2027–29 Cleanup Grant Updates for Public Comment

Environmental Justice Criteria
Oversight Remedial Action Grants
Cleanup Grants Supporting Affordable Housing

For the

Toxics Cleanup Program

Washington State Department of Ecology
Olympia, Washington

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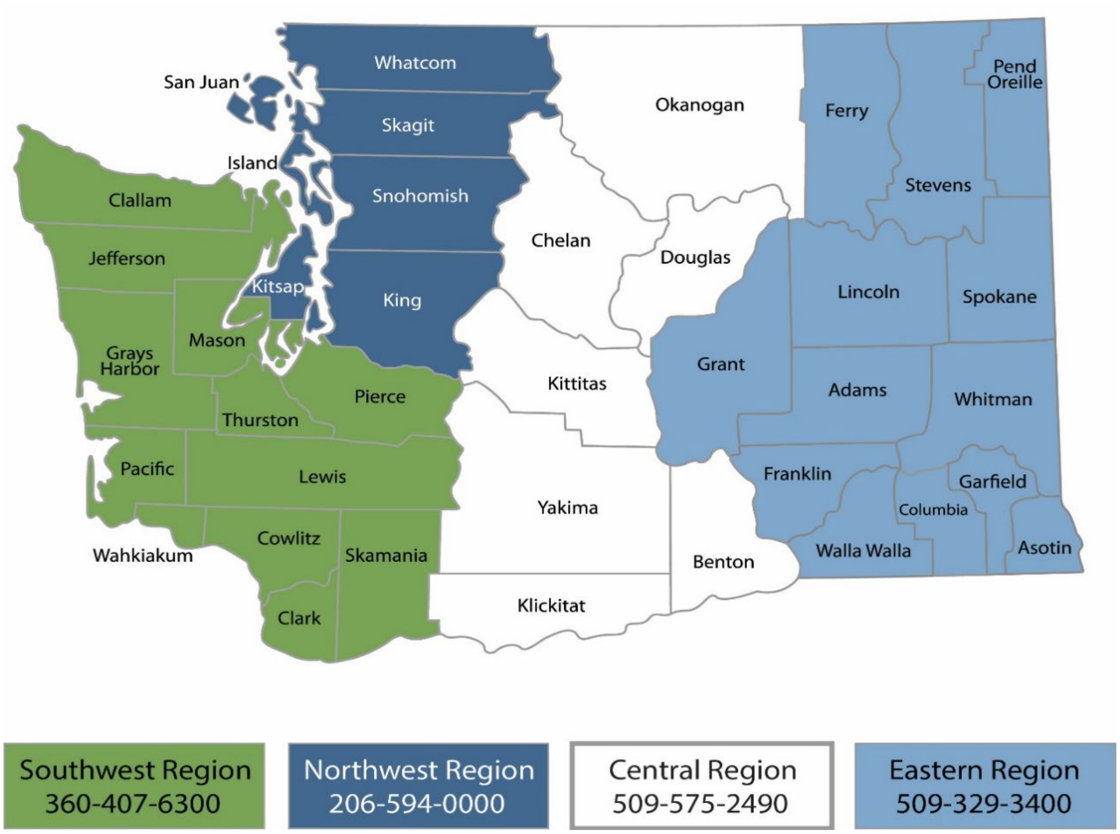

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DEPARTMENT OF
ECOLOGY
State of Washington

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Executive Summary

This document outlines proposed updates to the following for public comment:

- The Environmental Justice criteria used to identify overburdened communities and vulnerable populations for cleanups.
- The 2027-29 biennial solicitation for Oversight Remedial Action Grants (ORAG).
- The structure of Cleanup Grants for Affordable Housing (previously Affordable Housing Cleanup Grants).

Environmental Justice criteria updates

As of February 2025, EPA's EJScreen tool and several other key environmental justice resources, such as the Climate and Economic Justice Screening Tool (CJEST), are no longer available. Despite changes at the federal level and the loss of federal tools, Ecology remains committed to pursuing environmental justice in alignment with the state's HEAL Act and the MTCA Cleanup Regulations. Therefore, Ecology is proposing updates to the criteria and data sources used for determining whether the population threatened by a contaminated site includes a likely vulnerable populations or overburdened community. The proposed criteria rely solely on the Washington Environmental Health Disparities (EHD) Map[2], a publicly available state dataset maintained by the Department of Health.

ORAG Updates

MTCA is facing a significant shortfall[3]. There is little-to-no capacity for new investments from MTCA Capital Account beginning in 2027-29. While cleanup funding is decreasing, demand for ORAGs remains high. Due to limited funding, need to align with legislative expectations, and to support the maximum number of cleanups possible statewide Ecology is updating several policies and criteria regarding this grant type.

Updates to this grant type include:

- Refining substantial progress review, especially regarding requests for construction phase funding to ensure the timeliness of the request.
- Standardizing and limiting recipient staff time to 10% of the grant or $100,000, whichever is less to fund the maximum number of projects.
- Providing an Eastern Washington priority to ensure a statewide program to the extent possible.

[2] https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map
[3] https://apps.ecology.wa.gov/publications/summarypages/2501008.html

- Scored criteria updates for time sensitive construction windows, funding gaps, Site Hazard Assessment and Ranking Process[4] (SHARP), highly impacted community considerations, and general clarity.

Cleanup Grants Supporting Affordable Housing

The competitive Affordable Housing Cleanup Grant program started in the 2023-25 biennium. Since then, Ecology has conducted three solicitations and awarded a total of 14 grants. While many projects are making great progress, several others are no longer moving forward. Based on an external review and lessons learned, Ecology is proposing a restructure and renaming of the grant program. Instead of conducting the solicitation in advance of the budget build, Ecology intends to request a lump sum in the submission to the Governor to support Cleanup Grants Supporting Affordable Housing. This lump sum request would replace the normal project lists usually submitted with cleanup project requests and identified in the Ten-Year MTCA Financing Report.[5] Project funding would be awarded in two phases, one competitive and the second based on substantive progress.

[4] https://ecology.wa.gov/spills-cleanup/contamination-cleanup/cleanup-process/assessing-contaminated-sites
[5] https://ecology.wa.gov/about-us/who-we-are/our-programs/toxics-cleanup/tcp-legislative-reports

Environmental Justice Criteria Updates

Background

The Healthy Environment for All Act[6], commonly referred to as the HEAL Act, requires Ecology and other state agencies to identify and address environmental health disparities in overburdened communities and vulnerable populations (RCW 70A.02.005[7]). These communities have a higher risk of adverse health outcomes, and the law seeks to prevent and mitigate those outcomes. In particular, the law instructs Ecology and other covered state agencies to incorporate environmental justice into funding and budgeting processes.

In alignment with the HEAL Act, Ecology updated[8] the Model Toxics Control Act (MTCA) Cleanup Regulations, Chapter 173-340[9] WAC, to incorporate environmental justice into the prioritization and cleanup of contaminated sites. In January 2024, Ecology's Toxic Cleanup Program published Implementation Memo 25[10] to provide guidance on how to determine whether the population threatened by a contaminated site includes a likely vulnerable population or overburdened community. On June 26, 2024, the Governor's Office published a uniform approach[11] for identifying overburdened communities and vulnerable populations to direct and track investments under the HEAL Act.

Both Implementation Memo 25 and the Governor's uniformed approach relied heavily on federal tools and datasets. As of February 2025, EPA's EJScreen tool and several other key environmental justice resources, such as the Climate and Economic Justice Screening Tool (CJEST), are no longer available. Despite changes at the federal level and the loss of federal tools, Ecology remains committed to pursuing environmental justice in alignment with the state's HEAL Act and the MTCA Cleanup Regulations. Therefore, Ecology is proposing updates to the criteria and data sources used for determining whether the population threatened by a contaminated site includes a likely vulnerable populations or overburdened community. The proposed criteria rely solely on the Washington Environmental Health Disparities (EHD) Map[12], a publicly available state dataset maintained by the Department of Health.

Proposed criteria and information sources

Ecology is proposing to use the following criteria and data sources under the MTCA Cleanup Regulations to determine whether the potentially exposed population includes a likely vulnerable population or overburdened community.

Overburdened community

[6] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02
[7] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.005
[8] https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/closed-rulemaking/wac-173-340
[9] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340
[10] https://apps.ecology.wa.gov/publications/SummaryPages/2409044.html
[11] https://ofm.wa.gov/spending/environmental-justice-heal-act/identifying-overburdened-communities/
[12] https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map

The potentially exposed population includes a likely overburdened community if the population meets at least **one of the following two criteria**:

- The potentially exposed population is located in a census tract that ranks a 9 or 10 on the Environmental Health Disparities Index from the Washington State Department of Health's EHD Map; **or**
- The potentially exposed population is located in a census tract is fully or partially on what is referred to as "Indian Country." Indian Country is defined in 18 U.S.C Sec. 1151. This information can be viewed on the EHD Map using the "Tribal Boundaries" overlay.

Vulnerable population

The potentially exposed population includes a likely vulnerable population if the population meets at least **one of the following two criteria**:

- The potentially exposed population is located in a census tract that ranks a 9 or 10 on the "Socioeconomic factors" Index from the Washington State Department of Health's EHD Map; **or**
- The potentially exposed population is located in a census tract that ranks a 9 or 10 on the Population Living in Poverty Index **and** a 9 or 10 on the People of Color Index from the Washington State Department of Health's EHD Map.

How will Ecology use the proposed criteria?

Ecology will use the proposed criteria to guide:

- **How we prioritize contaminated sites and our resources.**

  At the program level, the focus is on reducing environmental health burdens of vulnerable populations and overburdened communities. This is where we can make the most difference. We can do that by reducing the number of cleanup sites impacting those communities.

  The amended rule requires that we prioritize sites impacting a likely vulnerable population or overburdened community and track our progress (WAC 173-340-340[13]). We will use the proposed criteria to identify such sites.

  We will consider whether a site threatens such populations or communities when prioritizing sites and resources, including for:

  - Site hazard assessments.
  - Ecology-conducted and supervised cleanups.
  - Competitive cleanup grants, including the Oversight Remedial Action Grants described in this document.

- **How we report cleanup investments under the HEAL act.**

[13] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-340

We will use the criteria to determine whether a cleanup investment benefits a vulnerable population or overburdened community.

- **How sites are cleaned up.**

  At the site level, the focus is on accountability and transparency in cleanup decision-making. For sites impacting a likely vulnerable population or overburdened community, the rule requires the person conducting the cleanup to:

  - Take a hard look at and consider how the site and cleanup may impact the vulnerable population or overburdened community; and
  - Show their work by documenting those considerations in applicable cleanup plans and reports.

  For Ecology-conducted and Ecology-supervised cleanups, the rule also requires Ecology to develop a plan for engaging likely vulnerable populations and overburdened communities and provide equitable opportunities to participate in cleanup decision-making. See WAC 173-340-350[14] through 173-340-390[15] and 173-340-600[16](9), (13), and (14)). We will use the criteria to determine whether these additional requirements apply.

Reconciling terms

For the purposes of Oversight Remedial Action Grant scoring, the term "highly impacted community" (which is used and defined in the RAG rule) is used instead of the terms "vulnerable population" and "overburdened community" (which are used and defined in the HEAL Act). A highly impacted community is defined by WAC 173-322A-100(24)[17] as "a community that the department has determined is likely to bear a disproportionate burden of public health risks from environmental pollution." Ecology is aligning the RAG-specific definition with implementation of the HEAL Act definitions. As described in "Category 3: Equitable distribution", the criteria for identifying a "highly impacted community" are the same as specified above.

[14] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-350
[15] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-390
[16] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-600
[17] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A-100

Oversight Remedial Action Grant Updates

The purpose of Oversight Remedial Action Grants[18] (ORAGs) is to expedite cleanup and redevelopment of hazardous waste sites and to lessen the impact of cleanup on local ratepayers and taxpayers. The policy and scoring updates outlined below are designed to help Ecology:

- Fund as many cleanups as possible within limited resources.
- Minimize the threat of funding gaps for local government cleanups.
- Ensure ORAGs are distributed statewide to the extent possible.
- Updating criteria for general clarity and transparency.
- Refine Site Hazard Assessment Ranking Process (SHARP) use for grant prioritization.
- Update criteria regarding highly impacted communities.
- Better align on program performance with legislative and Governor expectations for state funding for timely spending.

MTCA revenue shortfall

MTCA is facing a significant shortfall. Forecasted revenue from the Hazardous Substance Tax has dropped almost $100 million since the Legislature passed the 2025-27 budgets. There is little-to-no capacity for new investments from MTCA Capital Account beginning in 2027-29, unless significant underspending is assumed to allow for an over-appropriation of the accounts. Without an increase in revenue or legislative action cleanup projects may be stranded next biennium. For more information on the MTCA revenue shortfall please refer to Ecology's focus sheet[19].

Legislative and Governor capital expectations

As funding becomes scarce, it is increasingly imperative that funding requests are scaled to the immediate need. The last two biennial capital budgets passed by the legislature formalize this sentiment in Sections 8008 and Section 8018. The policy changes provided within this document are meant to help align the RAG program with legislative intent while funding as many cleanups as possible. These expectations, outlined below, are applicable to all state capital funding, not just cleanup or RAG funding.

2023-25 Capital Budget: Section 8008

[18] https://ecology.wa.gov/grants-ORAG
[19] https://apps.ecology.wa.gov/publications/summarypages/2501008.html

In the 2023-25 biennium, the legislature added Section 8008[20] to the capital budget. This section clarified legislative expectations that:

- Projects are ready to proceed in a timely manner
- The legislature generally does not intend to reappropriate funds more than once (funds should be spent within 4 years)
- Agencies should expedite expenditures to the extent feasible

In response to this language Ecology modified funding notifications for the 2023-25 biennium to clarify legislative expectations, identified spending policies in all subsequent cleanup grant guidelines, and updated scored criteria for Oversight Remedial Grants related to readiness to proceed through prior grant performance. The 2025-27 Oversight Remedial Action Grant Guidelines[21] were specifically updated in Section 7.2 to clarify reapplication may be required for funds not spent with six years of the funding notification date. This effectively sets an expected expiration date for 2025-27 biennium funding of June 30, 2031.

Additionally, projects with our oldest capital funding for Oversight Remedial Action Grants were asked to reapply for replacement funds in the 2025-27 biennium. Ecology received a total of 60 eligible applications for over $180 million state share for the 2025-27 biennium, of which 11 projects were ultimately funded. In the exercise of asking local governments to reapply, none of the projects reapplying for replacement funding ranked high enough to receive funding. As a result, Ecology identified this as a potential risk to local governments based on current criteria and the implementation of a reapplication expectation. Policy and criteria changes proposed are meant to help mitigate the risk of a funding gap due to reapplication expectations moving forward.

2025-27 Capital Budget: Section 8018

In the 2025-27 biennium, the legislature replaced Section 8008 of the capital budget with Section 8018[22]. This section built on and further clarified legislative intent for funds provided in the capital budget. It states:

- Projects are expected to spend in a timely manner
- The legislature expects funds to be:
    - Under agreement within four years of appropriation date
    - Spent within six years of appropriation date
- Reappropriation or carrying forward funding is not a guarantee on any timeline, including the expectations above.

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[20] https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Passed%20Legislature/5200-S.PL.pdf?q=20230516094055
[21] https://apps.ecology.wa.gov/publications/documents/2409046.pdf
[22] https://lawfilesext.leg.wa.gov/biennium/2025-26/Pdf/Bills/Senate%20Passed%20Legislature/5195-S.PL.pdf?q=20250514093507

Subsequent Sections 8018(2) and 8018(3) that required specific funding to lapse were vetoed by Governor Ferguson due to concerns with implementation and alignment with timeline considerations of the Governor's budget. However, in the veto note the Governor expressed agreement with the legislature on the intent of this section and the associated timelines.

As part of this implementation, Ecology does not intend to request reappropriation for any RAG funding from prior to the 2019-21 biennium for the 2027-29 biennium. Local government partners impacted by this decision have already been notified and Ecology is working with them to mitigate risks of funding gaps. In general, Ecology will distribute formal communication to all ORAG recipients prior to the 2027-29 solicitation to explicitly identify:

- State share funding available for each project (both under agreement and funds not yet under agreement).
- Funding that will not be carried forward into the 2027-29 biennium.
- Expectations for timelines for all grant funding to come under agreement and spend.

Cleanup projects rely on funding stability to continue moving readily forward from one phase to the next. Additionally, cleanup construction phase funding is especially high in both dollar value and sensitivity to timing. The RAG program will never perfectly align with the four- and six-year expectations outlined in the capital budget bill. For example, if a project was going out for bid for construction 7 years from the appropriation date, Ecology would not expect them to reapply and would carry those funds forward to ensure cleanup project completion. At the same time, implementing timelines and requirements for reapplication disincentivizes requesting funding ahead of when it is needed. By timing funding to when it is needed Ecology can support more projects consistently over time and better meet legislative and Governor intent for timely spending.

Demand for ORAG funding is high

Demand for ORAGs has always exceeded the amount of funding available. As local governments go to construction and more are applying for cleanup projects, the demand for cleanup funding increases. In the 2025-27 biennium, we received a total of 60 ORAG applications, which is at least 15 more applications than either of the last two biennia (see Figure 1).

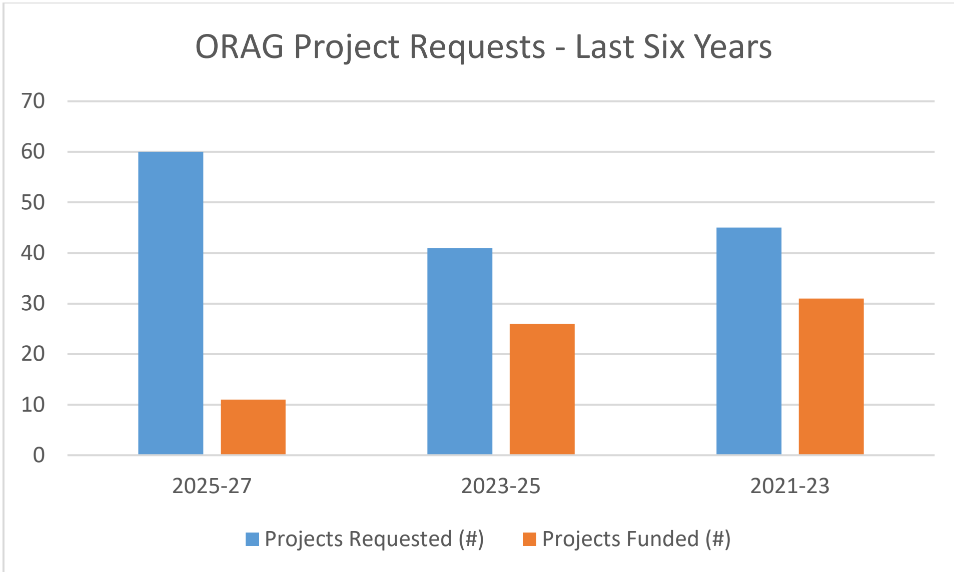

Figure 1: Number of applications for ORAGs for the last three biennial solicitations compared to the number of projects funded.

Part of the increase in the 2025-27 biennial solicitation applications was for not previously funded projects. According to WAC 173-322A-210 Ecology must prioritize "previously funded projects, provided substantial progress has been made." In the last three biennial solicitations approximately two thirds of the projects that submitted a request had previously funded priority. However, these projects in many cases also had existing grant funds from awards in previous biennia.

On average for the last three biennial solicitations 17 projects without previous funding priority requested funding. The 2021-23 biennium was the only biennium of the three able to fund new projects and only two of the 15 were funded. Projects yet to receive ORAG funding are either delayed until grant funds are available, or the local government can support the full cost of the project until funds are awarded.

ORAGs do allow for retroactive costs to be billed after grant activation based on the timing of the order or decree that dictates the cleanup. As a result, it is not uncommon for local governments to build up hundreds of thousands or even millions of dollars retroactive costs to bill once funding is awarded. However, providing the state share upfront for formal cleanups, especially for small local governments, can be cost prohibitive and the project may alternatively slow down until funding is provided. Ecology is requesting local governments with unfunded projects fill out a survey[23] to identify the amount of retroactive costs they have unbilled to date. The results of that survey will be provided along with the responses to comments.

In the 2025-27 biennial solicitation Ecology received over $150 million in requests for previously funded ORAGs alone. Due to limited funding availability Ecology prioritized ORAGs, especially since several projects were slated for time sensitive construction timelines. Part of this

[23] https://www.surveymonkey.com/r/ZH6FS5S

prioritization included not requesting new funding for Integrated Planning Grants (IPGs)[24] or Area-wide Groundwater Investigation Grants[25] for the 2025-27 biennium.

Due to low demand for Area-wide Groundwater Investigation Grants in past biennial solicitations, Ecology does not anticipate offering this grant type for the 2027-29 biennium. However, we are reviewing the grant type for its utility and potential barriers to use as a tool to support cleanup efforts. Local government partners are encouraged to take the survey[26] to provide feedback and will be available until the close of the 2027-29 biennial solicitation. Responses will be reported as part of the 2026 MTCA Ten Year Financing Report.

Ecology remains committed to supporting cleanups, both ongoing and those just starting. Several of the policy changes outlined for public comment are designed to increase Ecology's ability to financially support not previously funded ORAGs as well as other types of RAGs, including our smaller grant types like IPGs and Independent Remedial Action Grants (IRAGs)[27].

Refining substantial progress review

During the 2025-27 biennial solicitation, Ecology met with several local governments to examine and refine the funding level of their ORAG requests. The purpose of the exercise was to identify the impact of including a reduced state share amount in Ecology's request to the Governor. The subsequent impact was to enable the available funding to support as many of the 60 projects as possible, including several hitting time sensitive construction windows. Overall, in the 2025-27 biennium, Ecology reduced previously funded projects by over $20 million. Even with the reduction, however, there were only 11 projects out of 60 ORAG requests funded.

All projects will be evaluated, independent of scored criteria, for their readiness to proceed for the dollar value requested. Ecology will consider the following:

- Current cleanup progress, including phase of work
- Current financial progress, including ability of both current funds and the requested funds to meet the following timelines:
  - Funds should come under agreement within four years of appropriation
  - Funds should be spent within six years of appropriation
- If requesting construction phase funding, Ecology will further evaluate the request based on:
  - If a 30% engineering design has been submitted to Ecology
  - Status of local government match

Ecology may request additional information if the application is insufficient to conduct the above review. Projects may be removed or included at a reduced level of funding on the project

[24] https://ecology.wa.gov/grants-IPG
[25] https://ecology.wa.gov/about-us/payments-contracts-grants/grants-loans/find-a-grant-or-loan/area-wide-groundwater-investigation-grants
[26] https://www.surveymonkey.com/r/FBQF7NQ
[27] https://ecology.wa.gov/grants-IRAG

list depending on results of the substantial progress review. Local government partners can expect formal communication prior to Ecology's submission to the Governor if a project was removed from or included at a reduced level in the project list based on this evaluation.

Standardizing recipient staff time costs

Ecology conducted a review of recipient staff time charges of almost 40 ORAGs over the lifetime of each grant. Ecology's goal in this review, and the subsequent policy update, is to ensure funding is used to maximize cleanups both within each grant and by supporting as many projects as possible. The analysis revealed a positive correlation between local government size and the percentage of the grant supporting recipient staff time; the larger the local government the more staff time charged to the grant.

Recipient participation in management of the grant and the cleanup project itself is critical to the success of any local government cleanup. However, Ecology wants to ensure ORAG funding is being used equitably and consistently across all local governments. By controlling staff time costs for all local governments consistently, it will allow a larger number of projects to be supported overall.

Starting at the beginning of the 2027-29 biennium all new and existing ORAG grants will be written or amended respectively to limit recipient staff time. Recipient staff time moving forward will be:

- Restricted to the grant administration task.
- Limited to 10% of the dollar value for each payment request as it is submitted.
- Limited to 10% of the grant OR $100,000, whichever is less.

All recipient staff time will still need to be properly documented to identify date work performed, hours worked per day, hourly rate, total cost, and a detailed summary of work performed for each staff member by day to be eligible for reimbursement.

Eastern Washington priority

The purpose of this modification is to ensure the Remedial Action Grant program and associated budget, similar to the cleanup program, supports cleanups statewide to the extent possible. Projects east of the cascades are regularly smaller dollar value in comparison to westside projects, especially in comparison to in-water projects. Due to the high dollar values and limited available funding, it is possible for just a few projects to require the majority of funding available for a given biennium. This was seen in the 2025-27 biennium as two larger dredging projects represented 70% of the new RAG investments for the biennium.

During the 2025-27 biennial solicitation and others before, there was a scored criteria for projects that were east of the Cascades (located in Ecology's Central and Eastern regions). However, in the most recent solicitation Ecology found the scored criteria, amidst all other changes, was not as effective as desired at prioritiziang eastside projects and ensuring a statewide cleanup program. Starting with the 2027-29 biennial solicitation Ecology is instituting an Eastern Washington priority and removing the scored criteria for eastside projects similar to the practice described in the 2023-25 Affordable Housing Planning Grants[28] in Section 7.4.

Starting with the 2027-29 biennium, at least 25% of the funds from the new Oversight Remedial Action grant budget will be reserved within both previously and not previously funded project priorities for projects east of the Cascades (Ecology's Central and Eastern regions) to the extent possible. If Ecology determines that it has not received sufficient applications during the funding cycle, the department may allocate funds to other regions of the state.

The prioritization of Oversight Remedial Action Grants, as a result, will be:

1. ORAGs with an active Extended Grant Agreement
2. Previously funded ORAGs in Eastern Washington (up to 25% of available funds)
3. Previously funded ORAGs (westside and eastside beyond the 25%)
4. Not previously funded ORAGs in Eastern Washington (up to 25% of available funds)
5. Not previously funded ORAGs (westside and eastside beyond the 25%)

ORAG scorecard Updates

The Oversight Remedial Action Grant scorecard was updated for several factors, including:

- Increased clarity of criteria, including timing, to enable consistent and fair scoring.
- Prioritization of projects with active funding gaps or with limited construction windows.
- Continued refinement of implementation of the Site Hazard Assessment Ranking Process (SHARP) for prioritizing sites for funding.
- Loss of access to federal databases supporting demographic data for highly impacted community related criteria.

The criteria for the 2025-27 biennium solicitation were published in the associated guidelines[29]. Most criteria remain similar with slight alterations and changes to point value; however, some were deleted due to lack of clarity during scoring or redundancy with SHARP implementation. The larger changes to the scorecard explained below and the complete draft scorecard for the 2027-29 biennium follows.

Prioritization for funding gaps and time sensitive construction windows

In reviewing the solicitation results for the 2025-27 biennium and the likely needs expected for the 2027-29 biennium, Ecology identified several projects that will or may experience a funding gap. This included several projects reaching cleanup construction phase, where timing is

[28] https://apps.ecology.wa.gov/publications/documents/2209048.pdf
[29] https://apps.ecology.wa.gov/publications/SummaryPages/2409046.html

critical. As a result, two scored criteria were modified to prioritize active funding gaps and projects within time sensitive permit windows.

Local governments rely on sequential funding to keep cleanups moving forward. However, overtime funding has previously been requested and awarded well ahead of when projects are shovel ready for construction. By implementing expectations on timing and reapplication previously mentioned, Ecology is aiming to provide a framework for local government applications to be more appropriately scaled to the work in the immediate future. This change does not come without risk, as construction funding timing is critical and loss of funds could create funding gaps that could delay cleanups. To counter this, Ecology modified one of the prior grant performance criteria to actively prioritize projects with no current Remedial Action Grant funding or those that won't have any for the biennium of the solicitation. This criteria is designed to help prioritize previously funded projects at the most financial risk within the RAG budget.

Construction windows in general are time sensitive, but especially those that require in-water work. The federal permit, or the Joint Aquatic Resource Permit Application (JARPA), required for this work is only active for five years. As a result, it is critical that projects with a JARPA in hand can go to construction during that window. Otherwise, the JARPA, which can take well over a year to obtain, may expire and the project could be delayed for years to decades. To mitigate this, the permit criteria was modified to help prioritize projects with a JARPA in hand at the time of the solicitation.

Updating how site hazard assessments are considered

As required by the amended MTCA Cleanup Regulation[30], we developed a new way to assess the hazard posed by contaminated sites, called the Site Hazard Assessment and Ranking Process[31], or SHARP. SHARP allows us to assess all contaminated sites based on available information and update those assessments when new information becomes available. SHARP enables us to identify and prioritize sites that pose the greatest chemical exposure risks to human health and the environment.

We started assessing site hazards using SHARP in January 2024, after the rule became effective. Ecology first incorporated the new hazard assessments into our grant scoring criteria for the 2025-27 biennium, replacing several existing criteria. However, since then, we have identified additional criteria that are redundant. We are proposing to remove those redundant criteria and increase the SHARP score both in weight and granularity. See category 3 of the ORAG scorecard.

Highly impacted community criteria update

One of the factors by which Ecology prioritizes ORAGs is if the site is determined to be in a highly impacted community. A highly impacted community is defined by WAC 173-322A-100(24) as "a community that the department has determined is likely to bear a

[30] https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-320
[31] https://ecology.wa.gov/spills-cleanup/contamination-cleanup/cleanup-process/assessing-contaminated-sites

disproportionate burden of public health risks from environmental pollution." Ecology is aligning RAG specific definitions with efforts for implementing the Healthy Environment for All Act[32] (also known as the HEAL Act) passed by the Legislature in 2021.

The law requires Ecology and other state agencies to identify and address environmental health disparities in overburdened communities and vulnerable populations. These communities have a higher risk of adverse health outcomes and the law seeks to prevent and mitigate those adverse outcomes (RCW 70A.02.005[33]). Learn more about this essential work at Ecology's Environmental Justice[34] and HEAL[35] Websites.

The HEAL Act instructs Ecology and other covered state agencies to incorporate environmental justice into funding and budgeting processes. The HEAL Act creates new obligations. Specifically, the law requires agencies to set a goal of directing 40% of all grants and expenditures that create environmental benefits to vulnerable populations and overburdened communities (RCW 70A.02.080)[36].

On June 26, 2024, the Governor's Office published a uniform approach for identifying overburdened communities and vulnerable populations to direct and track investments under the HEAL Act. This approach ensures that investments made under this law are effectively directed towards creating benefits for vulnerable populations in overburdened communities and tracked consistently across state agencies. Under this approach, an investment fulfills HEAL Act funding equity requirements if it is:

- Invested in a geographic area identified on the Overburdened Communities Mapping (OBC) tool;
- Reasonably expected to benefit a "vulnerable population" based on one or more of the definitions established in the HEAL Act (RCW 70A.02.010(14)[37]); and
- Reasonably expected to create "environmental benefits" based on the criteria in the HEAL Act (RCW 70A.02.010(4)).

The February 2024 solicitation for the 2025-27 biennium funding occurred before this guidance was released. The OBC map, similar to our published 2025-27 demographic criteria, relies on federal data sets that are no longer available. As a result, Ecology is modifying demographic data for our highly impacted community criteria to rely solely on state tools that are publicly available and follow the intent of the uniform approach. See Updates to Environmental Justice Criteria above and category 3 of the ORAG scorecard below.

32 https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02
33 https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.005
34 https://ecology.wa.gov/about-us/who-we-are/environmental-justice
35 https://ecology.wa.gov/about-us/who-we-are/environmental-justice/heal
36 https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.080
37 https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010

ORAG Scorecard

ORAG projects will be prioritized by funding according to if the project:

1. Previously received RAG funding
2. Has an active Extended Grant Agreement
3. Is located East of the Cascades
4. Project’s scored criteria

A project’s score is determined by adding together the total score for each category out of 161 points available (percentages are rounded). The categories are:

- Category 1: Faster Cleanup and Readiness to Proceed (22%)
- Category 2: Site Hazard Assessment Ranking Process Score (31%)
- Category 3: Equitable Distribution (34%)
- Category 4: Redevelopment and Reuse in Cleanups (13%)

Category 1: Faster cleanup and readiness to proceed

1.1	Prior grants	8 points max	5% of score

8 points: The site does not have any current Remedial Action Grant funding OR all of the site's current Remedial Action Grant funding is ineligible to roll into the next biennium resulting in a state share funding gap.

0 points: The site currently has Remedial Action Grant funding and at least some of the funding is eligible for extension into the next biennium.

This criteria does not consider expected spending, as it is meant to prioritize sites already experiencing a funding gap.

1.2	Prior grant performance	5 points max	3% of score

5 points: All active remedial action grants for the recipient were billed up to date at the time of the solicitation close.
OR Did not have a Remedial Action Grant at the time of the solicitation.

0 points: One or more active Remedial Action Grants were not billed up to date at the time of the solicitation close.

1.3	Permit status at the time of the solicitation close	7 points max	4% of score

7 points: JARPA is required and in hand for the project.

5 points: For the phases of work for which funding is requested: all permits are in hand OR no permits are required (by scope of work or MTCA/ CERCLA exemptions).

3 points: Required permits are in process.

0 points: None of the above apply.

1.4 Contracting Status at the time of the solicitation close for all phases of work requesting funding — 4 points max — 2% of score

4 points: Contracts are in place.

3 points: Bidding documents are complete.

2 points: Bidding documents are in process.

0 points: Process not started.

1.5 Leveraging other funds to reduce costs to the state — 3 points max — % of score

5 Points: Applicant has secured additional grants, private funds (including contributions, insurance, public-private partnerships, etc.).

3 Points: Applicant is pursuing grant applications, private funds (including contributions, insurance, public-private partnerships, etc.).

2 Points: Applicant has a capital plan for both cleanup and redevelopment or reuse of the site.

0 Points: None of the above apply.

Contributions from other RAG eligible local governments do not count as leveraging other funds.

1.6 Ecology's readiness to proceed at the time solicitation closes — 6 points max — 4% of score

6 Points: Order or decree for the phase of work for which funding was requested is effective.

4 Points: Order or decree for the phase of work for which funding was requested is in negotiation OR an order or decree is in place but must be amended prior to completing the scope for which funding was requested.

2 Points: Ecology Cleanup Project Manager (Site Manager) has been assigned to the site (as reflected in Ecology's Integrated Site Information System, ISIS).

0 Points: None of the above apply.

Category 2: Improve Human Health and the Environment as Determined by SHARP

2.1 SHARP numerical rating for the site 50 points max 31% of score

The percentage of SHARP Rating points multiplied by 50 and rounded to the nearest whole number.

Examples
50 grant points = 100% of SHARP rating points (maximum available is 3,500)
25 grant points = 50% of SHARP rating points (1,750 points)
6 grant points = 11% of SHARP rating points (385 points)

Category 3: Equitable Distribution

3.1 Highly Impacted Community Considerations - Environmental health disparities index
20 points max 12% of score

The environmental health disparities index considers 19 indicators that include environmental exposures and effects as well as sensitive populations and socioeconomic factors.

20 points The population of the census tract scores a rank of 9 or 10 on the Environmental Health Disparities Index maintained by the Department of Health **OR** is located in census tracts that are fully or partially on Indian Country as defined in 18 U.S.C. Sec. 11514.

0 points The above does not apply.

3.2 Highly Impacted Community Considerations - Environmental health disparities map
10 points max 6% of score

10 points The site ranks 9 or 10 for socioeconomic factors rank of 9 or 10

0 points The above does not apply.

3.3 Highly Impacted Community Considerations - Environmental health disparities map
10 points max 6% of score

10 points People of color (Race/Ethnicity) rank 9 or 10
AND population living in poverty rank of 9 or 10

0 points The above does not apply.

3.4 Site is in an "economically disadvantaged," city, town, or unincorporated portion of the county as defined in WAC 173-322A-100(15) and (16).

See Economically Disadvantaged Cities, Towns, and Counties in Washington State (2025-27)[38].

15 points Meets the criteria.

0 points The above does not apply.

Category 4: Redevelopment and Reuse in Cleanups

4.1 The site contains a vacant, abandoned, or underutilized industrial or commercial facility.

Points max % of score

2 points: Yes

0 points: No

4.2 The project has plans in place for significant fish/wildlife habitat restoration and/or other conservation benefits beyond remediation of the site.

3 points: Yes

0 points: No

2 points: Applicant already identified a purchaser, developer, operator, or lessee for the redeveloped site.

0 points: The above does not apply or redevelopment is not planned for the site (example of dredging projects).

[38] https://ecyapfass/Biblio2/SummaryPages/2509045.html

4.3 Applicant provided documents or information demonstrating that a lack of local funding or ability to obtain financing is significantly delaying the cleanup and subsequent use, sale, or redevelopment of the site points max % of score

4 points: Yes

0 points: No

2 points: Site is located within a Redevelopment Opportunity Zone (ROZ) designated under RCW 70A.305.150.

1 point: Site is located within an incorporated city, town, or urban growth area designated under RCW 36.70A.110.

0 points: None of the above apply.

4.4 Local infrastructure (such as public transit, roads, water, sewer, utilities) to serve the redeveloped site

3 points: Already in place.

2 points: Under construction.

1 point: Planned.

0 points: None of the above apply **OR** the cleanup does not have redevelopment planned.

4.5 Based on plans for site reuse at the time of the solicitation close points max % of score

2 points: Site will be redeveloped to provide additional affordable housing on site after cleanup.

1 point: Site will preserve existing affordable housing on site after cleanup.

0 points: Site will not preserve or provide affordable housing after cleanup.

4.6 Based on plans for site reuse at the time of the solicitation close:

3 Points: Redeveloped site will be primarily for public use (for example, a park, museum, or library).

2 Points: Redeveloped site will be partially for public use (example, site contains both a public trail and private housing).

0 Points: Neither of the above apply.

Cleanup Grants Supporting Affordable Housing

The competitive Affordable Housing Cleanup Grant program started in the 2023-25 biennium. Since then, Ecology has conducted three solicitations and awarded a total of 14 grants. While many projects are making great progress, several others are no longer moving forward. As part of an effort to improve the grant process, we hired Masters students from the Evans School of Public Affairs and Governance to review current policies and processes to make recommendations for changes. As a result of this external review and lessons learned, Ecology is proposing a restructure and renaming of the grant program.

Changing the name of the grant program

Feedback from grant recipients included confusion over what scope of work the grant funding could support. In response, Ecology is proposing to shift the grant program name from "Affordable Housing Cleanup Grant" to "Cleanup Grants Supporting Affordable Housing" starting in the 2027-29 biennium.

Restructuring the grant program to a phased approach

Instead of conducting the solicitation in advance of the budget build, Ecology intends to request a lump sum in the submission to the Governor to support Cleanup Grants Supporting Affordable Housing (name change recommended due to feedback received to date). This lump sum request would replace the normal project lists usually submitted with cleanup project requests and identified in the Ten-Year MTCA Financing Report.[39] Project funding would be awarded in two phases, one competitive and the second based on substantive progress.

Phase 1 – Competitive solicitation

Early in the 2027-29 biennium, after funding is confirmed, Ecology anticipates offering one competitive solicitation for approximately 20% of the funding requested. The maximum award amount is anticipated to be similar to the Affordable Housing Planning Grants. These grants would support early phases of cleanup that are critical to defining the nature and extent of the cleanup site and evaluating if the site is appropriate for housing. Early phases, especially investigation, are critical for recipients to understand the potential scale of the cleanup prior to signing legal agreements for either the cleanup or purchase of the site.

Phase 2 – Substantial progress

Projects would be eligible for the amendment of additional funds into the agreement if one of the following conditions was met:

1. Substantial cleanup and financial (grant spending) progress has been made at the site and additional funds are needed to continue early phase work.

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[39] https://ecology.wa.gov/about-us/who-we-are/our-programs/toxics-cleanup/tcp-legislative-reports

2. An order or decree is signed for the site, making the recipient eligible for engineering design, cleanup construction, and post cleanup monitoring costs.
3. Previously funded competitive Affordable Housing Cleanup Program grants have made substantial progress and demonstrated a need for additional funds.

This flexibility would decouple cleanup funding timing to make it more flexible, as development funding is already very time restricted. Additionally, this structure would allow us to more accurately scale funding to the imminent need for each project, which will aid with timely spending. Any of the requested funds not under agreement in four years would be made available for lapse in accordance with legislative and Governor intent expressed in Section 8018.

Timeline for next steps

Ecology anticipates scheduling public comment period for detailed grant policies, eligibility, criteria, and structure in the Fall of 2026. Eligibility and associated policies for the Voluntary Cleanup Program waiver for affordable housing is anticipated to be part of this public comment period as well.

Appendix A.

Chapter 173-322 WAC, Remedial Action Grants and Loans

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

WAC Sections*

RAG Rule section	Section title
173-322A-010[40]	Purpose and authority.
173-322A-020[41]	Relation to other laws and rules.
173-322A-100[42]	Definitions.
173-322A-200[43]	Funding cycle.
173-322A-210[44]	Funding priorities.
173-322A-220[45]	Fiscal controls.
173-322A-320[46]	Oversight remedial action grants.
173-322A-325[47]	Oversight remedial action loans.
173-322A-340[48]	Area-wide groundwater investigation grants.
173-322A-350[49]	Safe drinking water action grants.

*WAC sections related to grants not covered by these Guidelines have been omitted.

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

[40] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-010
[41] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-020
[42] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-100
[43] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-200
[44] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-210
[45] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-220
[46] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-320
[47] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-325
[48] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-340
[49] https://app.leg.wa.gov/WAC/default.aspx?cite=173-322A&full=true#173-322A-350

(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).[50]

(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*.

[50] The MTCA Cleanup Rule refers to several statutes' previous codification numbers. For example, in 2020 the Washington State Legislature recodified the Model Toxics Control Act from Chapter 70.105D RCW to Chapter 70A.305 RCW.

(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 multibiennial 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.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-210, filed 8/29/14, effective 9/29/14.]

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-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), § 173-322A-325, filed 8/29/14, effective 9/29/14.]