and rules (such as coordinating with agency-wide efforts to streamline and standardize grant processes).

The purpose of this rule implementation plan is to inform those who must comply with new Chapter 173-322A WAC about how the Ecology intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance with the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

## **Implementation and Enforcement**

The goal of this rule making is to implement changes to the existing remedial action grant and loan program. The new Chapter 173-322A WAC modifies and replaces the repealed Chapter 173-322 WAC. The changes will:

- Encourage and expedite the cleanup and reuse of contaminated sites by local governments.
- Provide more transparency for local governments about the funding process.
- Streamline existing requirements, improve rule clarity, and improve consistency with other requirements and with agency-wide efforts to streamline and standardize grant processes.

Chapter 173-322A WAC only governs the provision of grants and loans to local governments for remedial actions. Chapter 173-340 WAC, MTCA Cleanup Regulations, governs what remedial actions are required.

Implementation will be carried out primarily by Toxics Cleanup Program (TCP) staff in headquarters and the four regional offices. Financial management staff (primarily located in headquarters) will be working with this revised rule and the new Ecology Administration of Grants and Loans (EAGL) system to process applications and payments. For cleanup conducted by TCP under MTCA, site managers in headquarters and regional offices provide oversight of cleanup activities, documentation of work conducted, and review of payment requests for cost reimbursement.

### **Guidance**

Ecology is updating the program guidelines to reflect the adopted changes to the rule. We will provide staff and the public an opportunity to review and comment on the updated guidelines before they are finalized. The guidelines will address:

- Categories of grants.
- Application process, timing, and EAGL requirements.
- Grant roles and responsibilities.
- Site cleanup process overview.
- Eligibility requirements for various types of grants.
- Criteria for funding priority.
- Definition of grant-eligible costs.
- Treatment of retroactive costs.
- Local fund match requirements.
- Specific grant management requirements for payment and performance monitoring.
- Reporting requirements.

We will develop other written material as needed to guide implementation and will hold technical trainings to assist staff and site managers. Webinars and video conference options will be provided as appropriate.

## **Enforcement**

As a grant and loan program benefiting local governments, enforcement of these rules is generally provided through Ecology’s funding decisions. The rules and guidance provide for withholding of funds if grantees fail to meet the rule requirements.

Authority for enforcement of the MTCA Cleanup Regulation, which governs the technical aspect of remediation work, is provided by MTCA. Enforcement mechanisms for site remediation are unchanged by this rule making.

## **Informing and Educating Persons Affected by the Rule**

The rule changes affect local governments that:

- Perform initial investigations and hazard assessments of hazardous waste sites on behalf of Ecology.
- Investigate and clean up hazardous waste sites where the local government is potentially liable or responsible under state or federal law.
- Purchase and redevelop property contaminated by a hazardous waste site.

Throughout the rule-making project, Ecology has focused on outreach to the affected local governments and other interested persons, including other state and federal agencies, the business community, the environmental community, consultants and persons who engage in cleanup-related activities as part of their business, and the general public.

Key issues for information and outreach will be:

- Timing of the application and the Ecology budgeting cycle.
- Cost estimating and projections to promote good cash management.
- Priority-setting criteria and the prioritization process for funding.
- The application process with the new rule requirements and EAGL.

Ecology will use our rule work group and existing stakeholder lists to conduct additional outreach and education after the rule and guidance are finalized.

### **Rule Making Work Group**

In 2013, Ecology began a rule scoping process by conducting meetings with interested stakeholders to understand their highest priority rule issues. Ecology carefully considered this feedback to decide which issues to include for rule making. Ecology developed discussion topics that provided details on each issue and used these to guide discussion and decision making.

Two meetings were held with the work group prior to the public review and comment. Ecology also requested assistance from the work group members such as the port, city, and county associations, to disseminate information to their members.

Ecology will update the work group as the rule is implemented and the associated guidance is revised and finalized. The work group will be one of the primary means to reach interested parties with educational materials regarding the grant process.

### **Website and email lists**

A dedicated website was created and is updated regularly. Ecology periodically provides announcements via the RAG-Rule listserv and the MTCA-SMS-RULE-UPDATE listserv. This listserv has over 300 subscribers. Announcements are also distributed via the Ecology Site Register.

After the rule is adopted and before the effective date, Ecology will update the website and send announcements via email about planned seminars and webinars. Ecology will ask recipients to forward the message to help insure the announcements reach potentially affected persons.

### **Conferences**

TCP has presented materials regarding the statutory and regulatory changes at various industry conferences over the past 12 months. As we adopt the rules and finalize the guidance there will be additional opportunities to inform interested parties at brownfields conferences, environmental seminars, and industry conferences.



## **Focus Sheets**

Focus sheets have been provided to the public and are available for download. Focus sheets typically do not explore technical topics in detail but instead identify key principles and offer directions on where to get further information. Additional focus sheets, Frequently Asked Questions, and other handouts will be provided based on stakeholder and site managers needs. Possible topics include:

- What grant is the right one for this site?
- How do I fill out my application?
- What are “eligible costs” and “ineligible costs”?
- What conditions must be met to qualify for periodic reimbursement on an independent remedial action grant?

## **Seminars, Webinars and Conferences**

Focus groups, public hearings, presentations at conferences, and regular website updates have helped to familiarize the regulated community with the proposed changes. The following seminars and webinars are being planned:

- Regional office staff training on EAGL and changes to the Remedial Action Grant program.
- Training and education in conjunction with scheduled EAGL training seminars for local governments.

## **Outreach to Tribes**

Ecology has provided updates and notification to tribes and tribal organizations, and has offered Government-to-Government consultation. Because tribes are not local governments, this rule-making has been of limited interest to the tribal community.

## **Promoting and Assisting Voluntary Compliance**

The actions listed above that inform and educate stakeholders on the changes will also help promote voluntary compliance. Guidance materials and EAGL are being updated to reflect the new changes. Compliance with the rule requirements is not a significant problem. If governments do not comply with the rule and guidelines, they are not eligible to receive funding.

Ecology expects that TCP financial and site managers will be a primary contact for the regulated community as rule implementation takes effect. To ensure that site managers have knowledge regarding relevant changes, TCP will host educational seminars and webinars for staff.

# Evaluating the Rule

Ecology will rely on environmental objectives that are currently built into the program's performance measures reported to Office of Finance Management (OFM) aimed at satisfying several goals of the Governor's Results Washington Initiative.

The goals and mission of the Toxics Cleanup Program (TCP) are to get contaminants out of the environment, keep them out, and continue to work towards supporting sustainable communities and economic development. This work is authorized under MTCA, which was a citizen's initiative that passed in 1988. Since the program's inception, information and involvement with the public has been the foundation of how we do business and make decisions.

Performance measures are one way to show what we have done, what we're working on, and what we have left to do. The rule changes assist performance by getting cleanup dollars to local communities for remedial action. Cleaning up sites reduces risks to human health and the environment and creates opportunities for re-development. Our measures reported to OFM track environmental results by way of the number of sites that have been cleaned up. We also collect statistics that look at the "on schedule" metrics of state-funded sites (Remedial Action Grant sites) and estimated acreage of remedial actions.

## Results Washington Initiative

The rule changes will support efforts to achieve several goals of the Governor's Results Washington Initiative:

- Prosperous Economy (Goal 2). The rule changes will support restoration of brownfield sites, promoting urban development and job creation.
- Clean and restored environment (Goal 3). Specifically, the rule changes will support statewide efforts to:
  - Increase the number of contaminated sites cleaned up.
  - Increase the number of contaminated brownfield sites cleaned and restored to economically beneficial, productive use.
- Efficient, Effective, and Accountable Government (Goal 5). The rule changes will provide better service to our grantees as well as support Ecology LEAN efforts.

## Agency Strategic Priorities

Accelerating grant-funded cleanups will also support two Ecology strategic priorities ("Protect and Restore Puget Sound" and "Reduce Toxic Threats"). For example, there are several large sediment and source control projects (e.g., Lower Duwamish Waterway) that will benefit from the extended grant provisions and efforts to integrate storm water control and cleanup projects.

## **LEAN Goals**

The rule changes will support ongoing agency efforts to reduce cleanup timeframes for publicly funded projects. Consistent with other LEAN goals, the rule changes will provide products and services that are of value to our stakeholders. For example, periodic reimbursements will ease the financial burden placed on local governments and Integrated Planning Grants (which were made permanent by the legislation) will continue to provide funding for both redevelopment site studies and cleanup.

## **Training and Informing Agency Staff**

Ecology has included staff at all stages of the rule-making process. TCP site and regional managers are a valuable source of technical information, and a key interface with the regulated community.

Training materials and seminars will focus specifically on the needs and concerns of site managers. Opportunity to ask detailed questions will be provided. Ecology will begin scheduling seminars and video conferences in conjunction with EAGL training as soon as the rule is adopted. Initial training will be completed before the rule goes into effect. TCP anticipates training will continue after the effective date of the rule to keep the program up to date on new protocols. Training for Ecology staff will be conducted using the following methods:

- Guidance posted on SharePoint with a mechanism for input identified.
- Informational presentations and Q&A sessions.
- Rule-making staff available to answer questions.
- Presentations at each Regional Office (either at regularly scheduled staff meetings or at special seminars).

A few of the more important items for internal training and education are:

- Requirements for periodic reimbursements under Independent Remedial Action Grants.
- Definition of eligible and ineligible costs.
- Application requirements and schedules.
- Agency budgeting and cash management information needs and timeframes.

## **List of Supporting Documents that May Need to be Written or Revised**

Ecology may need to update EAGL to fully implement the rule changes. Ecology will revise or develop the following supporting documents to implement the rule changes:

- Remedial Action Grants and Loans for Local Governments – Program Guidelines. Ecology is updating the guidelines to reflect the adopted changes to the rule. We will provide staff and the public an opportunity to review and comment on the updated guidelines before they are finalized in December 2014.

- [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#), Ecology Publication Number 14-01-002. This document may need to be updated to fully implement the rule changes.
- Pre-application and Ten-year Forecast forms will need to be developed.

## More Information

- For more information about the adopted changes to the rules, visit: [www.ecy.wa.gov/programs/tcp/regs/wac173322/1309-adoption.html](http://www.ecy.wa.gov/programs/tcp/regs/wac173322/1309-adoption.html).
- For more information about the remedial action grant and loan program, visit: [www.ecy.wa.gov/programs/tcp/grants/explore-tcp.html](http://www.ecy.wa.gov/programs/tcp/grants/explore-tcp.html).
- To get updates about the program and notices of funding opportunities, sign up for e-mail notices at: [listserv.wa.gov/archives/ecy-remedial-action-grants.html](mailto:listserv.wa.gov/archives/ecy-remedial-action-grants.html).
- To view administrative requirements for grants and loans managed in EAGL system, go to: <https://fortress.wa.gov/ecy/publications/SummaryPages/1401002.html>.

## Contact Information

### Financial Managers

Lydia Lindwall  
 Department of Ecology, Toxics Cleanup Program  
 PO Box 47600, Olympia, WA 98504  
 360-407-6210  
[lydia.lindwall@ecy.wa.gov](mailto:lydia.lindwall@ecy.wa.gov)

Dan Koroma  
 Department of Ecology, Toxics Cleanup Program  
 PO Box 47600, Olympia, WA 98504  
 360-407-7187  
[dan.koroma@ecy.wa.gov](mailto:dan.koroma@ecy.wa.gov)

### Rule Writer

Michael Feldcamp  
 Department of Ecology, Toxics Cleanup Program  
 PO Box 47600, Olympia, WA 98504  
 360-407-7531  
[michael.feldcamp@ecy.wa.gov](mailto:michael.feldcamp@ecy.wa.gov)