



## Toxics Cleanup Program

### Policy 800B: Information Access

*Established:* February 1991

*Contact:* Policy and Technical Support Unit, Headquarters

*Purpose:* In order to investigate a report of a release or threatened release of hazardous substances, the Department of Ecology is authorized by the Model Toxics Control Act, RCW 70.105D.030, to access any and all information relevant to the site. The purpose of this policy is to give Ecology employees guidance in accessing information necessary for the investigations and cleanup of hazardous waste sites.

*Disclaimer:* This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

*Approved by:* \_\_\_\_\_

**Accommodation Requests:** To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

## **Purpose and Applicability**

In order to investigate a report of a release or threatened release of hazardous substances, the Department of Ecology is authorized by the Model Toxics Control Act, RCW 70.105D.030, to access any and all information relevant to the site. The purpose of this policy is to give Ecology employees guidance in accessing information necessary for the investigations and cleanup of hazardous waste sites.

### **1. The Department May Access All Information.**

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Whenever there is a reason to believe that a release or threatened release of a hazardous substance has occurred, authorized employees, agents or contractors may access all information relevant to conducting investigations or remedial actions. Examples of relevant information may include:

- a. Handwritten, typewritten, printed or photocopied forms of notes, letters, reports, transcripts, invoices, manifests, documents, or communications of any kind;
- b. Photographs;
- c. Video tapes or movies;
- d. Recordings;
- e. Maps;
- f. Discs; and
- g. Cards, magnetic or punched.

### **2. Reasonable Notice To Site Owner And Operator Shall Be Given Before Accessing Information.**

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Before accessing information, the investigator shall provide the owner and operator with a reasonable notice of the intent to access information. The process for information access is discussed in WAC 173-340-800. During normal business hours, the investigator should have access to and be allowed copies of all private documents related to the investigation of the release. Reasonable notice of the Department's intent to access information shall be achieved in one of the following ways:

- a. A conversation with the owner and operator, to the extent known by the Department, in which information access is immediately granted. This may be accomplished either by providing a written notice in person or a verbal notice either in person or by telephone;

- b. a conversation with the owner and operator, to the extent known by the Department, in which notice of intent to access information in twenty-four hours is given. This may be accomplished either by providing a written notice in person or a verbal notice either in person or by telephone;
- c. A written notice to the owner and operator, to the extent known by the Department, by regular mail, at least three days prior to the entry. (See POL 800A, Paragraph 3 for the specific contents of a written notice.)

The investigator shall maintain a telephone log or field notebook documenting the service of verbal notice.

If access cannot be achieved through any of these means, the investigator shall contact the Ecology Division of the Attorney General's Office to acquire a subpoena to gain access to information. (See PRO 800)

### **3. Orders And Decrees Shall Contain Conditions For Information Access.**

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Whenever investigations or remedial actions are conducted under an order or consent decree, the MTCA requires that Ecology's investigators, agents, or contractors shall not be denied access to information. All orders and decrees shall contain provisions for obtaining access to information to implement the terms of the order or decree and those provisions shall constitute reasonable notice. For sites where there is no agreement regarding access to information, or the order or decree is with someone other than the owner/ operator, then reasonable notice consistent with Paragraph 2 must be provided before accessing information.

### **4. The Ongoing Operations At The Site Should Not Be Disrupted.**

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The investigator shall make reasonable efforts to avoid disrupting the ongoing operations of the site, except under emergency circumstances or while working under a warrant, when the nature of the investigation is likely to disrupt operations at the site, to the extent possible, the investigator shall inform the owner/ operator in advance. In general, this will occur at the time reasonable notice is given, see paragraph 3.

### **5. The Department Shall Make Reasonable Efforts To Help Potentially Liable Persons Gain Access To Information.**

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When conducting remedial actions under an order or decree, potentially liable persons who need access to information that is not their own must attempt to secure access from the owner/operator. If they fail in their attempt, the Department shall make reasonable efforts to help them access information needed to conduct the remedial action in a manner consistent with 42.17 RCW, Chapter 173-03 WAC, and agency policy on public information disclosure. Refer to guidance materials on public disclosure in the Resource Handbook (EIM 411.3).

Copies of all information collected shall be submitted to the Department and placed in the site file. (See POL related to the creation and management of site files: EIM 411.1; EIM 411.11; and EIM 411.13).

**6. Site Managers Shall Maintain A Record Of The Information Collected During The Investigation.**

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The site manager shall keep a complete record of all information collected during an investigation. Information shall be maintained in the site file in accordance with Chapter 173-03 WAC, Chapter 42.17 RCW and agency policy. The following should be included in the investigative record:

- a. Copies of all documents; (See Paragraph 2)
- b. Transcripts or summaries of all conversations and interviews;
- c. Copies of all inter- and intra- office memos, early notice letters and comments, PLP letters and comments, agency findings, and personal notes and comments relevant to the site;
- d. Title search results;
- e. Financial information;
- f. Corporate information, copies of all permits, manifests, invoices, etc.;
- g. Results of sampling;
- h. Technical reports;
- i. History of operations at the site;
- j. Telephone log; and
- k. Field notebook.

**7. The Site Record Shall Be Available For Public Review.**

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Information collected during the investigation of a release or threatened release shall be disclosed to the public upon request, in accordance with rules for information disclosure contained within Ch.42.17 RCW and the management of public records in Ch.173-03 WAC.

Refer to guidance materials on public disclosure in the Resource Handbook (EIM 411.3).